



U.S. Department
of Transportation


Memorandum

Federal Motor Carrier Safety Administration

ACTION: Requirements for Inspection of
Commercial Motor Vehicles operated by

Subject: Mexico-domiciled Carriers under the
Cross-Border Demonstration Project

Date: JUN - 5 2008

From: 
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Reply to
Attn. of: MC-ESB

To:
Assistant Administrator and Chief Safety Officer
Associate Administrator for Field Operations
Enforcement and Program Delivery Office Directors
Enforcement and Program Delivery Division Chiefs
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Field Administrators
Service Center Directors
Division Administrators
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I. Purpose

This memorandum supersedes guidance provided under the Requirements for Inspection of Commercial Motor Vehicles operated by Mexico-domiciled Carriers Operating under the Cross-Border Demonstration Project (MC-ECE-0026-06), issued December 27, 2007. The primary change in the policy involves replacing the Commercial Vehicle Safety Alliance (CVSA) Decal Compliance Check Record with a Driver Vehicle Inspection Report to document the CVSA decal compliance check. This change is being made to implement an electronic process for collecting and reporting the results of the check.

This memorandum provides guidance to: (1) ensure that every Commercial Motor Vehicle (CMV) operated by Mexico-domiciled motor carriers granted provisional operating authority for transportation beyond United States (U.S.) municipalities and commercial zones on the U.S.-Mexico border under the Cross-Border Demonstration Project is checked upon each entry into the U.S.; and (2) enforce the statutory and regulatory requirements that every Mexico-domiciled carrier participating in the Cross-Border Demonstration Project display a current CVSA decal on every CMV it operates in the U.S.

II. Background

Section 350(a)(5) of the Fiscal Year 2002 U.S. Department of Transportation (DOT) Appropriations Act directs the Federal Motor Carrier Safety Administration (FMCSA) to require inspection of all CMVs operated by Mexico-domiciled motor carriers granted provisional operating authority until the motor carrier holds permanent operating authority from the FMCSA for at least three consecutive years.

On March 19, 2002, FMCSA published two interim final rules necessary for implementation of the North American Free Trade Agreement. The interim final rules are codified at 49 CFR Part 365, Subpart E, and 49 CFR Part 385, Subpart B. These rules imposed inspection and CVSA decal requirements on Mexico-domiciled motor carriers issued provisional operating authority.

Under 49 CFR §385.103(a), each Mexico-domiciled motor carrier granted provisional operating authority operating in the U.S. will be subject to an oversight program to monitor its compliance with applicable Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards, and Hazardous Materials Regulations. Additionally, 49 CFR §385.103(c) requires each Mexico-domiciled carrier granted provisional operating authority under Part 365 have on every CMV it operates in the U.S. a current CVSA inspection decal attesting to a satisfactory safety inspection by a certified inspector.

When taken together, these provisions authorize FMCSA and its State partners to place out-of-service (OOS) a CMV operated by a Mexico-domiciled motor carrier granted provisional operating authority for failure to display the required CVSA decal. Any other conclusion would prevent Federal and State inspectors from ensuring those Mexico-domiciled motor carriers and the CMVs they operate remain continuously in compliance with these applicable safety standards.

A. Operating Authority

The provisional operating authority granted to Mexico-domiciled motor carriers under the Cross-Border Demonstration Project allows the motor carrier to operate beyond the U.S. southern border municipalities and commercial zones.

A Mexico-domiciled motor carrier that was previously issued a certificate of registration to operate exclusively within the commercial zones, and subsequently is issued provisional operating authority to operate beyond the U.S. municipalities and commercial zones, will be required to ensure that each CMV operated in the U.S. displays a current CVSA inspection decal (including those that continue to operate exclusively in the commercial zones).

B. U.S. DOT Number Identification

When FMCSA grants provisional operating authority to a Mexico-domiciled motor carrier to operate beyond the U.S. southern border municipalities and commercial zones, it is assigned a distinctive U.S. DOT number. The distinctive U.S. DOT number includes a suffix "X" at the end of the number. Each CMV (as defined in 49 CFR §390.5) operated by a Mexico-domiciled motor carrier participating in the Cross-Border Demonstration Project must be marked with the U.S. DOT number issued by FMCSA, including the "X" suffix.

Mexico-domiciled motor carriers participating in the Cross-Border Demonstration Project are subject to the marking requirements of 49 CFR §390.21, and should be cited on the inspection report accordingly if the suffix is not included in the vehicle markings. Enforcement actions for violations of §390.21 are recommended.

C. Commercial Driver's License Requirement

Every CMV (as defined in 49 CFR §383.5) driver of a Mexico-domiciled motor carrier participating in the Cross-Border Demonstration Project who is subject to the commercial driver's license requirements in 49 CFR Part 383 will undergo a driver License verification check upon entry into the U.S., in accordance with procedures outlined within the Licencia Federal enforcement policy.¹

D. English Language Proficiency Requirement

Every CMV (as defined in 49 CFR §390.5) driver of a Mexico-domiciled motor carrier participating in the Cross-Border Demonstration Project will undergo an assessment to determine whether the driver meets the requirements of 49 CFR §391.11(b)(2). Guidance for performing the English language proficiency assessment is outlined in the July 20, 2007 policy memorandum titled "Placing Drivers Out of Service for Violating 49 CFR Section 391.11(b)(2) - English Language Proficiency (MC-ECE-0005-07)" and memorandum titled "49 CFR Section 391.11(b)(2) English Language Proficiency" dated February 1, 2008.

III. POLICY

A. Checking upon Entering the United States from Mexico

The FMCSA Division Administrators (DAs) are responsible for ensuring every CMV operated by a Mexico-domiciled motor carrier participating in the Cross-Border Demonstration Project and entering the U.S. is subject to a CVSA decal compliance check. During this check, the inspector must verify that:

1. The power unit and trailer (if applicable) display a current CVSA inspection decal
2. The driver possesses a valid driver's license for the type of vehicle being operated.
3. The driver undergoes an English language proficiency assessment, a sign recognition assessment and meets the requirements of 49 CFR §391.11(b)(2).
4. The power unit in operation is equipped with a global positioning system (GPS) vehicle tracking device.

This effort will require coordination between the DAs, State agencies and Customs and Border Protection agents² performing operations at the same ports of entry. Any of these agencies may perform the screening to identify CMVs required to display a USDOT number with the suffix "X". However, the DAs are ultimately responsible for ensuring every vehicle required to display a USDOT number ending with the suffix "X" entering the U.S. from Mexico is subject to a CVSA Inspection Decal Compliance Check, and its driver(s) is subject to a driver license verification check, an English language proficiency assessment and a sign recognition

¹ See Mexican Licencia Federal Enforcement Policy dated October 24, 2001 and Mexican Licencia Federal de Conductor Enforcement Policy Clarification dated November 25, 2006

² Customs and Border Protection and FMCSA have committed to coordination of screening CMVs operated by, and drivers for, Mexico-domiciled motor carriers with provisional operating authority entering the United States as part of the cross-border demonstration project for compliance checks to be performed by Federal or State inspectors.

assessment. Those vehicles not displaying a current CVSA inspection decal must be inspected, and a CVSA inspection decal must be issued to those that pass the safety inspection before they are allowed to proceed.

B. Recording the Results of the Inspection

Generally, every CVSA decal compliance check will be documented by conducting a Level 4 inspection. It may also be documented by conducting a Level 1, 2, or 3 inspection, if appropriate. The Driver Vehicle Inspection Report will replace the CVSA Inspection Decal Compliance Check Record to document the results of the CVSA decal compliance check.

The CVSA decal compliance check will be documented by completing the Driver Vehicle Inspection Report and the five Special Studies fields available on the Driver Vehicle Inspection Report. The CVSA decal compliance check information will be recorded in the Special Studies fields as follows:

1. Field 1: Existing valid CVSA decal number on the power unit, if applicable, followed by a three-letter abbreviation of the decal month of issuance (Jan, Feb, Mar, Apr, May, Jun, Jul, Aug, Sep, Oct, Nov, Dec). If no valid CVSA decal is applied to the power unit, leave the field blank.
2. Field 2: Existing valid CVSA decal number on the trailer, if applicable, followed by a three-letter abbreviation of the decal month of issuance. If no valid CVSA decal is applied to the trailer, or there is no trailer, leave the field blank.
3. Field 3: Driver license check completed (enter yes or no).
4. Field 4: English language proficiency assessment conducted (enter yes or no).
5. Field 5: Vehicle equipped with GPS vehicle tracking device (enter yes or no).

Every Driver Vehicle Inspection Report conducted on Mexico-domiciled motor vehicles participating in the Cross-Border Demonstration Project when entering the U.S. from Mexico must include all the required entries in the Special Studies fields of the report (Attachment A).

The inspector shall upload all inspection reports at least daily.

C. Participating Vehicles without a CVSA Inspection Decal

The following scenarios provide guidance and procedures to ensure that CMVs operated by Mexico-domiciled motor carriers participating in the Cross-Border Demonstration Project are checked and display a current CVSA inspection decal. If a CMV does not display a current CVSA inspection decal the inspector should follow the inspection and enforcement guidance below:

1. **Scenario 1: Inspection of a CMV not displaying a current CVSA inspection decal at a southern border port of entry.**
 - a. Conduct a Level I inspection.

- b. If no critical vehicle inspection items³ are discovered, affix a CVSA inspection decal.
 - c. If one or more critical vehicle inspection items are discovered, record the vehicle violations and place the vehicle out-of-service (OOS) according to the CVSA OOS criteria. Affix an OOS sticker on the appropriate vehicle(s), inform the driver of the OOS defect(s).
 - d. DO NOT cite the OOS violation for failing to display a current CVSA inspection decal.
 - e. If one or more critical vehicle inspection items are discovered, but the item does not meet the CVSA OOS criteria, advise the driver of the requirement for the vehicle to display a current CVSA inspection decal, and explain that the driver cannot continue to operate the vehicle within the U.S. until the vehicle receives a CVSA inspection decal. Advise the driver of the potential for the vehicle to be placed OOS for operating without a current CVSA inspection decal, and potential for enforcement action.
 - f. DO NOT cite the OOS violation for failing to display a current CVSA inspection decal.
 - g. Refer to the re-inspection guidance below.
- 2. Scenario 2: Inspection of a CMV not displaying a current CVSA inspection decal operating in the U.S. beyond the southern border ports of entry.**
- a. Conduct a Level I inspection and place the vehicle OOS for failing to display a current CVSA inspection decal as required.⁴
 - b. If one or more critical vehicle inspection items are discovered, record the violation of failing to display a current CVSA decal as required. Also record the critical vehicle inspection item(s) and any other vehicle defect(s) discovered. Affix an OOS sticker on the appropriate vehicle(s), inform the driver of the OOS defect(s).
 - c. If no critical vehicle inspection items are discovered, record the OOS violation of failing to display a current CVSA inspection decal as required on the inspection report using the violation citation and description below. Remove the OOS sticker, issue a CVSA inspection decal and annotate in the inspection software the verification of the OOS violation repair.
 - d. Refer to the re-inspection guidance below.
 - e. Refer to the enforcement guidance below.

³ Critical Vehicle Inspection Items are defined within the North American Standard Truck Inspection Procedures.

⁴ The CVSA Executive Committee has approved this out-of-service requirement for inclusion in the North American Standard Administrative Out-of-Service Criteria.

3. Scenario 3: Inspection of a trailer picked up within the U.S. and being transported to Mexico which does not display a current CVSA inspection decal.

- a. Conduct a Level I inspection.
- b. If no critical vehicle inspection items are discovered, affix a CVSA inspection decal.
- c. If one or more critical vehicle inspection items are discovered, record the violation of failing to display a current, CVSA decal as required (DO NOT indicate 005 for this violation) and any other vehicle defect(s) discovered. Affix an OOS sticker; place the trailer 005 in accordance with the CVSA 005 criteria and inform the driver of the OOS defect(s).
- d. If one or more critical vehicle inspection items are discovered, however the discovered critical vehicle inspection item does not meet the CVSA OOS criteria, record the violation of failing to display a current CVSA decal as required (DO NOT indicate OOS for this violation), advise the driver of the requirement for the vehicle to display a current CVSA inspection decal, and explain that the driver cannot continue to operate the vehicle within the United States until the vehicle receives a CVSA inspection decal. Advise the driver of the potential for the vehicle to be placed 005 for operating without a current CVSA inspection decal, and potential for enforcement action.
- e. DO NOT place the trailer OOS for the violation of failing to display a current CVSA inspection decal.
- f. Refer to the re-inspection guidance below.

D. Violation Cites for Not Displaying a Current CVSA Inspection Decal

49 CFR §390.3(e)(1)/385.103(c) - Failing to comply with all applicable regulations contained in 49 CFR Parts 350-399/Failing to display a current CVSA decal as required.

E. Re-inspection Guidance for Vehicles Not Displaying a Current CVSA Inspection Decal

1. If the inspector who performed the initial inspection is available for re-inspection of the vehicle(s), verify that the defect(s) has been repaired, annotate in the inspection software the verification of the repairs and issue a CVSA inspection decal. The vehicle(s) may now be allowed to proceed out of the inspection area.
2. If the same inspector is not available, the subsequent inspector must complete a Level I inspection, note the previous OOS item(s) and verification of the repair in the notes field in the inspection software, and issue a CVSA decal. The vehicle(s) may now be allowed to proceed out of the inspection area.

NOTE: The Mexico Secretaria de Comunicaciones y Transportes and the U.S. DOT committed to the prompt correction of readily repairable 005 defects on otherwise properly functioning and compliant vehicles. Therefore, it is the obligation of the DAs to ensure timely re-inspection of CMVs operated by Mexico-domiciled motor

carriers participating in the Cross-Border Demonstration Project placed OOS, whether the re-inspection is performed by a State or Federal inspector.

F. Enforcement Actions for Not Displaying a Current CVSA Inspection Decal

1. Enforcement actions should be initiated when a CMV is discovered to be operating in the U.S. beyond the southern border ports of entry by CMV Mexico-domiciled motor carrier participating in the Cross-Border Demonstration Project without the required CVSA Inspection Decal unless otherwise noted above.
2. State enforcement personnel should pursue appropriate State enforcement action for the OOS violation. If the jurisdiction does not have the authority, State enforcement personnel should obtain the proper documentation and forward the evidence to the FMCSA Division Office to initiate Federal enforcement action.

IV. IMPLEMENTATION DATE

This memorandum is effective on July 1, 2008.

If you have any questions or need additional information, please contact the North American Borders Division at (202) 366-3517.