

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF TRANSPORTATION

OF THE UNITED STATES OF AMERICA

AND

THE SECRETARÍA DE COMUNICACIONES Y TRANSPORTES

OF THE UNITED MEXICAN STATES

ON INTERNATIONAL FREIGHT CROSS-BORDER TRUCKING SERVICES

The Department of Transportation of the United States of America (DOT) and the Secretaría de Comunicaciones y Transportes (SCT), of the United Mexican States (Mexico), hereinafter the "Parties";

ACKNOWLEDGING that one of the key objectives of the North American Free Trade Agreement (NAFTA) is to facilitate the cross-border movement of goods and services between Mexico, the United States, and Canada;

REAFFIRMING that the facilitation of the efficient movement of goods between the three countries is dependent on having international transportation systems to which the governments apply safety and security standards in a non-discriminatory manner;

ENDORSING the common desire of the United States and Mexico to fulfill their obligations as established in the NAFTA for international freight cross-border motor carrier services as a means to enhance the competitiveness and prosperity of North America; and

MINDFUL of the goal of safe, secure, and efficient movement of commerce between the United States and Mexico;

Have agreed as follows:

Article 1

Definitions

For the purpose of this Memorandum of Understanding:

1. "Commercial Driver's License" means a document issued by a state of the United States of America or the District of Columbia, in accordance with applicable U.S. statutes and regulations, to an individual that authorizes the individual to operate a class of commercial motor vehicle.
2. "Competent authorities" means in the case of the United States of America, the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation and, in the case of the United Mexican States, the Dirección General de Autotransporte Federal (DGAF) of the Secretaría de Comunicaciones y Transportes.
3. "Initial phase" means the transitional period of time in which Mexican-domiciled motor carriers that apply for operating authority from the United States of America, or in which U.S.-domiciled motor carriers that apply for operating authority from the United Mexican States are subject to the conditions as set out in Annex I to this Memorandum of Understanding.

4. "International freight cross-border trucking services" means international cargo transportation provided by motor carriers that are authorized by either the United States of America or the United Mexican States to operate in their respective territories, and in the case of the United States of America, to operate beyond the commercial zones immediately adjacent to the U.S.-Mexico border.

5. "Licencia Federal de Conductor" means a document issued by the Secretaría de Comunicaciones y Transportes of the United Mexican States, which authorizes a person to drive vehicles engaged in federal public service and private commercial vehicles of companies and industry that transport products requiring the use of Mexican federal highways.

6. "Memorandum of Understanding" means this Memorandum of Understanding (MOU), including its Annexes.

7. "Motor carrier" means a truck company domiciled in the territory of either the United States of America or the United Mexican States that has applied for or has received provisional or permanent authority for international freight cross-border trucking service.

8. "Permanent Operating Authority" means, in the case of a Mexican-domiciled motor carrier, OP-1 authority granted by FMCSA allowing the motor carrier to operate international freight cross-border trucking services in the United States that cannot be suspended or revoked unless the motor carrier receives an unsatisfactory safety rating pursuant to U.S. laws and regulations; and, in the case of a U.S.-domiciled motor carrier, authority granted by DGAF allowing the motor carrier to operate international freight cross-border trucking services in Mexico.

9. "Provisional operating authority" means, in the case of a Mexican-domiciled motor carrier, OP-1 authority granted by FMCSA allowing the motor carrier to operate international freight cross-border trucking services in the United States during an initial eighteen (18) month heightened monitoring period; and, in the case of a U.S.-domiciled motor carrier, authority granted by DGAF allowing the motor carrier to operate international freight cross-border trucking services in Mexico during an initial eighteen (18) month period.

Article 2

Scope

1. This MOU is without prejudice to the rights and obligations of the United States and Mexico under the NAFTA.

2. During the initial phase, each Party shall allow international freight cross-border trucking services in the territory of its country by motor carriers domiciled in the territory of the other country, provided that such motor carriers are complying with the conditions set forth in this MOU, including the conditions in Annex I.

3. The initial phase is to last for a period of time not to exceed three (3) years, and may be less time as mutually agreed to by the Parties.

4. Any activities relating to operations conducted under this MOU shall be conducted in accordance with applicable statutes, rules, and regulations of the United States and Mexico.

5. This MOU shall not be applicable to motor carriers engaged in the cross-border carriage of placardable hazardous materials or to motor carriers engaged in the cross-border carriage of passengers.

Article 3

Pre-Operational Conditions

1. The DOT shall grant a Mexican-domiciled motor carrier provisional operating authority for international freight cross-border trucking services in the United States provided that the pre-authority conditions set out in Section 1 of Annex I are met.

2. The SCT shall grant a U.S.-domiciled motor carrier provisional operating authority for international freight cross-border trucking services in Mexico provided that the pre-authority conditions set out in Section 2 of Annex I are met.

Article 4

Operations

1. The DOT may revoke, suspend, limit or impose conditions on the operating authority of a Mexican-domiciled motor carrier that is engaged in international freight cross-border trucking services in the United States if such motor carrier fails to comply with the conditions set out in Section 3 of Annex I, or, in the case of a motor carrier with permanent operating authority, the motor carrier fails to comply with the conditions set out in Section 5 of Annex I.

2. The SCT may revoke, suspend, limit or impose conditions on the operating authority of a U.S.-domiciled motor carrier that is engaged in international freight cross-border trucking services in Mexico if such motor carrier fails to comply with the conditions set out in Section 4 of Annex I, or, in the case of a motor carrier with permanent operating authority, the motor carrier fails to comply with the conditions set out in Section 6 of Annex I.

3. This MOU does not authorize motor carriers subject to the jurisdiction and regulations of either the United States or Mexico to engage in domestic carriage of goods point-to-point in the territory of the other country (cabotage). Either Party may take remedial Mexican action as permitted by applicable laws or regulations, including, where appropriate, the revocation of operating authority, if its competent authority determines that a motor carrier of the other country has engaged in cabotage operations.

Article 5

Monitoring Group

1. The Parties shall designate their representatives to a Monitoring Group established pursuant to this MOU. The Monitoring Group shall meet every month to oversee the progress of the initial phase as set out in Annex I. The meetings may occur in person, or via telephone or video conferencing.

2. The Monitoring Group shall make available for review periodic updates and reports upon the request of either Party.

Article 6

Transition to Full Access

On the date of notification by the DOT to the U.S. Congress that the provisions of U.S. law pertaining to the initial phase, including those regarding compliance with the statistical data collection and analysis of the initial phase, have been met, the DOT will also notify SCT and the Parties shall grant motor carriers of the other Party full access to provide international freight cross-border trucking services, subject to applicable domestic laws and regulations.

Article 7

Consultations

Either Party may, at any time, request consultations regarding the implementation or interpretation of this MOU. Such consultations shall begin at the earliest possible date, but not later than fifteen (15) days after a Party makes a request, unless otherwise agreed. Each Party shall prepare and present during such consultations relevant evidence in support of its position to facilitate consultations.

Article 8

Amendments

This MOU may be amended at any time by written agreement of the Parties.

Article 9

Termination

Either Party may give notice in writing to the other Party of its decision to terminate this MOU. Such termination shall take effect sixty (60) days after the date of notification, or no later than 60 days after the date of commencement of a period of consultations between the Parties as described in Article 7.

Article 10

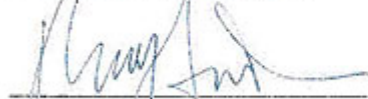
Entry into Force

This MOU shall enter into force upon the date of signature.

In witness whereof, the undersigned, being duly authorized by their respective governments, have signed this MOU.

Done at Mexico, D.F., in duplicate, this 6th day of July, 2011, in the English and Spanish languages, both texts being equally authentic.

BY THE DEPARTMENT OF
TRANSPORTATION OF
THE UNITED STATES OF AMERICA


RAY LAHOOD
SECRETARY

BY THE SECRETARÍA DE
COMUNICACIONES Y
TRANSPORTES OF THE UNITED
MEXICAN STATES


DIONISIO ARTURO PÉREZ-JACOME FRISCIONE
SECRETARY

Annex I

Temporary Conditions for Motor Carrier Operations under U.S. and Mexican laws and regulations

Section 1

Pre-Authority Conditions Applicable to Mexican-domiciled motor carriers under U.S. laws and regulations

1. All Mexican-domiciled motor carriers that wish to participate in international freight cross-border trucking services in the United States are to complete the application OP-1 MX. The application, and accompanying application fee, is to be submitted to FMCSA. Motor carriers who participated in the 2007-2009 Demonstration Project are to be exempt from payment of the application fee.
2. All Mexican-domiciled motor carriers that wish to participate in international freight cross-border trucking services in the United States are to undergo a Pre-Authorization Safety Audit (PASA) performed by FMCSA, in accordance with Title 49 of the United States Code of Federal Regulations (CFR), Part 365, as may be amended. The PASA will include the following, in addition to any other requirements set out in the Federal Motor Carrier Safety Regulations (FMCSRs):

a. National security and criminal background vetting conducted on the applicant motor carrier and any drivers the motor carrier designates for participation in the initial phase. With respect to such vetting:

i. Criteria for exclusion from the initial phase are to be those used by U.S. Customs and Border Protection of the U.S. Department of Homeland Security for its global entry program.

ii. Motor carriers are to provide information on the drivers they wish to enroll in the initial phase, including the drivers' names, dates of birth, and Licencia Federal de Conductor license numbers.

iii. U.S. security agencies are to communicate to appropriate Mexican agencies, where possible, the basis for a motor carrier's or driver's exclusion from the initial phase.

b. Records inspections are to be conducted in accordance with 49 CFR Part 365. Among the records to be inspected are ones that facilitate the following:

i. Verification of available performance data and safety management programs;

ii. Verification of a controlled substances and alcohol testing program;

iii. Verification of a system for compliance with hours-of-service rules, including recordkeeping and retention;

iv. Verification of proof of ability to obtain insurance in the United States;

v. Review of available data concerning safety history and other information necessary to determine familiarity with and preparedness to comply with FMCSRs and the requirements of the Hazardous Materials Regulations (HMRs) that pertain to the transportation of non-placardable quantities of hazardous materials;

vi. Evaluation of safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;

vii. Interview with motor carrier officials to review safety management controls and evaluate any written safety oversight policies and practices; and

viii. Review of any other applicable information required by FMCSA personnel to complete the PASA.

c. Vehicle inspections are to be conducted in accordance with 49 CFR Part 365, including as follows:

i. Applicant motor carriers are to select and identify which vehicles will perform international freight cross-border trucking services.¹

¹ Motor carriers' selection of specific vehicles to participate is limited to the initial phase only. Once the initial phase ends, motor carriers are not to have the option of selecting specific vehicles. Instead, all vehicles that may enter the United States for motor carriers with OP-1 authority are to complete a successful PASA and comply with all FMCSRs, in addition to all applicable state and Federal laws and regulations.

ii. FMCSA personnel are to perform physical inspections of the vehicles during the PASA to determine compliance with:

1. FMCSRs and eligibility for a Commercial Vehicle Safety Alliance (CVSA) safety decal;
2. Federal Motor Vehicle Safety Standards (FMVSS); and
3. U.S. Environmental Protection Agency (EPA) engine emission standards in effect as of 1998 or later.

d. Driver inspections are to be conducted in accordance with 49 CFR Part 365, including as follows:

- i. Applicant motor carriers are to select and identify which drivers will perform international freight cross-border trucking services.
- ii. FMCSA personnel are to verify driver qualifications, including confirming the validity of the driver's Licencia Federal de Conductor and review any federal and state driver license history for traffic violations that could disqualify the driver for operations in the United States.
- iii. FMCSA personnel are to conduct an English Language Proficiency exam of each participating driver. The exams are to be conducted orally in English and should test the driver's knowledge of U.S. traffic laws and signs.

3. The following information is to be collected at the time of the PASA, however, it is not to be used in the evaluation of the motor carrier for entry into the program:

- a. Environmental post-treatment equipment on participating vehicles;
- b. Any other emissions-related equipment on participating vehicles; and
- c. Primary ports of entry the applicant carrier intends to use; there is no restriction on which ports of entry the carrier uses.

Section 2

Pre-Authority Conditions Applicable to United States-domiciled motor carriers under Mexican laws and regulations

1. All U.S.-domiciled motor carriers that wish to participate in international freight cross-border trucking services in Mexico are to complete the application TFC-USA-01. The application, and accompanying application fee, is to be submitted to DGAF.

2. All U.S.-domiciled motor carriers that wish to participate in international freight cross-border trucking services in Mexico are to be in compliance with applicable regulations in Mexico and are to undergo a Safety Assessment (Revisión de Condiciones de Seguridad (RCS)) performed by DGAF, in accordance with the rules to be published in the Official Gazette of the Federation (Diario Oficial de la Federación, DOF). The RCS is to include the following, in addition to any other requirements set out in the federal motor carrier regulations of Mexico.

- a. Public security and criminal background vetting conducted on the applicant motor carrier and any drivers the motor carrier designates for participation in the initial phase. With respect to such vetting:
 - i. Criteria for exclusion from the initial phase for entry into Mexican territory are to be set by the correspondent's security agencies.

ii. Mexican security agencies are to communicate to appropriate United States agencies, where possible, the basis for a motor carrier's or driver's exclusion from the initial phase.

b. Inspections of the files are to be conducted in accordance with the rules that are published in the DOF. Inspections are to cover the following issues:

i. Verification of a program for controlled substances and alcohol testing;

ii. Verification of a system for compliance with hours-of-service rules, including recordkeeping and retention;

iii. Verification of safety management programs; and

iv. Evaluation of safety inspections, maintenance, and repair, including verification of records of periodic vehicle inspections over the last three (3) months;

v. Verification of all applicable information required by the DGAF inspectors to complete the RCS.

c. Vehicle inspections are to be conducted in accordance with:

i. Commercial Vehicle Safety Alliance, CVSA, criteria;

ii. Official Mexican Standard NOM-068-SCT-2-2000 Federal Land Transport Motor Carrier Service for Passage, Tourism, Cargo, and Private Transport: Physical, mechanical and Safety Conditions for operations on Roads and Bridges in the Federal Jurisdiction, published in the Mexican Official Gazette on July 24, 2000, or any substitution thereof;

iii. Engines are to be in compliance with U.S. EPA emission standards in effect as of 1998, or later.

d. The drivers that the applicant carrier selects and identifies to provide international freight cross-border trucking services will have an oral examination of knowledge of Spanish. Examinations must test the driver's knowledge of regulations and road signs of Mexico.

3. Motor carriers that obtain provisional authority for 18 months of operation shall:

a. Comply with all federal motor carrier regulations of Mexico.

b. Obtain within six (6) months following the granting of provisional authority, a low emission certificate, which must be carried by every vehicle. This is in compliance with NOM-041-SEMARNAT-1999 and NOM-045-SEMARNAT-1996.

c. When required by SCT, via DGAF, vehicles authorized to provide international freight cross-border trucking services must carry Electronic On-Board Recorders (EOBRs), or similar technology, which will be provided by SCT. DGAF will own those electronic devices and data, and may share it with the motor carrier and the FMCSA.

d. Provide the following driver information to the Administration of Protective and Preventive Medicine of Transport (DGPMP, Dirección General de Protección y Medicina Preventiva): social security number, passport number, commercial driver license number, proof of address, medical certificate and photograph (1" x 1.2") of the drivers who participate in the program.

Section 3

Provisional Authority for Mexican-domiciled motor carriers under U.S. laws and regulations

1. Upon notification by FMCSA that the application for authority is to be granted, the applicant motor carrier is to file proof of U.S. insurance with FMCSA to obtain provisional authority to perform international freight cross-border trucking services in the United States.

2. Motor carriers are to have provisional authority for not less than 18 months of operation. A motor carrier with provisional authority that participated in the 2007-2009 Demonstration Project, and maintained safe operations for the total number of months it performed international freight cross-border trucking services under the Demonstration Project, is to receive credit for the number of months it operated in the Demonstration Project, and therefore is not to be subject to Stage 1 inspections, as described in paragraph 5.

3. Motor carriers with provisional authority are to be subject to all FMCSRs, and all U.S. laws, rules, and regulations.

4. For the length of the initial phase, FMCSA is to provide and pay for the installation of Electronic On-Board Recorders (EOBRs) on participating vehicles, until such time as required by U.S. law or regulation. The motor carriers are to submit to the installation of such devices on participating vehicles. FMCSA is to own the EOBR equipment and data and may share such data with the motor carriers and DGAF.

5. Stage 1 – At the beginning of the motor carrier's provisional authority, participating vehicles and drivers are to be inspected upon each entry into the United States for three (3) months. A motor carrier is to be inspected at least three (3) times during Stage 1, however, if not, the time may be extended beyond three (3) months.

6. Stage 2 – Upon FMCSA's review of a motor carrier's first three (3) months of provisional authority operations, and upon a satisfactory outcome of the review, participating vehicles of a motor carrier with provisional authority are no longer to be inspected upon each entry into the United States. Inspections thereafter are to occur at a level more comparable to those of motor carriers operating in the United States commercial zone, but sufficient to meet the legal requirements for a statistically valid sample of safety data. Motor carriers are to continue to maintain current CVSA safety decals in compliance with 49 CFR Part 385, as may be amended.

7. Stage 3 – Pursuant to 49 CFR Part 385, prior to the motor carrier reaching 18 months of operation under provisional authority, FMCSA is to conduct a Compliance Review. If the motor carrier receives a satisfactory safety rating as a result of the compliance review, the motor carrier is to be granted permanent authority. In accordance with 49 CFR Part 385, motor carriers that do receive a satisfactory safety rating are to be notified by FMCSA of their deficiencies and provided the opportunity to undergo another Compliance Review no sooner than 60 days after notification. Provided the motor carrier does not receive an unsatisfactory safety rating, the motor carriers may retain their provisional authority while correcting the deficiencies. If the motor carrier receives an unsatisfactory safety rating, the motor carrier is not to be permitted to operate within the United States until such time as the deficiencies are corrected. Failure to correct deficiencies would subject the motor carrier to the revocation of provisional authority by FMCSA.

Section 4

Provisional Authority for United States-domiciled motor carriers under Mexican laws and regulations

1. Upon notification by the DGAF that the application for authority is to be granted: the applicant motor carrier is to file a valid Mexican liability insurance policy for damage to third-parties with coverage in Mexico for a minimum amount of 19,000 days of minimum wage in the Federal District and proof of payment of the premium. The insurance policy must contain the Vehicle Identification Number (VIN) of each insured unit. This policy must be granted from a Mexican insurer with coverage in all of the territory of Mexico, a minimum validity of one year, and an endorsement to renew and not cancel before 30 days prior to the expiration of the policy.

2. Stage 1 – At the beginning of the motor carrier's provisional authority, participating vehicles and drivers may be inspected upon each entry into Mexico for three (3) months by personnel designated for this purpose.

3. Stage 2 – If motor carriers pass inspections at the border crossings into Mexico during the period in question, they will no longer to be inspected upon each entry into Mexico and will occur randomly. Motor carriers are to

continue to maintain current CVSA safety decals or a physical-mechanical verification certificate pursuant to NOM-068-SCT-2-2000.

4. Stage 3 – Prior to the motor carrier reaching 18 months of operation under provisional authority, DGAF is to conduct a review to verify compliance with all federal motor carrier regulations of Mexico, and will also consider the following:

- a. Reports of violations;
- b. Reports of fatigue driving;
- c. Compliance with regulations by drivers, including those on controlled substances and alcohol;
- d. Reports of vehicle maintenance;
- e. Accident records; and
- f. Maintain a satisfactory rate of security, in compliance with the FMCSA criteria.

If the outcome of the compliance review is unsatisfactory, the motor carrier will be notified by DGAF of its deficiencies and will have the opportunity to correct them within a period of 30 days. The motor carrier can maintain its provisional authority while correcting the deficiencies. Failure to correct deficiencies would subject the motor carrier to the revocation of provisional authority by DGAF.

Section 5

Permanent Authority of Mexican-domiciled motor carriers under U.S. laws and regulations

1. Motor carriers that receive a satisfactory safety rating after a compliance review and complete at least 18 months of operation are to be granted permanent operating authority. Motor carriers that participated in the 2007-2009 Demonstration Project are to be granted permanent operating authority commensurate with the amount of time the motor carrier operated during the Demonstration Project.
2. To maintain permanent operating authority, motor carriers are to comply with all FMCSRs and applicable provisions of the HMRs, continue to renew their CVSA safety decals for 3 years, maintain a satisfactory safety record, and not exceed the scope of their operating authority.
3. On an ongoing basis, motor carriers are to update driver and vehicle records with FMCSA. Failure to comply with this requirement, as well as other applicable laws and regulations, may result in the revocation of operating authority.
4. Any additional vehicles or drivers the motor carrier wishes to include in the program are to be approved by FMCSA.
5. Motor carriers who complete Stage 3 of the initial phase may convert their permanent operating authority, granted during the initial phase, to standard permanent operating authority upon the termination or conclusion of the initial phase.

Section 6

Permanent Authority of United States-domiciled motor carriers under Mexican laws and regulations

1. Motor carriers that demonstrate compliance with all federal motor carrier regulations of Mexico may obtain a permanent operating authority by DGAF, for which the motor carrier, for each of its participating vehicles must have:
 - a. Policy of liability insurance for damage to third party property or persons; and
 - b. Certificates of low emission of pollutants.
2. The decision shall be issued within a period of 30 calendar days from the filing of all compliance requirements and a satisfactory outcome of the compliance review. If after this period, DGAF has not issued a decision, it shall be understood as affirmative.
3. To maintain permanent authority, motor carriers are to comply with all federal motor carrier regulations of Mexico and maintain a satisfactory safety rating according to FMCSA criteria, and to comply with the rules to be published in the Official Gazette of the Federation (Diario Oficial de la Federación, DOF).
4. Failure to comply with these requirements, as well as other applicable laws and regulations, may result in the application of sanctions under the existing laws.
5. Any additional vehicles or drivers the motor carrier wishes to include in the program are to be approved by DGAF.

Section 7

Initial Phase – Statistically Valid Sample

In accordance with the provisions of Title 49 of the United States Code, Section 31315(c), FMCSA must use a statistically valid sample to determine whether the initial phase achieved success.