

The following document only paraphrases the regulations on cabotage of the Immigration and Naturalization Service and the U.S Customs Service. The contents may not be relied upon as a substitute for the official regulations. Although the FMCSA makes every effort to assure that the information provided is complete and accurate, it is not intended to take the place of published regulations of the Immigration and Naturalization Service or the U.S. Customs Service. For questions on those regulations, contact the U.S Customs Service, Office of Regulations and Rulings, 202-927-1327 or Immigration and Naturalization Service, Office of Inspections, 202-514-3019. You may also contact them through the link to their website below.

www.ins.usdoj.gov/graphics/index.htm

www.customs.treas.gov

Cabotage Rules for Canadian-Based Drivers

The U.S. Customs and the Immigration and Naturalization Service (INS) are responsible for the development and enforcement of cabotage restrictions relating to surface transportation in the United States. Cabotage refers to the point-to-point transportation of property or passengers.

Canadian motor carriers are required to comply with U.S. Customs rules and regulations relating to cabotage while in the U.S. Canadian drivers are required to comply with INS rules and regulations relating to entry into the U.S. and performance of work while in the U.S.

It should be noted that while in most cases INS and U.S. Customs regulations are intended to be consistent, differences between the regulations do exist. To be in full compliance, both the Canadian driver and the Canadian-based vehicle must comply with the appropriate regulations.

The following is synopsis of U.S. Customs and INS rules and regulations relating to cabotage and Canadian driver requirements

U.S. Customs Requirements:

1. *Domestic Moves.* Generally, Canadian carriers are prohibited from engaging in domestic traffic in the U.S. Canadian carriers are allowed to make international moves. Determination of the type of traffic (international or domestic) is based on the origin and destination of the cargo. Vehicles engaged in the transportation of cargo originating in Canada and terminating in the U.S. or Mexico is considered an international move. This includes vehicles transporting cargo for only a part of the complete international trip.
2. *Repositioning of Empty Vehicles.* The movement of empty vehicles between two points in the U.S. is **not** considered a domestic move. The U.S. Customs no longer defines an empty vehicle as merchandise and, therefore, the repositioning of empty vehicles does not involve the transportation of merchandise. Canadian carriers are

allowed to reposition empty vehicles within the U.S.

3. *In-Transit Cargo.* In-transit cargo refers to the transportation of merchandise having both a U.S. origin and destination that travels through Canada. For example, merchandise transported between Buffalo, NY and Detroit, MI that goes through Ontario is in-transit cargo. The transportation of in-transit cargo either entering or leaving the U.S. on Canadian-based vehicles is allowed provided either prior or subsequent transport is performed by U.S.-based vehicles. Using the example above, a Canadian carrier would be allowed to transport merchandise with an origin of Buffalo, NY and a destination of Detroit, MI provided some portion of the trip was performed by a U.S.-based carrier (Buffalo, NY to Windsor, ON on a Canadian-based vehicle; Windsor, ON to Detroit, MI on a U.S.-based vehicle).

4. *Use of Canadian-based Vehicles for Domestic Transportation.* Generally, the use of Canadian-based vehicles for domestic movement of merchandise is prohibited. There is one exception. A domestic movement incidental to the immediate prior or subsequent engagement of a vehicle in international transportation is allowed. Incidental is defined as Ain the general direction of an export move or as part of the return movement to their base country@. It includes a movement en route to the pick-up of an export move. For example, a Toronto, ON-based carrier transports merchandise originating in Toronto and terminating in Miami, FL. The vehicle can then be used to pick up merchandise in Miami for delivery to St Louis, MO (a domestic move) where an export move will be picked up for delivery to Canada. The movement of merchandise from Miami to St Louis is considered incidental to the immediate prior or subsequent engagement of such vehicle in international transportation. The Canadian-based vehicle can also transport a domestic move in the general direction of an export move and then immediately return empty to Canada.

The purpose of this change in cabotage regulations was to allow more efficient and economical utilization of vehicles both domestically and internationally.

INS Requirements:

1. *Temporary Visitors for Business.* Canadian truck drivers must meet the general entry requirements as a visitor for business. The requirements include:

- § have a residence in a foreign country which he or she has no intention of abandoning,
- § intend to depart the U.S. at the end of the authorized period of temporary admission,
- § have adequate financial means to carry out the purpose of the visit to and departure from the U.S., and
- § establish that he or she is not inadmissible to the U.S. under the provisions of section 212(a) of the Immigration and Naturalization Act, which includes such grounds of inadmissibility as health-related, criminal, subversive, public charge,

improper manner of arrival or improper documents, other immigration violations, and several other categories of ineligibility.

2. *Documentary Requirements.* Each applicant for admission as a visitor for business is required to satisfy the inspecting officer of his or her citizenship. An oral declaration may be accepted or the inspecting officer may request supporting documentation. Such documentation may include, but is not limited to, a passport, a birth certificate, or a certificate of citizenship.

3. Key Principles Relating to Cabotage.

§ Drivers may be admitted to deliver or pick-up cargo traveling in the stream of international commerce.

§ Drivers **may not** engage in point-to-point hauling within the U.S.

§ Drivers **may not** engage in any activity that qualifies as local labor for hire.

4. *INS Regulations.* Canadian-based drivers may transport goods or passengers to the U.S. from Canada if all goods or passengers to be delivered were loaded in Canada.

Likewise, Canadian-based drivers may load and transport goods or passengers from the U.S. to Canada provided no unloading occurs in the U.S. They may also load goods or passengers at various locations in the U.S. only if all goods and passengers will be unloaded in a foreign country.

Purely domestic service (point-to-point within the U.S.) is not permitted.

Solicitation, in competition with U.S. operators, is not permitted. This means that a Canadian-based driver cannot solicit a return load for delivery to Canada while in the U.S. Any return load must be pre-arranged.

5. *Examples of Permissible Movements by Canadian-based Drivers.*

§ A shipment from Canada to one or more locations within the U.S.

§ A return shipment from one or more U.S. pick-up locations for delivery to Canada provided the pick-ups were pre-arranged.

§ Delivery of a shipment from Canada to the U.S., drive with the **same** empty trailer to another U.S. location, live load that trailer for delivery to Canada.

§ Delivery of a shipment from Canada to the U.S., drive with the **same** empty trailer to another U.S. location, drop the trailer, pick up a second loaded trailer for delivery to Canada.

§ Delivery of a shipment from Canada to the U.S., pick up a different empty trailer and drive to another U.S. location, live load that trailer for delivery to Canada.

§ Delivery of a loaded trailer from Canada to one U.S. location, drive the tractor (with no trailer) to another U.S. location to pick up a loaded trailer for delivery to Canada.

- § Canadian relay drivers may drive entirely domestic segments of an international move. For example, a Canadian driver may drive a vehicle (transporting an international shipment originating in New York City and destined for Montreal, PQ) from New York City to Albany, NY where another Canadian driver takes over and completes the trip by driving from Albany, NY to Montreal, PQ. The driver does not need to enter the U.S. with the vehicle, but must enter within a reasonable period.
- § Drivers may perform activities that are necessary incidents of international commerce, such as loading or unloading international cargo.
- § Drivers may be paid by a U.S. carrier/employer, provided the driver is engaged solely in the international delivery of goods and cargo to or from the U.S. The driver must qualify as a visitor for business.

6. *Examples of Movements Not Permitted by Canadian-based Drivers.*

- § Pick up a shipment at one U.S. location for delivery to another U.S. location
- § Reposition an empty trailer between two points in the U.S. when the driver did not either enter with or depart with that trailer.
- § Pick up additional **domestic** shipments to fill up a partially filled trailer carrying an international shipment.
- § Solicit shipments for delivery while in the U.S.

Conflicts Involving U.S. Customs and INS Regulations

U.S. Customs regulations allow for Canadian-based vehicles to transport domestic shipments (point-to-point in the U.S.) when the shipment is incidental to the immediate prior or subsequent engagement of the vehicle in an international movement. INS regulations do not allow a Canadian-based driver to pick up a shipment at a U.S. location for delivery to another U.S. location. It should be noted that the U.S. Customs regulations provide that the Canadian-based driver must be in compliance with the applicable INS regulations to operate a vehicle in this type of move. Because the INS regulation prohibits this type of move, in effect, the U.S. Customs regulation is moot at the present time.

U.S. Customs regulations do not consider the repositioning of any empty trailers domestic transportation and allow Canadian-based drivers to execute such movements. INS regulations prohibit Canadian-based drivers from repositioning empty trailers unless the driver either entered with or departed with that trailer.

Relevant Reference Material

- § U.S. Customs Notice dated October 1, 1997
- § U.S. Customs Memorandum dated May 8, 1998
- § Treasury Decision (T.D.) 99-10 published in the Federal Register dated February 16, 1999

§ 19 USC 1592
§ 19 CFR 123.14