CLIENT ALERTS & INSIGHTS

Cross-Border Transport Risks: Cabotage Regulatory Enforcement Intensifies

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Featured Industries: Transportation & Logistics

Cabotage enforcement at the U.S.-Mexico border has sharply intensified in recent months, as federal agencies deploy new data-sharing practices to identify and bar drivers with cabotage violations from crossing into the United States. Recent enforcement shows that this framework is no longer a background compliance concern. Rather, it is now the subject of active, coordinated federal enforcement with real operational consequences for motor carriers and drivers.

Historic U.S. Customs Framework: The general rule is that foreign-based operators may engage in international traffic, even if carriage occurs in the United States, but those operators may not engage in purely local traffic: "Trucks, busses, and taxicabs, however owned, which have their principal base of operations in a foreign country and which are engaged in international traffic, arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers, may be admitted without formal entry or the payment of duty. Such vehicles shall not engage in local traffic except as provided in paragraph (c) of this section." 19 CFR § 123.14 (emphasis added). This general rule operates to prohibit point-to-point movements that would be otherwise performed by domestic motor carriers.

Historic Immigration Framework: Immigration-related restrictions, are often the greatest obstacle to modeling a cross-border supply chain at the lane level. The immigration statutes governing the entry of drivers are more restrictive than those governing customs activities and do not allow as much flexibility in the regulatory and policy process. For example, the USMCA and precedent decisions interpreting the visitor for business statute expressly forbid point-to-point hauling within the United States by alien drivers-without the availability of cover from any "incidental to international traffic" exception that was historically permitted.

United States immigration regulations are based on the concept that foreign drivers are considered business visitors, alien non-immigrants. 8 USC § 1101. Because of this status, foreign drivers must generally meet the entry requirements as a visitor for business and must only transport cargo traveling in the stream of international commerce within the meaning of immigrations laws and immigration regulations. The transportation operator provisions are intended to allow the free movement of goods across the border, an activity that is international in scope, but not to facilitate access to the domestic labor market: "Purely domestic service or solicitation, in competition with the United States operators, is not permitted." 8 CFR § 214.2(b)(4)(i)(E). Therefore, care is due to ensure that the driver of a movement is in compliance with all applicable immigration regulations, which often times includes the need to apply for and secure a B-1 Visa as a business visitor.

The New Enforcement Environment: Recent enforcement at and near the U.S.-Mexico border results from increased capabilities and appetite by regulatory authorities. The U.S. Department of Transportation has begun sharing the Federal Motor Carrier Safety Administration's ("FMCSA") inspection and violation records with CBP. This sharing of information gives CBP agents real-time visibility into a driver's cabotage history at the moment of a border crossing. Agents are currently revoking visas and denying entry to Mexican drivers with a documented cabotage violation on their record. In effect, this converts an administrative infraction into an immediate operational shutdown for the motor carrier relying on the driver completing the cross-border shipment.

The impact is by these recent enforcement measures is becoming significant. The FMCSA's data shows a 4.3% decrease in Mexican-domiciled carriers operating in the U.S.-Mexico commercial zone. Additional industry reports indicate that several hundred or a few thousand drivers have recently been denied entry due to cabotage violations. CBP has confirmed an increase in encounters involving cabotage violations along the U.S.-Mexico border, though it has not released comprehensive enforcement statistics.

The enforcement push has also been accompanied by reinstatement of the English-language proficiency requirement for commercial drivers. Under this requirement, drivers must be able to converse with the public, understand highway traffic signs and signals, respond to official inquiries, and produce records when stopped, and inspectors are directed to place a driver out of service if the driver cannot satisfy these criteria during a roadside inspection. This follows sustained pressure from industry associations urging Congress to close regulatory loopholes and impose meaningful penalties including fines, disqualification, and loss of operating authority on carriers that repeatedly violate cabotage restrictions.

Implications and Steps Forward: For carriers and shippers utilizing cross-border lanes, the practical takeaway is that past tolerance for questionable domestic-leg movements can no longer be assumed. Carriers may look to audit driver dispatch practices against the CBP "incidental to international traffic" guidance, and confirm that any domestic movement clearly follows or precedes an international leg. Carries may also ensure that their drivers hold appropriate B-1 business visitor status where required, and maintain documentation demonstrating the international character of each movement. Since the FMCSA's inspection records are now a direct input into CBP's border screening, even minor documented violations can result in significant operational impediments. Shippers and brokers can incorporate cabotage compliance representations and audit rights into carrier agreements and confirm that brokers vet carrier compliance history before tendering cross-border freight.

Benesch will continue to monitor developments in cabotage enforcement and related cross-border trucking regulation. Carriers and shippers with questions about structuring compliant cross-border lanes, responding to a cabotage-related visa or entry denial, or assessing exposure under current enforcement practices should feel free to contact our team.

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