

## CUSTOMS DIRECTIVE

**ORIGINATING OFFICE:** FO:TP

**DISTRIBUTION:** S-01  
**CUSTOMS DIRECTIVE NO.** 3120-002A  
**ISSUE DATE:** JUNE 19, 2000  
**SUPERSEDES:** 3120-002, 5/15/85  
**REVIEW DATE:** JUNE 2002

**SUBJECT:** FINANCIAL RESPONSIBILITY; FOREIGN DOMICILED CARRIERS

- 1**     **PURPOSE.** To provide guidance for the enforcement of the evidence of financial responsibility required of contiguous foreign domiciled carriers.
- 2**     **POLICY.** The references and procedures outlined in this directive will be followed to ensure consistency and uniformity in determining financial responsibility of contiguous foreign domiciled carriers.
- 3**     **AUTHORITIES/REFERENCES.** 49 U.S.C. 31138 and 31139.
- 4**     **DEFINITIONS.** For the purpose of this directive, the following definitions will be used.

  - 4.1**    Private carriage - Transportation provided by a person who is the owner, lessee, or bailee of the property being transported and the property being transported is for sale, lease, rent, or bailment or to further a commercial enterprise.
  - 4.2**    For-hire carriage - Transportation of property except when the property is transported by a person engaged in a business other than transportation; and the transportation is within the scope of and furthers a primary business (other than transportation) of the person.
  - 4.3**    Hazardous material - a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property, and which has been so designated. For further reference, see the Hazardous Materials Table in 49 CFR 172.101.
  - 4.4**    Nonhazardous property - anything being transported that is not a hazardous material.
  - 4.5.**    In-bulk - the transportation of property, as cargo, (except Class A and B explosives and poison gases) in containment systems with capacities in excess of

3,500 water gallons.

**4.6.** In-bulk (Class A and B explosives) - the transportation, as cargo, of any Class A or B explosive(s) in any quantity.

**4.7** In-bulk (poison gas)- - the transportation, as cargo, of any poison gas, in any quantity.

**5** **RESPONSIBILITIES.** CMC Directors and Port Directors must ensure compliance with this directive. Port Directors are responsible for developing procedures to implement this directive.

**6** **PROCEDURES.** The following procedures will be followed to ensure service wide uniformity.

**6.1** The Commercial Motor Vehicle Safety Act of 1994 (Public Law 103-272) gives the Secretary of Transportation authority to establish regulations requiring minimum levels of financial responsibility for carriers transporting passengers and different classes and quantities of merchandise. The law requires that carriers not having evidence of sufficient financial responsibility within the cab of the vehicles, be denied entry to the United States by the Secretary of the Treasury and the Secretary of Transportation.

**6.2** Financial liability for foreign-based trucks will be documented on Form MCS-90 which the driver must have in the vehicle at all times. If this form is not presented or the liability amount is insufficient, entry will be denied to the carrier. NOTE: On the Mexican border Form AUTO-787 is allowed for periods not to exceed 24 hours.

**6.3** Foreign based passenger carriers are required to have a copy of Form MCS-90B or MCS-82B in their possession as proof of sufficient financial liability. Those lacking the proper form or sufficient financial liability will be denied entry to the United States.

**6.4** Using the criteria outlined under financial liability requirements, inspectors will determine if the carrier is covered by the act, and if so, then what level of financial liability must the carrier have.

**6.5** For trucks, the law applies to those vehicles with a gross vehicle weight (GVW) rating in excess of 10,000 lbs. or more. The GVW of a vehicle can be determined by checking the permanent metal tag attached to the door or doorframe of the vehicle, (NOTE: 10,000 lbs. equals approximately 4,550 Kg.). Almost all vehicles larger than a pickup have a GVW greater than 10,000 lbs. There is one exception to the GVW rule which will be listed after the liability requirements.

**6.6** A minimum financial liability of \$750,000 is required for a for-hire carrier transporting interstate or foreign non-hazardous cargo.

**6.6.1** A financial liability of \$5,000,000 is required for transporting intrastate/interstate/foreign, any quantity of poison gas, compressed or liquefied gas or Class A explosives, or over 3,500 gallons of hazardous material as defined by the Secretary of Transportation.

**6.7** Exception to the GVW Rule, applies to ALL vehicles regardless of size if they are transporting any quantity of Class A or B explosives, or any quantity of poison gas, or a large quantity of radioactive material.

**6.8** For buses, the Motor Carrier Safety Act covers for-hire carriers who transport passengers in interstate or foreign commerce in the U.S. The level of financial liability required for buses depends on the passenger capacity of the bus including the driver.

**6.8.1** A capacity of 16 passengers or more requires a liability of \$5,000,000.

**6.8.2** A capacity of 15 passengers or less requires a liability of \$1,500,000.

**7** **MEASUREMENT.** The Director, Field Operations, Customs Management Center, will ensure that ports under their jurisdiction are in compliance with this directive via management controls.

Acting Assistant Commissioner  
Office of Field Operations