



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

ENF 15

Obligations of Transporters

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Updates to chapter

Listing by date:

Date: 2009-02-13

The chapter ENF 15 was completely updated.

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1. What this chapter is about

This chapter describes the obligations and liabilities of transporters with respect to the persons they carry and may not carry to Canada and the enforcement measures which the Canada Border Services Agency (CBSA) may take against transporters failing to comply with their obligations.

2. Program objectives

The program's objectives are to ensure that transportation companies fulfil their obligations under Canada's *Immigration and Refugee Protection Act (IRPA)* and the operational, procedural and financial liabilities set out in the accompanying *Immigration and Refugee Protection Regulations (IRPR)*.

3. The Act and Regulations

A148 to A150 include obligations and liabilities respecting transportation companies. R259 to R287 provide procedural rules governing transportation companies.

3.1. Required forms

The forms required or referenced are shown in the following table:

Form Name	Number
Official receipt – Cash Security Deposit by a Transporter Company	IMM0410B
Costs Payable by Transporters	IMM0459B
Confirmation by Transporter Regarding Passenger(s) Carried	IMM1445B
Notice of Detention or Seizure of Vehicle or Prescribed Good (Pursuant to Subsection 148(2) of the Act)	IMM5266B
Receipt for Prescribed Document under R260	IMM5388B
Notice to Transporter	BSF 502

4. Instruments and delegations

Please refer to the transporters section, items 144 to 161, in the document entitled *Delegations and Designations* under the responsibility of the Minister of Public Safety.

5. Departmental policy

Under IRPA and its Regulations, commercial transporters have several obligations, including:

- refusing to carry improperly documented passengers to Canada;
- presenting passengers for examination at Ports of Entry (POEs) and holding them until completion of examination;
- ensuring that persons presented for examination have the prescribed documents for travel to Canada;
- carrying persons from Canada who have been directed to leave, allowed to withdraw their application to enter, or ordered removed;
- paying administration fees, medical costs and removal costs for certain classes of inadmissible persons;
- complying with directions to deposit security;
- providing prescribed information, including documentation and reports upon request; and

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- providing facilities at POEs for holding and examining persons carried to Canada.

The responsibility to ensure that a passenger is properly documented applies from the time the transporter is boarding at the final embarkation point before arrival in Canada until that person is presented for examination at a Canadian POE.

The Guide for Transporters, published by CBSA, expands on the above information and provides transportation companies with a resource setting out their obligations and liabilities under IRPA and providing them guidance on required travel documents for travel to Canada.

6. Definitions

R2 defines the following terms:

Term	Definition
Administration Fee	A fee assessed against a transporter that represents a portion of the total average costs incurred as a result of enforcement activities.
Agent	Includes any person in Canada who provides services as a representative of vehicle owners, charterers or vehicle operators and owners of reservation systems.
Commercial transporter	A transporter who operates a commercial vehicle.
Commercial vehicle	A vehicle that is used by a commercial transporter for commercial purposes.
Transporter	Includes a person who owns, operates, charters or manages a vehicle or a fleet of vehicles, a person who owns or operates an international tunnel or bridge, or a designated airport authority, and an agent for that person.
Vehicle	A means of transportation that may be used for transportation by water, land or air.
Vessel	A vessel within the meaning of section 2 of the <i>Canada Shipping Act</i> .

Note: The term "transporter" under the *Regulations* includes transportation companies as well as private owners of vehicles transporting themselves or other passengers to Canada.

7. Procedures: Obligations and liabilities of transporters

7.1. Prohibition to carry improperly documented persons to Canada

A148(1)(a) provides that a transporter is prohibited from carrying to Canada a person who is prescribed or does not hold a prescribed document. Therefore, a transporter must ensure that its passengers are properly documented for travel to Canada as prescribed in R259. Prescribed documents include:

- a travel document issued to a permanent resident abroad to facilitate their return to Canada;
- passports and travel documents referred to in R50(1) and R52(1);
- a travel document issued by Canada to protected persons;

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- visas referred to in R6 and R7 required of foreign nationals to enter Canada; and
- a permanent resident card.

A transporter must require any person exempt from the need for a passport and visa, such as a person claiming to be a citizen of Canada or the United States, to present sufficient evidence of their identity and citizenship.

The Government of Canada policy is that the Canadian passport is the only reliable and universally accepted travel and identification document available to Canadians for the purpose of international travel. Canadian citizens returning to Canada who present other documents, such as a Certificate of Canadian Citizenship, birth certificate, provincial driver's license, or foreign passport, instead of a Canadian passport, may face delays or be denied boarding by transport companies.

7.2. Persons directed not to be carried by a transporter

A148(1)(a) also provides that a transporter is prohibited from carrying to Canada any person who an officer has directed not be carried. While this authority exists, officers should not direct a transporter not to carry a passenger. CBSA maintains an advisory role and the decision to deny boarding is the carrier's, and the carrier's alone. Instructions would come from National Headquarters (NHQ) if action in this regard were required under extenuating circumstances.

7.3. Authority for transporter to hold passenger documents

A148(1)(b) requires a transporter to ensure that the documents referred to in R259 are available for examination upon arrival at the POE. R260 clarifies that a transporter who has grounds to believe that the prescribed documents of a passenger may be disposed of prior to arrival in Canada must hold the documents for presentation to the examining officer in Canada. The transporter is required to issue a receipt for any documents held and to present a copy thereof to the examining officer. The transporter can use the form IMM 5388B or one of their choosing.

7.4. Presenting and holding persons for examination

A148(1)(b) requires transporters to present all persons they carry to Canada for examination and to hold them until the examination is completed. The point at which an examination ends is prescribed in R37. R261 further clarifies that a transporter has complied with the obligation to hold a person for examination when:

- an officer informs the transporter that the examination of the person is completed;
- the person is authorized to enter Canada for further examination pursuant to A23;
- the person is detained under any Canadian law.

Persons must be held on the vehicles on which they arrive unless facilities for the examination and holding of persons are available at the POE. At international airports, transporters normally hold their passengers inside the terminal building. Persons arriving aboard cargo ships, however, must always be held aboard the vessel until their examination is completed.

7.5. Providing Advance Passenger Information (API) and Passenger Name Record (PNR) information

Pursuant to A148(1)(d) of IRPA and R269 of IRPR, all commercial carriers are required to provide the CBSA with API and PNR information relating to all persons on board commercial conveyances bound for Canada.

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The API/PNR program is designed to protect Canadians by enabling the CBSA to perform a risk assessment of travellers prior to their arrival in Canada.

R269(1) requires a commercial transporter to provide API on all passengers and crew members travelling by commercial vehicle. API is basic information and includes the traveller's name, date of birth, citizenship or nationality and passport or other travel document data. The information is sent electronically or by fax upon departure of the commercial vehicle from the last point of embarkation before arriving in Canada. This enables criminality, security and FOSS checks to be conducted prior to the arrival of the commercial vehicle.

R269(2) requires a commercial transporter to provide access to its reservation system or provide in writing all reservation information held by the transporter on passengers to be carried to Canada. PNR data is more detailed information and includes the travel itinerary, address and check-in information. This information is gathered by the airlines in their reservation, check-in and departure control systems.

7.5.1 Passenger Analysis Units (PAUs)

Passenger Analysis Units (PAUs) analyse API and PNR information and ensure that Border Service Officers (BSO) and Disembarkation and Response Teams (DART) have detailed advance information on persons who may be inadmissible to Canada. The PAUs also have the decision-making ability to flag an individual before their arrival in Canada so they can be referred for secondary immigration examination.

7.6. Providing passenger information after arrival in Canada

R264 requires a transporter to provide without delay the following documents requested by an officer, provided the request is made within 72 hours after the presentation for examination of the person in Canada:

- copy of any ticket issued to a person;
- the person's itinerary, including the place of embarkation and dates of travel; and
- information about the number and type of passport, travel or identity document used by the passenger.

7.7. Obligation to provide facilities

A148(1)(e) and R271 require a transporter to provide, equip and maintain facilities for the holding and examination of persons at POEs. R271 clarifies that this applies to commercial transporters and transporters who operate airports, international bridges or tunnels. R272 further clarifies that a commercial transporter carrying persons to Canada aboard a vessel must provide facilities for examination aboard the vessel.

8. Arrival of improperly documented foreign nationals

8.1. Reporting arrivals

8.1.1. FOSS entries

BSOs should complete the Transporter Violation field of a FOSS report whenever a foreign national who is subject of an inadmissibility report was improperly documented or otherwise inadmissible.

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8.1.2. Support System for Intelligence (SSI) entries

BSOs should also report in the SSI that an improperly documented foreign national has arrived. The reporting of an improperly documented arrival is very important as not completing the SSI report could result in the CBSA not being able to collect administration fees or removal costs from the liable transporter.

Note: SSI is used to report the arrival of improperly documented foreign nationals and all refugee claimants, regardless of whether they are properly documented or not. This will alert and provide details of transporter violations to the Transportation Unit at NHQ. Instructions for using this system are found in the SSI manual.

8.2. Advising transporters of the arrival of an improperly documented foreign national.

Form BSF 502 has two purposes:

- to notify a transporter that an improperly documented foreign national has arrived;
- to notify a transporter that it is or may be required to carry the foreign national from Canada.

8.3. Evidence establishing transporter liability

The following documents should be kept on case files as evidence that a transporter has brought an inadmissible foreign national to Canada:

- tickets;
- passenger manifest;
- boarding passes;
- baggage tags, duty free bags or paper napkins with transporter logo;
- the passenger's declaration (E311 form);
- a print-out of the passenger's travel itinerary;
- a disembarkation screening report (DART); and
- Form IMM 1445B signed by a representative of the transporter, where the transporter confirms the information regarding the passengers carried. If the representative refuses to sign IMM 1445B, the BSO should annotate the form accordingly.

9. Administration fees

R279 provides that a commercial transporter may be required to pay an administration fee in respect of any foreign national it carried to Canada who is subject to a report under A44(1):

- a foreign national who is inadmissible for failing to be in possession of the documents required for entry;
- a foreign national whom the commercial transporter was directed not to carry to Canada;
- a foreign national who is exempt from the requirement to hold a passport or travel document but who fails to be in possession of sufficient evidence of their identity;

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- a foreign national who failed to appear for an examination on arrival in Canada; or
- a foreign national who entered Canada as a member of a crew or to become a member of a crew and is inadmissible.

9.1. Exceptions

R279(2) provides that administration fees are waived in respect of any foreign national:

- who is authorized to enter and remain in Canada on a temporary basis, other than a foreign national who entered as or to become a member of a crew;
- who is allowed to withdraw their application to enter and who leaves Canada immediately;
- who is subject to a removal order issued on their arrival at a POE and who leaves Canada immediately;
- who returns to Canada as a result of a refusal of another country to allow them entry after they were removed from Canada or otherwise left Canada under a removal order;
- who returns to Canada under a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act* and who, immediately before being transferred to a foreign state, was subject to an unenforced removal order;
- who is in possession of refugee travel papers issued by the Minister of Foreign Affairs that are valid for return to Canada; or
- who is exempt from the requirement to have a temporary resident visa and is found inadmissible because the foreign national intends to remain in Canada permanently and does not possess a permanent resident visa.

9.2. Amount of fee

R280(1) provides that the administration fee is \$3,200 unless a Memorandum of Understanding is in effect between the CBSA and the transporter, in which case fees are assessed at the rates prescribed in R280(2). Administration fees represent a portion of the total average costs incurred by the Government of Canada with respect to the examination, detention and processing of inadmissible foreign nationals carried by a transporter.

Administration fees are assessed by the Transportation Unit, NHQ on the basis of SSI reports transmitted to NHQ from POEs or inland offices.

9.3. How administration fees are imposed

BSOs are responsible to report in SSI that an improperly documented person has arrived. The information contained in the SSI report is used by the Transportation Unit in NHQ to determine if an administration fee should be imposed. The reporting of an improperly documented arrival in SSI is important as not completing the SSI report could result in the CBSA not being able to collect administration fees from the liable transporter.

Once SSI information is received in NHQ, the Transportation Unit determines if an administration fee should be assessed and, if so, forwards a formal Notice of Assessment to the transporter. Transporters may contest the assessment by filing a submission within 30 days.

Note: SSI is used to report details of transporter violations to NHQ. Instructions for using this system are found in the SSI manual.

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9.4. R280 - Airline Memorandum of Understanding (MOU) Program

R280(2) provides that a Memorandum of Understanding (MOU) between a transporter and the CBSA may include reductions in the amount of administration fees as an incentive for transporters to reduce the number of improperly documented persons arriving in Canada. The MOU program is only applicable to air carriers. Those air carriers committed to an effective document screening and security procedures may benefit from reduced administration fees. Fees are automatically reduced by 25 percent to \$2,400 upon signing and complying with an MOU. Further reductions of 50 percent, 75 percent and 100 percent can be granted depending on the level of interdiction success as measured against the assigned performance standards.

For further information on the MOU terms and conditions, refer to the *sample Memorandum of Understanding between the CBSA and the airline (the transporter)*.

10. Detention costs

Transporters have no direct liability for detention costs. The administration fees paid by transporters are intended to offset a portion of the Department's overall average detention costs. Under R278(a), however, expenses with respect to the foreign national's accommodation are removal costs payable by a transporter. If a transporter notifies an officer of its intention to make travel arrangements but fails to carry the foreign national within 48 hours or within whatever longer period was agreed upon by an officer, any accommodation costs incurred as a result of the transporter's delay should be reported to the Transportation Unit along with all other removal costs. See sections 11.4 and 11.5.

11. Liability to carry foreign nationals from Canada

A148(1)(f) requires transporters to carry from Canada any inadmissible foreign nationals they transported to Canada.

11.1. When there is no removal order in place

Transportation companies have the obligation to carry from Canada foreign nationals who:

- are directed to leave pursuant to R40(1);
- are directed back to the United States pursuant to R41; or
- are allowed to withdraw their application to enter Canada pursuant to R42.

Form BSF 502 Part B1, should be used to notify the transporter of the requirement to carry a foreign national from Canada.

In the above situations, the expectation is that the foreign national will leave Canada without delay. If the transporter is unable or unwilling to remove or arrange for the immediate transport of the foreign national from Canada, the BSO may consider authorizing the person to enter pursuant to A23, or writing a 44(1) report and making a removal order, in which case procedures in the following section 11.2. can be applied.

Note: If an improperly documented foreign national, who is allowed to withdraw their application to enter Canada, fails to leave Canada immediately, then the exception stipulated under R279(2)(b) would not apply and an administration fee should be assessed. The BSO should complete an SSI report and notify the Transportation Unit, NHQ (see contact information under section 15).

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11.2. When a removal order exists

Transporters have the obligation to carry from Canada foreign nationals who are subject to an enforceable removal order.

11.2.1. Notification to transporters of requirement to carry a person from Canada

R276 requires an officer to notify a transporter of its obligation to carry a foreign national from Canada. There are two types of notification required:

- a preliminary notification that the transporter may be required to carry a person from Canada [R276(1)(a)]. The officer completes Part A of form BSF 502.

When a transporter brings an inadmissible foreign national to Canada who is made subject to a removal order that is not yet enforceable, the officer must inform the transporter that it is or might be required to carry the person from Canada. This would be done in the case of refugee claimants or where there is a stay and a removal order cannot immediately be enforced.

- a notification of the requirement to carry a foreign national [R276(1)(b)]. The officer completes Part B2 of form BSF 502.

When a removal order becomes enforceable, an officer must inform the transporter that it must carry the foreign national from Canada and advise whether escorts are required.

There is no time limitation with respect to a transporter's liability to carry an inadmissible foreign national from Canada. Liability continues until a removal order becomes enforceable, regardless of when the transporter brought the foreign national to Canada.

11.2.2. Requirement for transporter to make removal arrangements

R276 requires a transporter, when notified of the requirement to carry a foreign national from Canada, to advise an officer without delay of the arrangements it makes to carry the foreign national from Canada.

The transporter must carry the person from Canada within 48 hours of advising an officer of the arrangements made, or within any longer period of time agreed upon by the officer.

R273 provides that transporters must transport the foreign national who is subject to an enforceable removal order from wherever the foreign national is situated in Canada to the vehicle in which they will be carried from Canada.

11.2.3. Removal arranged by an officer

In cases when a removal order is enforceable, R276 provides for an officer to make arrangements to remove a foreign national from Canada under the following circumstances:

- the transporter fails to advise an officer without delay of its arrangements after having been notified of the requirement to carry the foreign national;
- the transporter fails to carry the foreign national from Canada within 48 hours of having advised an officer of its arrangements or within any longer period of time agreed upon by the officer;
- the transporter has previously advised an officer in writing that it does not require notification because it is unwilling or unable to carry inadmissible foreign nationals from Canada aboard its vehicles;
- the officer finds the arrangements proposed by the transporter to be unacceptable.

Most shipping companies will be unwilling or unable to arrange for inadmissible foreign nationals to be carried from Canada, particularly because they will have already deposited security to cover

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removal costs. They may, therefore, not wish to be notified each time a foreign national, who they brought to Canada, is ready to be removed. If so, they should advise the CBSA of this in writing, after which officers will no longer be required to provide them with notification each time a removal order becomes enforceable. Officers should ensure a copy of the written instructions from the transporter is placed on the subject's file.

11.2.4 Unacceptable travel arrangements

The travel arrangements made by a transporter to carry and escort a foreign national from Canada must be acceptable to an officer. Section R276 provides that the arrangements a transporter makes to carry a foreign national from Canada must meet the following criteria:

- the foreign national is not inadmissible in the country of destination and, for the purposes of transit, all countries of transit;
- the safety of the foreign national and other persons aboard any vehicle used to reach the country of destination must be ensured; and
- the transporter must undertake to comply with any request for an escort or escorts.

Examples of arrangements that would not be acceptable are when the transporter proposes:

- an itinerary which involves a stop-over in a country that may not allow or has refused to allow transit to a person being removed;
- conveyance on a commercial flight without segregation from other travellers in the case of a dangerous person or security risk;
- use of inexperienced or unqualified escorts or use of measures of restraint which are inconsistent with departmental policy and procedures.

11.3. Exceptions

R277 provides that a transporter is not required to carry from Canada any foreign national who was authorized to enter and remain in Canada on a temporary basis or who held a valid temporary resident or permanent resident visa at the time of their examination. However, a transporter is always required to carry from Canada a foreign national carried to Canada as or to become a member of a crew, regardless of whether they were granted entry or held a visa.

11.4. Liability for removal costs

A transporter that is required to carry from Canada a foreign national it brought to Canada is also liable to reimburse all costs of removal and, if applicable, attempted removal incurred by CBSA in respect of that person. R278 describes the various types of removal costs for which a transporter may be liable as:

- expenses incurred within or outside Canada with respect to the foreign national's accommodation and transport;
- accommodation and travel expenses incurred by any escorts;
- fees paid in obtaining documents for the foreign national and any escorts;
- the cost of meals, incidentals and other related expenses;
- regular and overtime wages paid to escorts and other personnel accompanying the foreign national; and

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- costs or expenses for interpreters, medical or other personnel assisting with the removal.

11.5. Notifying Transportation Unit, NHQ, of removal costs

The recovery of removal costs for which transporters are liable falls under the responsibility of the Transportation Unit, Enforcement Branch, NHQ.

In order to ensure that removal costs are recovered from the liable transporter, CBSA officers should complete form IMM 0459B and:

- e-mail it as an attachment to the Transportation Unit at tu-uct@cbsa-asfc.gc.ca;
- fax it to the Transportation Unit at 613-954-2381; or
- mail it to the Transportation Unit, Enforcement Branch, CBSA, 191 Laurier Street West, 10th Floor, Ottawa ON, K1A 0L8.

The Transportation Unit reviews each form and, after obtaining any missing information or making any necessary corrections, assesses the removal costs. If an invoice for removal costs is questioned by a transportation company, the Transportation Unit may request copies of supporting documents such as airline ticket invoices or travel expense claims.

12. Liability for medical costs

Pursuant to paragraph 148(1)(g) of the Act, a transportation company must pay all prescribed costs and fees relating to its obligation and under paragraph 148(1)(c) it must arrange for the medical examination, observation and treatment of a person it carries to Canada. These costs are prescribed under subsection 263(1) of the Regulations and apply only to foreign nationals reported under A44(1), including but not limited to medical inadmissibility, and to foreign nationals brought to Canada as or to become members of a crew.

A transportation company is always liable for the medical costs of its crew members regardless of whether they are reported under A44(1) or not.

12.1. Exceptions

A transportation company is liable for the medical costs of any passenger who requires a medical examination and/or emergency medical treatment upon arrival at a POE and who is subsequently reported under A44(1), except if:

- the passenger pays for the medical costs;
- the passenger has health insurance for medical costs incurred in Canada;
- the passenger is a citizen of a country whose citizens require a temporary resident visa (TRV) to visit Canada and holds a TRV;
- the passenger holds a permanent resident visa;
- the passenger is eligible for medical coverage under the Interim Federal Health (IFH) Program.

Note: IFH Program – Foreign nationals who arrive and require immediate medical attention should not be issued an IFH Certificate unless they are eligible for this benefit (i.e. refugee claimants or detainees. See IP3, Part 1, section 10.1 and IR3, section 4 for further information).

The IFH Program is not available to refugee claimants if they have the means to pay for their health care services or if they are already covered by a private or public health care plan.

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12.2. Duration

The transporter's liability continues for as long as:

- the foreign national requires medical treatment and has not been authorized to enter Canada as a temporary or permanent resident; or
- its crew member remains in Canada.

12.3. Billing of medical costs to transporters

When a transportation company is liable for the medical costs of a foreign national, CBSA should provide the medical service provider with the name and contact details of the transportation company to which invoices should be directed. The wording suggested hereafter may be adapted for use in such cases:

To: *(Name of medical service provider)*

From: *(Name and address of CBSA official)*

Re: *(Name of patient)*

The above noted person is not eligible for coverage under the Interim Federal Health (IFH) Program. Pursuant to subsection 148(1)(g) of the *Immigration and Refugee Protection Act* (IRPA) and section 263 of the *Immigration and Refugee Protection Regulations* (IRPR), the transporter is liable to pay medical costs. Therefore, if the patient is uninsured and is unable to pay for health care services, medical costs should be billed to the transportation company which brought this person to Canada, whose name and contact details are shown below.

Invoices sent to the IFH Program or to the Canada Border Services Agency in respect of this patient will not be paid.

c.c. *(Name of transportation company)*

Questions regarding the billing of medical costs to transportation companies can be directed to the Transportation Unit, NHQ at tu-uct@cbsa-asfc.gc.ca or 514-496-2765.

13. Security deposits

A148(1)(h) gives broad authority to require security from transporters to ensure compliance with their obligations. R283 provides that the Minister may require commercial transporters to post security. The security may relate to a specific inadmissible foreign national or be general security from which fees and costs incurred by the commercial transporter may be deducted.

13.1. Case-specific security deposits (marine mode)

The commercial transporter (ship owners, operators, agents) may be required to deposit security in respect of inadmissible foreign nationals who arrive in Canada aboard vessels as stowaways, crew members or passengers. The authority to direct transporters to deposit case specific security in the marine mode is delegated to officers in Regions. The cash amount required in each case is established by NHQ at \$25,000 per person. This amount is required to cover an administration fee of \$3,200 and the estimated average costs of a removal under escort. Officers may, with the approval of the Manager, Transportation Unit, direct transporters to deposit larger or smaller amounts where warranted. For example, the amount of security for a stowaway from Africa could

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be greater than the amount for a stowaway from Europe given the significantly higher costs of removals to Africa.

Directions for cash security deposits should be in writing using the Direction to Deposit Security standard letter format (see Appendix A) adaptable as required. When security is received, the official receipt form IMM 0410 must be completed for each foreign national and original given to the transporter with copies distributed as indicated.

Administration fees and any removal costs for which the transporter becomes liable in respect of the foreign national are automatically deducted from security. Case specific security is retained by the CBSA until all enforcement action against the inadmissible foreign national has been finalized and until all amounts for which the transporter is liable have been paid.

13.2. General security deposits (air mode)

Most airlines engaged in the international transportation of passengers to and from Canada are required to deposit general security in the form of cash. The authority for requiring transporters to deposit general security is delegated to the Manager, Transportation Unit, NHQ.

The general security deposit is a prerequisite for any MOU between a transporter and the CBSA. Only transporters that have entered into a MOU with CBSA are eligible to deposit general security in a form other than cash.

The amount of general security is determined in accordance with R283(2) based on the transporter's compliance with the Act and the anticipated risk of inadmissible foreign nationals being carried to Canada. The minimum amount currently required is \$30,000.

General security is not returned to a transporter which ceases to operate in Canada until enforcement action against all inadmissible foreign nationals previously brought to Canada by that transporter has been completed and until all amounts for which the transporter is liable have been paid.

In the event of unscheduled aircraft landings in Canada for the purpose of disembarking passengers who are ill or who were a threat to flight security, officers should seek guidance from the Manager, Transportation Unit, to determine if a security deposit is warranted.

13.3. Security deposits (land mode)

The operators of trains, buses, ferries, taxis and other cross-border passenger transportation companies that operate at the land border could be required to deposit security in respect of any inadmissible foreign national they bring to Canada.

Officers should consult with the Manager, Transportation Unit, whenever they believe that case-specific security may be warranted.

14. Ensuring transporter compliance

The following enforcement measures may be taken against a transporter that fails to comply with a direction to deposit security or fails to pay fees or costs for which it is liable:

- detention, seizure or forfeiture of a vehicle or other prescribed good under A148(2);
- registry of a certificate in the Federal Court under A146.

Note: The authority to detain or seize vehicles has been delegated to the regions for reasons of operational expediency. However, the DG, Policy and Program Development, NHQ, should be informed prior to seizing or detaining any commercial aircraft pursuant to A148(2).

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14.1. Detention of a vehicle or prescribed good

Under A148(2), the detention of a vehicle is an enforcement option when a vehicle or prescribed good is physically located in Canada and is still being operated by the transporter. R284 clarifies that a prescribed good is any good that is not land, a building or a transportation facility. Delegated authority to detain a vehicle is identified in the document entitled Delegations and Designations under the responsibility of the Minister of Public Safety. See previous note.

Note: The detention of a vehicle involves the use of the Notice of Detention or Seizure of Vehicle or Prescribed Good form IMM 5266B. The Manager, Transportation Unit at NHQ may request Regions to detain vehicles in order to obtain payment of overdue administration fees and removal costs.

The vehicle is detained as soon as an officer delivers a signed IMM 5266 to the master or any other person in charge of the vehicle. The delivery of the notice triggers the detention. As soon as the notice of detention has been delivered, the officer should transmit copies to the following local authorities, as applicable, to ensure that the vehicle will be prohibited from leaving:

- Canada Coast Guard Vessel Traffic;
- local vessel pilotage authority; and
- airport control tower.

The vehicle must be released as soon as the transporter remits the sum of money required or complies with its obligation. When the vehicle is released, the above-mentioned authorities must be immediately notified.

14.2. Seizure of a vehicle or prescribed good

Although a vehicle may be seized without it first being detained, seizure should be used as a last resort. A vehicle which is detained remains in the possession of the transporter. By seizing a vehicle, however, CBSA takes possession of the vehicle and thereby becomes liable for the costs of handling, maintaining and disposing of it.

The delegated authority to seize a vehicle under A148(2) is identified in the document entitled Delegations and Designations under the responsibility of the Minister of Public Safety. See previous note in section 14.

R286(1) provides that, following a seizure, the Minister shall make reasonable efforts to give notice of the seizure to the lawful owner.

The seizure of a vehicle involves the use of the Notice of Detention or Seizure of Vehicle or Prescribed Good form IMM 5266B. The vehicle is seized as soon as an officer delivers a signed IMM 5266 to the master or any other person in charge of the vehicle. As soon as the notice of seizure has been delivered, the officer should transmit copies of the notice to the local authorities, as applicable.

The officer should transmit a copy of the IMM 5266 to the harbour-master (for a ship) or the control tower (for an aircraft) giving specific details, such as the vehicle identification (ship's name and registry, or flight number or type of aircraft and registration number), the name of the transporter and the authority for seizing. This notification is necessary in order that the harbour-master or control tower can deny the vehicle permission to leave port or take off.

14.3. Disposition of seized vehicle or prescribed good

R286(2) provides that a vehicle or good seized under A148(2) be sold and the amount payable by the transporter deducted from the proceeds of the sale unless the transporter secures the object's release by providing:

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- an amount equal to the value of the object at the time of seizure and any expenses incurred in the seizure or detention;
- the security required under the Act or any costs and fees for which the transporter is liable, including the expenses incurred in seizing and detaining the object; or
- evidence that the transporter is in compliance with its obligations and has reimbursed the government for any expenses incurred in the seizure or detention.

14.4. Storage and security of a seized vehicle or good

When a vehicle or good is seized, CBSA should consult the transporter to the greatest extent possible to ensure that the vehicle is handled properly. A manager directing the seizure of the vehicle or good should commission an insurance appraisal to establish the value and condition at the beginning of the seizure period. Officers should ensure that CBSA is responsible for ensuring procedures are in place to protect the seized objects. These procedures often involve:

- arranging to have a vehicle towed to another location;
- hiring a temporary crew to move the object;
- ensuring the security of the object by contracting a security firm;
- safeguarding the vehicle's log books;
- taking preventive steps, if necessary, to protect the object from damage in cold weather.

For further information on seizures, see ENF 12, which deals with seizures under A140 and which also include information concerning the disposition and disposal of seized goods that is applicable to seizures under A148(2).

14.5. Registry of a certificate in the Federal Court

If the transporter does not have vehicles or goods in Canada that may be detained or seized, the amount payable by the transporter may be collected by registering a certificate in the Federal Court pursuant to A146.

The authority to certify before the Court that an amount payable by a transporter has not been paid is delegated to Comptrollership Branch, NHQ.

Once registered, the certificate has the same effect as if it were a Federal Court judgment. This means that the Agency may issue what is known as a writ of *feri facias* to a sheriff who can then execute the judgment against assets of the company for the amount payable. In practice, this usually involves the seizure of the amount payable from the transporter's bank account.

The transporter is liable for the costs of registering a certificate.

Where a vehicle cannot be detained to enforce a direction for the deposit of security, regional officers have the option of reporting the transporter's non-compliance to the Transportation Unit in order for the amount payable to be registered.

15. Transportation Unit contact information

The Transportation Unit, Enforcement Branch, NHQ, can be contacted by:

- e-mail at tu-uct@cbsa-asfc.gc.ca;

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- fax at 613-954-2381; or
- mail to the Transportation Unit, Enforcement Branch, CBSA, 191 Laurier Street West, 10th Floor, Ottawa ON, K1A 0L8.

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Appendix A Direction to Deposit Security

(Name of shipping agent)

(Mailing address)

(City, Province)

(Postal code)

(Date)

RE: *(name of ship)*

To whom it may concern:

Pursuant to paragraph 148(1)(h) of the *Immigration and Refugee Protection Act*, *(name of shipping agent)* is hereby directed to deposit with Her Majesty in right of Canada the sum of \$25,000 in Canadian currency. The security should be in the form of a cheque or money order payable to the Receiver General for Canada. This direction is issued as a result of the conveyance to Canada of *(name[s] of person[s] concerned)* as *([a] stowaway[s] / [a] crew member[s])*.

Compliance with this direction is a statutory requirement. Non-compliance may result in the detention of any vessel fully or partly owned by the company concerned, pursuant to paragraph 148(2) of the Act.

The security deposit may be remitted to the undersigned or to any other departmental official by arrangement with the undersigned.

Yours truly,

(signature of officer)

(name of officer)

(title)

(telephone number)