



U.S. Department of Homeland Security
Bureau of Customs and Border Protection
U.S. Border Patrol
Office of the Chief Patrol Agent
San Diego Sector

SDC 50/8-P

2411 Boswell Road
Chula Vista, CA 91914-3519

February 3, 2004

RECEIVED
FEB 04 2004
BY: Zermeno

MEMORANDUM FOR: ASSISTANT CHIEF PATROL AGENTS
PATROL AGENTS IN CHARGE
OFFICERS IN CHARGE
SAN DIEGO SECTOR

FROM:

for Michael C. Nicley
Chief Patrol Agent

SUBJECT:

Border Patrol Traffic Checkpoint Policy

Please find attached two memos from Gus De La Viña, Chief, U.S. Border Patrol one dated November 3, 2003, entitled, "Border Patrol Checkpoint Directive" and the other dated December 30, 2003, regarding "Border Patrol Traffic Checkpoint Policy." These memos are to accompany the CBP Directive entitled, "Border Patrol Checkpoint Operations and Guidelines" which was sent out on January 5, 2004, via cc:mail.

Please ensure that your agents review and adhere to the directive as stated. Upon receipt of this memorandum, acknowledge via cc:mail to your Assistant Chief Patrol Agent, that you have received and begun implementation of this directive.

Attachment

**U.S. CUSTOMS AND BORDER PROTECTION
Department of Homeland Security**

Memorandum

OBP 50/8b-P

NOV - 3 2003

MEMORANDUM FOR: COMMISSIONER

FROM:

Gus De La Vña
Chief
Office of Border Patrol



SUBJECT:

Border Patrol Checkpoint Directive

Attached is a proposed U.S. Customs and Border Protection (CBP) directive governing Border Patrol checkpoint operations for your review and approval.

The Office of Border Patrol established a working group to review current Border Patrol checkpoint operations and to forward recommendations for improvements. This review process determined that national policies governing checkpoints needed to be updated to reflect our priority mission of antiterrorism within CBP as well as technology advancements.

The attached directive addresses the critical need of checkpoint operations as they maximize the Border Patrol's mission in securing the Nation's borders against terrorists, smugglers of weapons of terror, other contraband, and illegal aliens. The directive will ensure consistency in checkpoint operations and enforcement nationwide. It fosters communication and intelligence sharing throughout CBP. This directive provides standards for existing checkpoints as well as guidelines for establishing additional checkpoints in the future.

My staff and I are available to provide additional information or answer questions if requested.

Approved: _____



Disapproved: _____

Let's Discuss: _____

Attachment

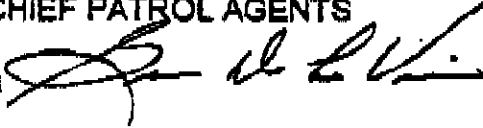
U.S. CUSTOMS AND BORDER PROTECTION
Department of Homeland Security

Memorandum

OBP 50/8b-P

DEC 30 2003

MEMORANDUM FOR: ALL SECTOR CHIEF PATROL AGENTS

FROM: Gus De La Viña 
Chief
U.S. Border Patrol

SUBJECT: Border Patrol Traffic Checkpoint Policy

The attached U.S. Customs and Border Protection Directive applies to all Border Patrol checkpoints and sets minimum standards for their operation. With the enhanced vigilance for terrorists and weapons of terrorism, including weapons of mass destruction, the unique capability of Border Patrol Agents and the exercise of their authority at checkpoints are imperative to homeland security. National policies governing checkpoint operations will ensure consistency in enforcement along our borders.

The directive supersedes all previous policies. This directive should be implemented within 30 days of the date of the memorandum.

Staff may direct questions concerning this policy to Assistant Chief James St.Hilaire at 202-927-2050.

Attachment

SUBJECT: BORDER PATROL CHECKPOINT OPERATIONS AND GUIDELINES

1 PURPOSE. The purpose of this directive is to standardize and improve Border Patrol checkpoint operations.

2 POLICY.

2.1 It is the policy of U.S. Customs and Border Protection (CBP) to use Border Patrol checkpoints to restrict the routes of egress from the border area where appropriate and thereby create deterrence to the initial illegal entry. Checkpoints greatly enhance the Border Patrol's ability to carry out the mission of securing the Nation's borders against terrorists, smugglers of weapons of terrorism, other contraband, and illegal aliens. Checkpoints are an integral part of the border enforcement strategy and provide a level of authority that is not replicated in any other enforcement tool outside the ports of entry.

2.2 This directive supplements the requirements as outlined in chapter 13 of the *Border Patrol Handbook* relating to operation of traffic checkpoints CBP's Office of Border Patrol. It is understood that the individual needs of each checkpoint will vary because of local conditions and differences in traffic flow.

2.3 Each Border Patrol sector shall be responsible for ensuring that the procedures and guidelines in this directive are followed.

2.4 Because of the nature of checkpoint enforcement operations and related national security issues, when a fixed/tactical checkpoint is being established to respond to a specific trend or threat, State and/or local operating permits need not be sought. *Sectors and stations are expected to maintain a liaison with local regulating agencies without compromising the security of the mission. (Refer to 18 U.S.C. 111, "Impeding a Federal Officer.")*

2.5 Border Patrol Agents must be very familiar with, and strictly adhere to, the court decisions that apply to their area of operations. In addition, they must differentiate the parts of those decisions that apply to the stopping of vehicles to examine occupants from the parts that apply to the searching of those vehicles.

2.6 No person or vehicle is exempt from inspection procedures at Border Patrol checkpoints. The only exceptions shall be in cases where health, safety or exigent circumstances exist.

2.7 Agents shall exclude themselves from the inspection process if a vehicle contains relatives or close friends.

2.8 Agents will conduct themselves in a professional and courteous manner at all times.

2.9 All immigration checkpoints are now judicially regarded as interior enforcement operations. Therefore, the law regarding "border searches" or "extended border searches" does not apply to Border Patrol checkpoints. In addition, there is no longer any meaningful legal distinction between "permanent" and "temporary" immigration checkpoints.

2.10 Sector and station management may add requirements as needed for their specific operation but must comply with, at a minimum, the requirements as outlined in the *Border Patrol Handbook* and this directive.

3 DEFINITIONS.

3.1 The term "immigration checkpoint" includes any interior location at which vehicular immigration inspection occurs. The primary purpose of a checkpoint is to restrict the routes of egress from the border area and thereby create deterrence to the initial illegal entry. Although currently the authority to inspect vehicular traffic for illegal aliens is the Border Patrol's primary objective, agents often encounter violators of other Federal and State laws.

3.2 For the purpose of this directive, the term "permanent checkpoint" refers to a checkpoint location that includes permanently constructed buildings, traffic control, and associated facilities without regard to hours of operation.

3.3 For the purpose of this directive, the term "Fixed/Tactical Checkpoint" refers to a checkpoint where the location is preselected and remains constant but where there are no permanent buildings or facilities. Most or all equipment is mobile and can be removed from the site when the checkpoint is nonoperational.

4 **AUTHORITY/REFERENCES.** Immigration and Nationality Act Section 287 (a) (8 U.S.C. Section 1357); *Border Patrol Handbook*; and chapter 13, *Manual of Uniformed Traffic Control Devices (MUTCD)*.

5 RESPONSIBILITIES.

5.1 The Commissioner of CBP shall have policy oversight regarding CBP-level policies and procedures.

5.2 Within CBP, the Chief, Office of Border Patrol, shall ensure that this directive is provided to and adhered to by all sectors.

5.3 Within the Border Patrol, Sector Chief Patrol Agents are responsible for the implementation of this directive.

FOR OFFICIAL USE ONLY

5.4 The Border Patrol Academy and the Chief Patrol Agents are responsible for fully training Border Patrol Agents in proper traffic check and safety procedures. Agents shall be provided proper vehicle inspection and public interaction training during basic training in the Border Patrol Academy. When agents transfer to different stations that operate checkpoints, their previous checkpoint experience should be ascertained and additional training provided if necessary.

6 PROCEDURES.

6.1 General Location Selection. Selection of a traffic checkpoint location is considered by the courts in determining the legality of that checkpoint; judicial guidelines must be followed. In the selection of any site for a checkpoint, the following factors must be considered:

6.1.1 The site should be far enough from the border to avoid interfering with traffic in populated areas near the border. When appropriate, it should also be beyond the 25-mile zone in which border crossers are authorized to travel.

6.1.2 The site should be close to the confluence of two or more significant roads leading away from the border.

6.1.3 The surrounding terrain should restrict vehicle passage around the checkpoint.

6.1.4 The site should be located on a stretch of highway compatible with safe operation.

6.1.5 Judicial rulings require that a checkpoint location be fixed at a particular site selected in advance by supervisors. A checkpoint must be operated at the same location every time and should not be moved up and down a particular stretch of road. When a checkpoint's location varies among several sites along a stretch of roadway, it may be found to be more like roving patrol, which requires "reasonable suspicion" to justify a vehicle stop. A checkpoint's location is as important as the manner of its operation.

6.1.6 New locations that include construction or land purchase not only should consider current needs but also should plan for future growth. (Reviewing a State's Department of Transportation 20-year traffic projections will assist in this planning process.)

6.1.7 Locations for new construction of permanent checkpoints should be selected and the checkpoints designed by sector staff in consultation with appropriate engineers, including State highway engineers.

6.1.8 New checkpoints may be co-located with State Department of Transportation commercial truck inspection facilities when possible and if appropriate.

FOR OFFICIAL USE ONLY

6.2 Minimum Required Facilities. Facilities required to operate a checkpoint vary with conditions and the volume of traffic. The minimum facilities required to operate any checkpoint are listed below.

6.2.1 A safe, environmentally controlled processing area (building, mobile trailer, specialty vehicle, or similar facility).

6.2.2 Secure, environmentally controlled detention area (building, mobile trailer, specialty vehicle, or similar facility).

6.2.3 Facilities with access to water and electricity (portable or permanent).

6.3 Required Vehicles. Adequate vehicles should be provided to include, at a minimum:

6.3.1 One marked emergency vehicle, preferably a sedan, equipped with a siren and emergency lights of the color specified by State regulations.

6.3.2 One appropriate backup unit and any other vehicles as deemed necessary by local management.

6.4 Traffic Control. Traffic control shall be established using the most recent version of the MUTCD published by the Federal Highway Administration of the U.S. Department of Transportation. Under these guidelines, traffic control devices, such as signs, barricades, and lights, and the placement distances of such equipment will vary greatly depending on normal posted speed limits and traffic flow. (MUTCD ordering information is available at www.atssa.com or 540-368-1701.) Rumble strips (strips of hard rubber placed across lanes to alert drivers to slow down) are authorized if allowed by State and local regulations.

6.5 Illumination. Lighting sufficient to safely illuminate the primary and secondary inspection areas is required. **Note:** Extreme caution must be exercised to ensure that drivers traveling in either direction are not blinded or their vision significantly impaired by the placement of these lights.

6.6 Communication Equipment. Communication equipment, such as a base radio and/or a mobile phone, shall be made available.

6.7 Recommended Inspection Equipment. The following inspection equipment is recommended (depending on local needs):

6.7.1 Vehicle jacks or lifts.

6.7.2 Inspection mirrors.

6.7.3 Compartment cameras (fiber optics).

FOR OFFICIAL USE ONLY

6.7.4 Density meters.

6.7.5 Laser distance measurement tool.

6.7.6 Radiation detectors.

6.7.7 Other tools: hammers, screwdrivers, crowbars, wrenches, etc.

6.7.8 Vehicle and Cargo Inspection System (VACIS) or other X-ray-type equipment. (At small checkpoints it may be more cost effective to use vehicle X-ray equipment available at a port of entry.)

6.7.9 Scales for seized contraband.

6.8 Required Equipment. The following miscellaneous equipment is required at all locations.

6.8.1 First aid equipment.

6.8.2 Fire extinguisher.

6.8.3 Emergency flares.

6.8.4 Batteries (sufficient quantity for battery-powered lights).

6.8.5 Extra cones and lights for traffic control

6.9 Physical Arrangements. Following are requirements for the physical arrangements of checkpoints.

6.9.1 All checkpoints must comply with traffic control guidelines as established using the latest version of the MUTCD as stated under "Traffic Control." The physical arrangement of any checkpoint must minimize the risk of an accident or an injury to any agent or member of the public. Non-traffic-control equipment should be kept a safe distance from any right-of-way or throughway.

6.9.2 The checkpoint site selected shall provide ample parking space for buses, trucks, and other vehicles pulled off for further questioning of occupants. This parking space should be to the right side of the highway. *Exception: On highways with traffic moving in both directions separated by a median, the median may be used if it is safe and wide enough. In such cases, vehicles may be pulled off to the left and later funneled into the traffic stream from that side.*

6.10 Personnel. Personnel and staffing levels required for optimal operation of a checkpoint should be reviewed each year. Staffing needs will vary dramatically from

FOR OFFICIAL USE ONLY

location to location, and it is nearly impossible to adopt a "one size fits all" approach. Issues affecting personnel include, but are not limited to:

6.10.1 Number of primary lanes of inspection.

6.10.2 Type and volume of traffic (commercial trucks v. passenger cars).

6.10.3 Number of circumvention routes.

6.10.4 Terrain.

6.10.5 Available support technology (sensors, cameras, X-ray equipment, etc.).

6.10.6 Local agreements between union and management.

6.11 Minimum Recommended Number of Agents. A minimum of three agents are recommended to operate a single lane checkpoint, as follows:

6.11.1 Primary inspection agent.

6.11.2 Secondary inspection agent.

6.11.3 Backup or rove agent.

6.12 Additional Agents Needed. Additional agents are required to operate multilane checkpoints: one additional agent for each lane of primary inspection and one additional secondary inspection agent per two primary inspection lanes. Preventing circumvention of a checkpoint is just as critical to its effectiveness as the inspection process and should be addressed with appropriate manpower.

6.13 Safety Procedures. The safe operation of traffic checkpoints is of the utmost importance. Neither agents nor the traveling public should be subjected to hazards beyond those that are inherent in any Border Patrol operation or in any other activity involving moving vehicles. Agents should adhere to the following safety procedures:

6.13.1 To the extent possible, protection from the natural elements shall be furnished for agents, canines, and detainees.

6.13.2 Whether agents are using a stoplight or hand signals, motorists must be clearly aware that they will be required to stop. If red and green lights are used at the stopping point, they should be highly visible.

6.13.3 When an agent is working in the primary inspection area, he or she should be positioned on the driver's side of the vehicle and equipment should not be placed in an area that would interfere with the free movement of the inspecting agent. As vehicles

FOR OFFICIAL USE ONLY

come to a stop, the agent should watch the occupants closely. If a flashlight is used, it should be in the hand opposite the sidearm.

6.13.4 After vehicles have stopped, agents should identify themselves as Border Patrol Agents and announce that they are performing an immigration inspection. Anytime the questioning goes beyond the routine, vehicles should be directed out of the lane of traffic and into the secondary inspection area.

6.13.5 A second agent should be in a position to watch the occupants of vehicles closely as they approach, remaining constantly alert for other vehicles so that other agents can be warned of imminent danger.

6.13.6 Buses to be inspected should be directed out of the traffic lane. Upon boarding a bus, an agent should get the attention of the passengers by identifying himself or herself and stating the purpose of the stop. Passengers should be checked as rapidly as possible. If passengers are taken into custody, it should be done with as little disruption as possible; any baggage must be secured and the driver requested to revalidate the passengers' tickets.

6.13.7 Agents walking down the aisle of a bus are in proximity to passengers on both sides. Care should be taken to maintain sidearm security and keep the gun hand free at all times.

6.13.8 Operations should be suspended if conditions become such that either the Border Patrol Agents or the traveling public are in danger of being injured through an accident. A conscientious appraisal must be made as to whether operations should be discontinued. Error should be on the side of caution. It is better to suspend traffic check operations than to continue under conditions that could result in an accident or an injury. The decision as to whether traffic check operations should be terminated rests with the Chief Patrol Agents but may be delegated to Patrol Agents in Charge of the station or the supervisory Patrol Agents in charge of the shift. If these agents cannot be contacted, the senior agent in charge of the checkpoint operations shall make the decision. Examples of such conditions include:

6.13.8.1 An accident in the vicinity that compromises the safe continued operation.

6.13.8.2 Heavy traffic congestion.

6.13.8.3 Slick or icy roads.

6.13.8.4 Inclement weather, such as fog, heavy rain, or heavy snow.

6.14 Intelligence Sharing. The Chief Patrol Agent of each sector or his delegate is responsible for ensuring that any information that may affect operations at another sector, station, or checkpoint or a port of entry is disseminated in real time to the

FOR OFFICIAL USE ONLY

appropriate parties, including, if appropriate, the Office of Field Operations or the CBP Situation Room. Such information includes, but is not limited to, the following:

6.14.1 The checkpoints that are open and that are closed.

6.14.2 Current intelligence that may assist operations.

6.14.3 Trends that may affect operations, such as use of false documents or specific smuggling trends.

6.14.4 Enhanced or special operations that may affect surrounding stations or checkpoints.

6.14.5 Lookouts.

6.14.6 Officer safety matters—specific threats.

6.15 Canine Program. All canine operations shall be in accordance with service canine policy. To the extent practical, checkpoints with canine operations should make extra effort to ensure that adequate shade is provided in areas where the canine will be working, thereby increasing the inspection capability of the canine.

6.16 Assistance at Accidents. Procedures for providing assistance at accidents are as follows:

6.16.1 The Border Patrol recognizes a moral obligation to render assistance at motor vehicle accidents if other emergency services are not present. In all cases, the appropriate law enforcement agency must be summoned immediately. The extent of any action is governed by the exigencies of the situation. Generally, appropriate steps include the following:

6.16.1.1 First aid to any injured parties.

6.16.1.2 Traffic control.

6.16.1.3 Other assistance that can be rendered to other agencies.

6.16.2 All pertinent information should be furnished to the other agencies upon notification. This should include, at a minimum, the seriousness of injuries, possible deaths, number of victims, and any obstruction of traffic lanes.

6.16.3 Agents should not move corpses without being directed by the coroner or another competent authority having jurisdiction unless it is absolutely necessary.

FOR OFFICIAL USE ONLY

6.17 Statistical Data Recording. Each sector (or, at the discretion of the Sector Chief Patrol Agent, each checkpoint station) shall maintain records and statistics, including, at a minimum, the following:

6.17.1 Location if fixed/tactical.

6.17.2 Dates and hours of operation (in detail not just totals)

6.17.3 Arrests of illegal aliens at primary or secondary inspection at the checkpoint.

6.17.4 Arrests of subjects attempting to circumvent checkpoint.

6.17.5 Narcotics seizures.

6.17.6 Arrests for any outstanding warrant.

6.17.7 Significant interviews or encounters with aliens from special interest countries.

6.17.8 Vehicle accidents that occur within the traffic control area of the checkpoint.

6.17.9 Failure to yield for checkpoint and flight from checkpoint.

6.17.10 Formal complaints.

6.17.11 Specific manpower requirements to operate efficiently, including a position description, if appropriate.

6.18 Complaints. Complaints from the public should be addressed immediately, in person and by a supervisor whenever possible. Official complaints shall be handled in accordance with current service policy.

6.19 Non-CBP Law Enforcement Agencies at Checkpoints. Other law enforcement agencies may perform their duties while at Border Patrol checkpoints in accordance with the following guidelines:

6.19.1 Border Patrol Agents must continually remain the controlling law enforcement officers at Border Patrol checkpoints.

6.19.2 Absent exigent circumstances, Border Patrol Agents must conduct immigration duties before any other law enforcement agency action or involvement may occur.

6.19.3 Any non-CBP law enforcement agency conducting ongoing law enforcement duties at a Border Patrol checkpoint must have stand-alone authority to conduct checkpoint operations for the specific purpose for which enforcement is being conducted.

FOR OFFICIAL USE ONLY

6.19.4 Other non-CBP law enforcement agencies may perform their duties at Border Patrol checkpoints when specifically requested by Border Patrol Agents upon discovering a violation of law over which the non-CBP agencies have primary jurisdiction.

7 New Construction of Permanent Checkpoints.

7.1 Facilities. New or planned construction of permanent checkpoints should include the following minimum facilities:

7.1.1 Safe and adequate detention and processing area to include records check capabilities (i.e., T-1 or greater capabilities).

7.1.2 Canopy coverage for preprimary, primary, and secondary inspection areas, including adequate lighting, environmental controls (heat and cooling) and wind and weather protection.

7.1.3 Safe storage space for detainee possessions.

7.1.4 Sally port.

7.1.5 Control room set up for sensors, dispatch and radio communication, and video monitoring.

7.1.6 Loading docks, including adequate safe holding area for removed cargo.

7.1.7 Area for vehicle lifts.

7.1.8 Separate bathrooms for public, agents, and detainees.

7.2 The process for designing all temporary and permanent buildings and or equipment should consider all normal office and personnel issues associated with any station or office.

7.3 Design must ensure expansion possibilities in relation to 20-year State traffic projections.

7.4 Approach and Inspection Area. The approach and inspection area of all new or planned construction of permanent checkpoints should include, at a minimum, the following:

7.4.1 Two primary inspection lanes to facilitate separation of commercial vehicles and passenger vehicles.

7.4.2 Separate secondary inspection areas for commercial vehicles and passenger vehicles.

FOR OFFICIAL USE ONLY

- 7.4.3 Concrete approach, apron, and inspection areas:
- 7.4.4 Area for commercial truck scales.
- 7.4.5 Surveillance platform (for looking down into or onto vehicles).
- 7.4.6 Kennels for canines.
- 7.4.7 Storage area for evidence.
- 7.4.8 Adequate parking space for employees, Detention and Removal Program buses, service vehicles, seized vehicles, etc.
- 7.4.9 Secure HAZMAT quarantine area to store vehicles until proper authorities can respond.
- 7.4.10 Storage area for miscellaneous equipment and tools.

8 Optimal Equipment. A thorough and efficient inspection requires the proper equipment. The following list of equipment is recommended to facilitate an efficient inspection and maintain traffic flow. This list is provided as a planning guide and does not constitute any equipment requirements.

- 8.1 Enough canines to provide coverage 24 hours a day, 7 days a week, for preprimary inspection at each lane and secondary inspection area.
- 8.2 Computers with server access to all necessary records checks, including ENFORCE, IDENT, IAFIS, NCIC, CIS, DAC, ISRS, etc.
- 8.3 Phone lines.
- 8.4 Card readers (portable and fixed).
- 8.5 Database access to gather information on:
 - 8.5.1 Targeting of high-risk carrier and cargo.
 - 8.5.2 Directly linking to ports of entry and checkpoints within corridor(s).
 - 8.5.3 Linking intelligence with investigations (U.S. Immigration and Customs Enforcement, Anti-smuggling, and other staff).
- 8.6 Video surveillance of traffic and surrounding area.
- 8.7 Intrusion sensors.

FOR OFFICIAL USE ONLY

- 8.8 License plate readers.
- 8.9 Density meter.
- 8.10 Fiber optic scopes.
- 8.11 Laser distance measurement tool.
- 8.12 Radiation detectors: Permanent installed systems that are lane specific are preferred.
- 8.13 VACIS or similar X-ray equipment.
- 8.14 Heartbeat monitors.
- 8.15 Vehicle lifts.
- 8.16 Truck scales.
- 8.17 Observation platforms.
- 8.18 Inspection mirrors.
- 8.19 Forklift.
- 8.20 Pallet jacks.
- 8.21 Tire changer.
- 8.22 Air compressor.
- 8.23 General assorted pneumatic and handtools.
- 8.24 Remote control tire deflation device on exit route.
- 8.25 Scales for contraband.
- 8.26 Money counters.
- 8.27 Appropriate safety equipment to meet standards set by the Occupational Safety and Health Administration and by this directive.
- 8.28 Red and green lights controlled by agent at primary.
- 8.29 Programmable public relations sign for exit.

FOR OFFICIAL USE ONLY

9 NO PRIVATE RIGHTS CREATED. This document is an internal CBP policy statement and does not create or confer any rights, privileges, or benefits on any person or party.

Commissioner
U.S. Customs and Border Protection

FOR OFFICIAL USE ONLY