

INTERNATIONAL LAW REPORT

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PROPOSED REVISIONS TO U.S. TRANSPORTATION REGULATIONS REGARDING ACCESS FOR MEXICAN CARRIERS

Background

Under the motor carrier access provisions adopted under the North American Free Trade Agreement (“NAFTA”), the United States agreed to phase out restrictions on cross-border trucking services and on Mexican investment in the United States trucking industry. Access to the U.S. market for Mexican providers of cross-border trucking services was to be granted in stages, with complete access granted by no later than January 1, 2000. Citing safety concerns, the Department of Transportation (“DOT”) announced in December of 1995 that it would delay implementation of the NAFTA motor carrier access provisions. Mexico brought a complaint against the United States, pursuant to the dispute resolution provisions of NAFTA. An arbitral panel was convened in May of 2000 and the panel’s final report was issued on February 6, 2001. The report indicated that the United States had failed to provide access by Mexican motor carriers to the United States, as was required under NAFTA. In response to this decision, the Federal Motor Carrier Safety Administration (“FMCSA”) has recently proposed revisions to current federal regulations which seek to bring the United States into compliance with its NAFTA obligations, while addressing the safety concerns raised by U.S. industry groups.

Discussion of Proposed Regulations

Mexican Cross-Border Operations in the Border Region.

Currently, the only Mexican motor carriers

that are permitted to operate with the United States are those that are outside the jurisdiction of the Interstate Commerce Commission. These carriers have obtained Certificates of Registration by filing Form OP-2 with the DOT, pursuant to which they are permitted to operate solely in limited zones within municipalities on the United States border.

The new Form OP-2, which must be completed every two years by applicants, is designed to require significant additional information from the applicant that will allow the DOT to better monitor safety and operational concerns. Holders of Certificates of Registration must notify the FMCSA of any changes to information on the Form OP-2 within 45 days of any such changes. Among other items, the new form requires applicants to (i) designate domestic agents for service of process, (ii) provide evidence that the applicant is registered in a motor carrier database maintained by the Mexican Federal Government, (iii) identify its existing operations in the United States and the insurance held by the applicant, (iv) certify that the carrier is not currently disqualified from operating commercial vehicles in the United States, (v) certify that the applicant has procedures in place to ensure compliance with U.S. safety requirements, and (vi) provide details regarding the applicant’s safety program. Information regarding the safety program would include the identity of the laboratory where driver drug testing is performed, the person responsible for the

safety program, and details of the applicant's accident monitoring system.

Mexican Cross-Border Operations Throughout the United States.

The FMCSA has also proposed revisions to the regulations that govern Mexican carriers who seek to engage in cross-border operations to U.S. locations outside of the border region. The new form OP-1(MX) would be required to be completed by Mexican motor carriers who wish to transport property or passengers throughout the United States, not just within commercial border zones. The proposed form OP-1(MX) is substantially identical to the form OP-2 discussed above and generally requires the same disclosure, commitments and representations discussed above.

Safety-Monitoring Program for Mexican Carriers.

In an effort to ensure compliance with revised regulations, the FMCSA has proposed regulations to implement a safety-monitoring program applicable to both Mexican carriers operating solely within the border zone pursuant to Form OP-2 and those who operate throughout the United States, pursuant to Form OP-1(MX). The stated goal of the proposed safety-monitoring program is to determine whether Mexican carriers operating in the United States are conducting safe operations. The proposed safety oversight program would evaluate the safety of Mexican carriers within 18 months after they have received conditional authority to operate in the United States. Each carrier must submit to a safety review within 18 months after receiving a temporary

registration under either the OP-2 application or OP-1(MX) application. If the safety review is successfully completed, then at the end of the 18 month period, the registration becomes final. The applicant remains under this safety review program until the program is completed. The regulations allow for a suspension of the conditional license if the carrier fails a safety review and does not take adequate steps to correct any deficiencies. The proposed safety-monitoring program is not intended to replace the regular safety compliance and enforcement procedures that apply to all motor carriers operating in the United States, but rather, provides an additional system for ensuring compliance by Mexican motor carriers.

President Bush has expressed his strong support for opening the U.S. border to Mexican motor carriers pursuant to the proposed regulations discussed above. The proposal, however, is controversial and has resulted in both the Senate and the House approving separate bills that would further restrict access by Mexican trucking companies to the United States. Bush allies hope to delay action by Congress on compromise legislation and thus avert a possible veto by Bush.

If you have a client or prospective client that would like to receive more information on these proposed regulations, or a description of the corresponding Mexican access rules for U.S. carriers, please contact **Stephen Elison** in Houston at **713.276.5963** or selison@gardere.com.

This newsletter is not intended to give legal advice. Because the application of any law or regulation depends entirely on the particular circumstances of the case, please consult with a knowledgeable attorney before relying on or acting on any information provided in this newsletter.

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