



This document is scheduled to be published in the Federal Register on 11/22/2016 and available online at <https://federalregister.gov/d/2016-28018>, and on FDsys.gov

DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 376

Lease and Interchange of Vehicles by Mexico-domiciled Motor Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice on applicability.

SUMMARY: Section 219(d) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) restricted Mexico-domiciled motor carriers from leasing commercial motor vehicles (CMVs) to U.S. carriers to transport property into the United States until the international obligations under the North American Free Trade Agreement (NAFTA) chapter on cross-border trade in services were met. Given FMCSA's acceptance of applications for long-haul operating authority from Mexico-domiciled motor carriers following the conclusion of the U.S.-Mexico Cross Border Long-Haul Trucking Pilot Program, the obligations are fulfilled and the restriction is no longer applicable.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

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SUPPLEMENTARY INFORMATION:

Background

The Motor Carrier Safety Improvement Act of 1999¹ (MCSIA) created FMCSA and transferred authority for motor carrier safety from the Federal Highway Administration.

Section 219(d) prohibited the leasing by a Mexico-domiciled motor carrier (lessor) of its equipment to a U.S. motor carrier (lessee) for operation beyond the commercial zones on the U.S.-Mexico border. This restriction specifically applied “Before the implementation of the land transportation provisions of NAFTA ...” The second clause in section 219(d) further states that this prohibition exists “during any period in which a suspension, condition, restriction or limitation imposed under section 13902(c) of title 49 ... applies to a [long-haul] motor carrier (as defined in section 13902(e)).” Section 13902(c) addresses “Restrictions on motor carriers domiciled in or owned or controlled by nationals of a contiguous foreign country.”

Section 13902(c)(3) provides that only “The President” or his delegate may “remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.” In November 2002, President Bush issued a presidential memorandum lifting the moratorium on granting long-haul operating authority to qualified Mexico-domiciled motor carriers of property and of passengers.² The only limitation that remained following this presidential action was the restriction on point-to-

¹ Pub. L. 106-159, 113 Stat. 1748, 1768, December 9, 1999.

² 67 FR 71795 (November 27, 2002)

point transportation within the United States, which did not impact the NAFTA land transportation provisions.

In March 2002, FMCSA issued Interim Final Rules that fulfilled a Congressional mandate to ensure the safe operation of Mexican vehicles in the United States. Several organizations filed suit in the U.S. Court of Appeals for the Ninth Circuit challenging those rules. The Court set aside the rules, and the United States sought Supreme Court review of the decision. In 2004, the Supreme Court reversed the Ninth Circuit and upheld the Agency's Interim Final Rules (Department of Transportation, et al. v. Public Citizen, et al., 541 U.S. 752 (2004)).

Congress, however, subsequently passed Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007,³ imposing further limitations on the Agency's ability to expend appropriated funds to issue operating authority to Mexico-domiciled motor carriers. The Agency was unable to process applications for long-haul operating authority from Mexico-domiciled motor carriers until a pilot program was completed pursuant to these new requirements.

From October 14, 2011, through October 10, 2014, FMCSA conducted a pilot program to determine the ability of Mexican motor carriers to operate safely in the United States. FMCSA delivered the requisite report to Congress in January, 2015. On January 15, 2015 (80 FR 2179), FMCSA announced that it would begin accepting and processing applications for long-haul operating authority from Mexico-domiciled property carriers under 49 U.S.C. 13902.

³ Pub. L. No. 110-28, 121 Stat. 112, 183, (May 25, 2007).

Because Mexico-domiciled motor carriers may now apply for and receive long-haul operating authority, the land transportation provisions of NAFTA for property carriers have been implemented. Therefore, the previous leasing restrictions are not applicable, consistent with Section 219(d) of MCSIA.

This notice is being issued to prevent inconsistent enforcement of a law that is no longer applicable. It also serves to inform all motor carriers and the general public that, in accordance with NAFTA and MCSIA, Mexican-domiciled motor carriers (lessors) are allowed to lease their equipment to U.S. motor carriers (lessees) regardless of the destination of the cargo, as long as the carriers meet the requirements of 49 CFR part 376. Included in part 376 are requirements that the “authorized carrier” (in this case, the U.S. motor carrier) assume “complete responsibility for the operation of the equipment for the duration of the lease” [49 CFR 376.12(c)]. These types of leasing arrangements are compliant with MCSIA and the Agency’s regulations.

Issued on: November 9, 2016

T.F. Scott Darling, III
Acting Administrator

[FR Doc. 2016-28018 Filed: 11/21/2016 8:45 am; Publication Date: 11/22/2016]