Memorandum

To: Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice-Chair
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Date: April 2, 2007

From: David J. Gau, Deputy Director
Property and Special Taxes Department

Subject: ***Update on Mexican Truckers under NAFTA***

This is an update on Mexican truckers and the North American Free Trade Agreement (NAFTA). Under NAFTA, the United States and Mexico agreed to allow truckers from each country to travel beyond the border zone (roughly described as within 25 miles of a commercial border crossing between the U.S. and Mexico).

Over the years, there have been various issues delaying the opening of the border to cross-border commercial traffic. The final issues have been resolved and the border will soon open to a one-year pilot program allowing U.S. truckers to make deliveries into Mexico and a select group of Mexican trucking companies to make deliveries beyond the 20-25 mile commercial zones currently in place.

Background

After NAFTA was introduced, the four States bordering Mexico and others began meeting to determine how vehicle registration and fuel tax reporting by Mexican truckers would occur. Attached is a copy of my June 3, 2004 memorandum to the Board Members on this topic which provides information on the various events that occurred through June 2004. Since then, staff continued its participation in the NAFTA Working Group on Fuel Tax and Registration (Working Group) to develop guidelines to implement the Interim Solution of the Three-Phase Plan (see page 2 of the June 4, 2004 memo).

Three-Phase Plan Interim Solution

The Interim Solution allows the four U.S. Border States to "host" (or adopt) Mexican truckers under the terms of International Fuel Tax Agreement (IFTA). This solution includes registering the carriers and maintaining accounts for them until Mexico can become a member jurisdiction of IFTA. It is expected to be several years before Mexico meets the requirements necessary to become an IFTA jurisdiction.

Funding

To assist in providing funding for the Interim Solution, the Federal Motor Carrier Safety Administration (FMCSA) made available grant monies to the four U.S. Border States. Staff from the Fuel Taxes Division prepared a grant proposal and submitted it to FMCSA, which approved the proposal. The grant provided funding effective October 1, 2005 through September 30, 2007. Staff also prepared a Budget Change Proposal (BCP No. 4, FY 2006-07) to obtain spending authority for the grant monies. This BCP was approved by the Board Members, and was included in the Governor's Budget. Staff also prepared and submitted a Budget Change Proposal (BCP No. 7, FY 2007-08) to obtain approval to continue spending grant monies through September 30, 2009, when the funds are made available.

Recruitment/Training

To carry out the Board's implementation plan, we have:

- Recruited, hired, and continue to train staff as detailed in BCP No. 4.
- New employees have been training by working on an existing backlog of IFTA workload that is the focus of BCP No. 7, *IFTA Workload Growth.*
- Purchased equipment for staff as required in BCP No. 4 in anticipation of the opening of the border.
- Translated Publication 50, *Guide to the International Fuel Tax Agreement,* into Spanish. Staff is also working on translating other documents that will assist Mexican truckers to understand their responsibilities during an audit.
- Provided overview training to Mexican officials on three occasions during the past few months. Presentations were made in Monterrey, Mexico in September 2006; Mexico City in October 2006; and Otay Mesa, California in November 2006.
- Provided state-specific IFTA training to Spanish-speaking truckers in November and December 2006.

Opening the Border

The FMCSA has forecasted the opening of the border several times. When BCP No. 4 was approved, FMCSA believed the border would open in the summer of 2006. When that time frame passed, the next forecast was for January 2007.

One of the significant factors delaying the opening of the border to cross-border commercial traffic was the reluctance of the Mexican Government to allow inspectors from FMCSA to conduct safety audits on Mexican trucking companies in Mexico. On February 22 and 23, 2007, the U.S. Department of Transportation (the parent agency of FMCSA) issued the attached press releases DOT 20-07 and DOT 21-07 announcing that FMCSA and the Mexican Secretary of Communications and Transportation had agreed to allow these inspections.

The releases indicate a one-year Demonstration Program allowing U.S. trucks to make deliveries into Mexico and a select group of Mexican trucking companies to make deliveries beyond the current 20-25 mile commercial zones in place along the Southwest border.

One-Year Demonstration Program

The Working Group met on March 20, 2007 to discuss details of the Demonstration Program with FMCSA and future FMCSA grants. FMCSA has begun conducting the safety audits, but is not able to determine in which states the Demonstration Program participants will register for IFTA. FMCSA did observe that most of the major border crossing locations are in California and Texas. In any event, FMCSA would like each of the U.S. Border States to participate in the Demonstration program. Based on the discussions at the meeting, we estimate that the first Mexican trucker requesting California IFTA credentials will be in late May or early June of 2007.

The Demonstration Program will not affect the current grant funding that expires September 30, 2007. FMCSA indicated they want the U.S. Border States to be fully prepared for a complete opening of the border to cross-border commercial traffic. FMCSA also indicated that grant funding will continue for the foreseeable future.

If you have any questions on this matter, please contact Ed King, Chief of the Fuel Taxes Division, at 916- 324-2379 or me at 916-445-1516.

DJG:kn
Attachments

cc: Mr. Ramon J. Hirsig
Ms. Kristine Cazadd
Mr. Robert Lambert
Mr. Randy Ferris
Ms. Carolee Johnstone
Mr. Edward W. King
Mr. Doug Shepherd

State of California

Board of Equalization
Property and Special Taxes Department

Memorandum

To : Honorable Carole Migden, Chairwoman
Honorable Claude Parrish, Vice-Chairman
Honorable Bill Leonard
Honorable John Chiang
Honorable Steve Westly

Date : June 3, 2004

From : David J. Gau, Deputy Director
Property and Special Taxes Department

Subject : *Mexican Motor Carriers under NAFTA*

I wanted you to be aware that in the near future the U.S. Supreme Court could issue a decision regarding the North American Free Trade Agreement (NAFTA) that results in allowing Mexican motor carriers to travel throughout the Continental U.S. and Canada.

Background

Under NAFTA, the United States and Mexico agreed to phase out certain of their respective geographic restrictions on the operations of each other's motor carriers that had been in effect since 1982. However, due to concerns regarding the safety of Mexican motor carriers, the United States maintained its restrictions which imposed a moratorium on the issuance of operating authority to most Mexican truck and bus companies beyond the municipalities and commercial zones along the U.S./Mexican border.

Currently, under the International Fuel Tax Agreement (IFTA), the jurisdictions (48 contiguous states and 10 Canadian provinces) collect fuel use taxes from motor carriers based on the number of miles traveled on each jurisdiction's highways and roads. This "pay-as-you-go" system is designed to provide for the collection of revenue from motor carriers based on their proportionate use of public roads. Each jurisdiction sets its own tax rate and acts as agent on behalf of the other jurisdictions for the collection and distribution of revenue based on the actual use of each state's and province's roads.

In 2001, it was determined that the moratorium violated NAFTA, and President Bush announced his intention to lift the moratorium. At approximately the same time, the Federal Motor Carrier Safety Administration issued rules revising application procedures and establishing a Safety Monitoring Program for Mexican motor carriers seeking authority to carry goods and passengers beyond the border zones.

In May 2002, a consortium of six public interest, labor and environmental groups filed suit in the Ninth Circuit Court to set aside these rules. The court agreed with petitioners, finding that the Federal Motor Carrier Safety Administration had improperly adopted its rules. The U.S. Supreme Court granted review of the Ninth Circuit Court decision in December 2003. The case was argued on April 21, 2004, and a decision is expected this month or next.

IFTA/NAFTA Fuel Tax Working Group

Early in 2002, an IFTA/NAFTA Fuel Tax Working Group was established. The group is composed of representatives from the Federal Highway Administration, the National Governors' Association, the International Fuel Tax Association Inc., the American Trucking Association, IFTA staff from Arizona, California, New Mexico, and Texas, and representatives from both the Mexican and Canadian governments. It has been meeting to develop a plan that will allow Mexican motor carriers to travel throughout the Continental U.S. and Canada. Following is the proposed Three-Phase Plan for Mexican Motor Carriers under IFTA:

1. Travel on Trip Permits

When transcontinental access for Mexican motor carriers is allowed, they will have to purchase fuel trip permits in each of the other jurisdictions in which they travel. Mexican carriers that register under the Board's Interstate User Diesel Fuel Tax Program do not need to purchase a California fuel trip permit because their highway taxes for California will be reported on their Interstate User Diesel Fuel Tax Return. This will continue until phase 2 is available.

2. Adoption by US Border States into IFTA

Mexican motor carriers will be "adopted" by one of the Border States for the purposes of the IFTA. This adoption will occur only if the U. S. government assists the Border States with the costs of providing service to the Mexican carriers. Money for the Border States is included in the federal transportation bill (the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003, also known as SAFETEA).

3. Participation in IFTA by Mexican Government

The Mexican government must develop a system of fuel taxation consistent with the requirements of the IFTA. This will involve a substantial change in the fuel industry in Mexico and will require diplomatic and administrative changes. This phase is expected to take several years. Motor carriers will continue to be adopted under phase 2 until phase 3 is implemented.

Implementation

Fuel Taxes Division staff has developed draft cost estimates, including staffing and equipment needs required to adopt Mexican motor carriers under phase 2 above, and is in the process of developing an implementation plan. In addition:

- The National Governors' Association, with the approval of the Federal Highway Administration, is developing a briefing paper to be distributed to the nation's governors on a number of NAFTA issues including IFTA.

- IFTA staff from Arizona, California, New Mexico and Texas has jointly submitted IFTA Full Track Preliminary Ballot Proposals to the members of the IFTA community for consideration to amend the IFTA Agreement to achieve the objectives developed by the IFTA/NAFTA Fuel Tax Working Group.

If you have any questions on this matter, please contact Ed King, Chief of the Fuel Taxes Division, at (916) 324-2379 or me.

DJG:kn

cc: Mr. Ramon J. Hirsig
Mr. Timothy W. Boyer
Ms. Janice L. Thurston
Ms. Judy Nelson
Ms. Monica Brisbane
Mr. Edward King
Mr. Doug Shepherd

Cross Border Truck Safety Inspection Program

News

DOT 21-07
Friday, February 23, 2007
Contact: Sarah Echols
Tel.: (202) 366-4570

New Program to Allow U.S. Trucks into Mexico for the First Time Ever, Change Way Some Mexican Trucks Operate Within the United States

El Paso, Texas – U.S. trucks will for the first time be allowed to make deliveries in Mexico under a year-long pilot program that expands cross border trucking operations with Mexico, U.S. Transportation Secretary Mary E. Peters announced today during a visit to truck inspection facilities in El Paso, Texas.

U.S. trucks will get to make deliveries into Mexico while a select group of Mexican trucking companies will be allowed to make deliveries beyond the 20-25 mile commercial zones currently in place along the Southwest border.

Secretary Peters said the new demonstration program was designed to simplify a process that currently requires Mexican truckers to stop and wait for U.S. trucks to arrive and transfer cargo. She said this process wastes money, drives up the cost of goods, and leaves trucks loaded with cargo idling inside U.S. borders. The Secretary added that under current rules, U.S. trucks are not allowed into Mexico because the United States refused to implement provisions of the North American Free Trade Agreement that would have permitted safe cross-border trucking.

"The United States has never shied away from opportunities to compete, to open new markets and to trade with the world. Now that safety and security programs are in place, the time has come for us to move forward on this longstanding promise with Mexico," **Secretary Peters** said.

"We are committed to retaining a high level of security and safety standards under this program," said **Homeland Security Secretary Michael Chertoff**. "The tough security measures we already have in place will remain unchanged, resulting in a smart and secure approach to safeguarding the border, while allowing for American and Mexican carriers to deliver cargo outside of arbitrary commercial zones."

"Today's announcement is another sign of the strength of the U.S.-Mexico relationship and a further step towards making our economies globally competitive, promoting mutual economic growth and prosperity while continuing to protect the safety of our borders," said **Commerce Secretary Carlos M. Gutierrez**.

"Safety is the number one priority and strict U.S. safety standards won't change," **Secretary Gutierrez** continued. "We will continue to work closely with President Calderon and his administration on ways we can further enhance the commerce of our countries and the competitiveness of our hemisphere without sacrificing safety or security."

Secretary Peters noted that the Department of Transportation has put in place a rigorous inspection program to ensure the safe operation of Mexican trucks crossing the border. Yesterday, Peters and Mexican Secretary of Communications and Transportation Luis Téllez announced a program to have U.S. inspectors conduct in-person safety audits to make sure that participating Mexican companies comply with U.S. safety regulations. The regulations require all Mexican truck drivers to hold a valid commercial drivers license, carry proof they are medically fit, comply with all U.S. hours-of-service rules and be able to understand questions and directions in English.

Secretary Peters said those Mexican truck companies that may be allowed to participate in the one-year program will all be required to have insurance with a U.S. licensed firm and meet all U.S. safety standards. Companies that meet these standards will be allowed to make international pick up and deliveries only and will not be able to move goods from one U.S. city for delivery to another, haul hazardous materials or transport passengers.

The first Mexican trucks to be authorized under the program will begin traveling beyond U.S. border areas once the initial in-person safety inspections are done and proof-of-insurance verified. Secretary Peters noted that with the announcement of the program, Mexico will begin to consider applications from U.S. trucking firms for licensing rights to operate within Mexico. Approximately 100 U.S. operators would be licensed by Mexico for cross-border operations.

In 2001, Congress authorized the cross border inspection program and listed 22 safety requirements that had to be in place before other steps were implemented. The Secretary noted that the Department's independent Inspector General's reports have confirmed success in meeting the congressional requirements. In addition, Secretary Peters said the Department has invested $500 million since 1995 to modernize border safety facilities and hire and train the over 500 federal and state inspectors who inspect trucks crossing the border every day.

"We have years of experience, we have a rigorous safety inspection plan in place and we have the facilities and the trained professionals to carry it out," Secretary Peters said. "Through this new pilot program, we are finding a better way to do business with one of this nation's largest trading partners, and in doing so, bringing U.S. drivers more opportunity, U.S. consumers more buying power and the U.S. economy even more momentum," she added.

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Cross Border Truck Safety Inspection Program

News

DOT 20-07
Thursday, February 22, 2007
Contact: Sarah Echols
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U.S. Officials Will Travel to Mexico to Conduct On-Site Safety Audits of Trucking Companies As Part of New Program Announced Today by U.S. Secretary of Transportation Mary E. Peters

Truck safety inspectors working for the U.S. Federal Motor Carrier Safety Administration will be able to travel to Mexico to conduct extensive safety audits on companies interested in hauling cargo into and out of the United States as part of a new program announced today by U.S. Secretary of Transportation Mary E. Peters.

Secretary Peters, who visited a local trucking company in Monterrey, Mexico, to announce the program with Mexican Secretary of Communications and Transportation Luis Téllez, said this step is needed before the United States can allow trucks from Mexico to operate beyond the currently existing border commercial zones that include cities like San Diego and El Paso.

"This program will make trade with Mexico easier and keep our roads safe at the same time," Secretary Peters said.

Peters also noted U.S. inspection teams will now be able to visit Mexican trucking companies to ensure their trucks and drivers meet the same safety, insurance and licensing requirements that apply to all U.S. truckers. She added the inspectors will evaluate truck maintenance and driver testing for compliance with U.S. requirements.

The inspection teams also will check that drivers have a valid commercial driver's license, have a current medical certificate, and can comply with U.S. hours-of-service rules. The teams will review driving histories for each driver the company plans to use to operate within the U.S. and verify the company is insured by U.S.-licensed firms. Finally, each inspection team will verify that every U.S.-bound truck has passed a comprehensive safety inspection. Trucks lacking required documentation will be subject to a "hood to tail-lamps" inspection by the teams.

"With this new program, we prove that safety and economic growth are compatible," Secretary Peters said.

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