

# ABA Position Paper

## *Safe and Fair Implementation of NAFTA*

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### **Issue**

ABA supports timely, safe and reciprocal implementation of the North American Free Trade Agreement (NAFTA). Implementation of NAFTA must be conducted in a way that ensures reciprocity for U.S. motorcoach operators and highway safety.

### **Background**

The NAFTA surface transportation provisions are designed to eliminate restrictions in all three NAFTA countries that limit access for and investment in transportation companies. For buses, changes in access refer to lifting crossborder restrictions on charter and tour buses, a provision that has already been implemented, and a reciprocal lifting of restrictions on regular route carriers, which has yet to be implemented. In terms of new investment, the U.S. is to allow 100 percent investment in bus companies owned by Mexicans while Mexico is to allow 51 percent U.S. ownership of Mexican companies in 2001 and 100 percent in January 2004. It is important to note that Mexican-owned U.S. bus companies will be allowed to provide both domestic and international service in the U.S.

The United States Congress has repeatedly postponed implementation of provisions of the North American Free Trade Agreement (NAFTA) with respect to Mexico-domiciled truck and scheduled bus service and continued a blanket moratorium on processing applications for authority by Mexico-domiciled motor carriers to operate in the United States beyond the commercial zone along the border. On February 6, 2001, a NAFTA dispute resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA. The Department of Transportation (DOT) is now preparing for the implementation of NAFTA. At Brownsville, Texas, 350 buses a week travel across the Los Tomates/Veterans Bridge, yet buses are checked only one day a month. There must be vigilant enforcement of passenger carrying vehicles at the border to ensure safety. Yet, the Federal Motor Vehicle Safety Standards (FMVSS) seek to ensure that vehicles driven on the public roads and highways of the United States, are manufactured so as to reduce the likelihood of motor vehicle crashes and of deaths and injuries when crashes do occur. To ensure compliance with FMVSS, manufacturers of motor vehicles must certify compliance with all applicable safety standards and permanently affix a label to each vehicle stating that the vehicle complies with FMVSS at the time of manufacture. However, DOT has delayed the implementation/enforcement of that requirement. This delay could potentially allow unlabeled or non-compliant vehicles to cross the border. The recently passed SAFETEA-LU contains a provision that requires the Federal Motor Carrier Safety Administration to examine the compliance of both Mexican and Canadian vehicles with respect to their compliance to FMVSS and report the results back to the Congress within one year from the enactment date of the statute. It further requires the Department of Transportation's Inspector General to provide Congress comments and observations on the scope and methodology of the FMCSA study within four months from the date the study is submitted.

Furthermore, the Motor Carrier Safety Improvement Act of 1991 mandated that the DOT apply the FMCSRs (except for drug and alcohol and CDL requirements) to small passenger vans or “camionetas.” ABA believes that it is imperative that the DOT proposed rule be finalized and an enforcement plan put into place prior to the opening of the border.

Enforcement of other issues includes checking for compliance with the FMCSRs, including operating authority, a drivers “*Licensia Federal*” (CDL equivalent), hours of service rules, ADA requirements, etc. Finally, an expedited rulemaking is needed to establish a facility audit requirement prior to the issuance of operating authority to new entrants to the U.S. market, regardless of whether they are based in the U.S. or Mexico. DOT proposed that new entrants operating in cross border service from Mexico be audited within 18 months of receiving authority. This rule does not apply to those companies based in the U.S. with Mexican ownership. ABA believes that an audit, in advance, is the only way to ensure that new passenger operations show understanding and compliance with the Federal regulations prior to beginning operations.

### **ABA Position**

ABA continues to be supportive of NAFTA, so long as it is conducted in a way that ensures reciprocity for U.S. motorcoach operators and ensures highway safety. ABA supports the FMVSS border check. However, checks should include both an electronic database search as well as a visual inspection. The DOT database should be used to ensure that the carrier has operating authority and complies with all pertinent insurance requirements. While visual inspections are limited at a minimum, vehicles should only be allowed entry if they can show visible proof of compliance with the FMVSS through a manufacturer’s affixed certification label or plate. Further, border officials should be trained to detect counterfeit and /or fraudulently applied certification labels. ABA will carefully monitor the FMCSA’s efforts in conducting the study and will urge the agency to complete its efforts within the mandated time frame. We will also continue to push for increased border inspections. We believe that a two-pronged test is the only way to ensure that safe and secure vehicles operate on U.S. roads and highways.

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