



# U.S. Senate Committee on Appropriations

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**U.S. Senate Appropriations Transportation,  
Housing and Urban Development, and Related Agencies Subcommittee  
Testimony of Charlie Parfrey  
President and COO, Parfrey Trucking  
Spokane, Washington**

WASHINGTON, D.C. . The U.S. Senate Appropriations Transportation, Housing and Urban Development, and Related Agencies Subcommittee on Wednesday held a hearing to examine the proposed Fiscal 2008 budget for the department. As part of that hearing, the subcommittee heard testimony from Charlie Parfrey, President and Chief Operating Officer of Parfrey Trucking in Spokane, Washington. Mr. Parfrey's prepared statement is below.

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Good morning Chairwoman Murray, Senator Bond, and members of the Committee. My name is Charlie Parfrey. I am the President and Chief Operating Officer of Parfrey Trucking Brokerage in Spokane, Washington. It is my privilege to be here today on behalf of the members of the Owner-Operator Independent Drivers Association (OOIDA).

OOIDA is a not-for-profit corporation established in 1973, with its principal place of business in Grain Valley, Missouri. OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business truckers. The more than 150,000 members of OOIDA are small-business men and women in all 50 states who collectively own and operate more than 260,000 individual heavy-duty trucks. Owner-operators trucks represent nearly half of the total number of Class 7 and 8 trucks operated in the United States.

I have personally been involved with the trucking industry for more than 23 years. In 1984 I purchased a truck and founded Parfrey Trucking. For the next 10 years I drove the truck and ran my business from the road, first as a solo operation and then as a team operation with my wife Donna. In 1994, Donna and I sold our truck and began a freight brokerage business. Today we have annual gross freight-shipment billings of more than \$5 million. We deal mostly in loads that are hauled on flatbed, step-deck and low-boy trailers such as lumber, steel, industrial equipment and heavy machinery.

The Owner-Operator Independent Drivers Association adamantly opposes opening our nation's roadways to Mexico-domiciled trucks and truck drivers. OOIDA views the recently announced pilot program as nothing more than an effort to expedite the entry of Mexico-domiciled trucks and drivers without resolving numerous safety and homeland security issues.

Truckers domiciled in the United States must operate under a tremendous amount of scrutiny and a constantly growing number of safety regulations. Such burdens are, by all available accounts, nonexistent for truck drivers and trucking companies in Mexico. U.S. drivers are outraged to think that their government will impose fewer rules on Mexico-domiciled trucks and drivers performing the same jobs on the same highways.

Beyond the declarations by the U.S. Department of Transportation (DOT) that they have complied with the requirements of Section 350 of the 2002 Transportation Appropriations Act (PL 107-87), we have seen no details or analysis to substantiate to those claims. DOT's effort has been almost entirely secret and beyond public view or scrutiny. As recently as this past fall, when asked about rumors that a Mexican motor carrier pilot program was being established, DOT officials responded that there was no such plan currently in the works.

Therefore, we are fundamentally unable to comment on the sufficiency of DOT's or state enforcement agencies' efforts and readiness to comply with Section 350 or to enforce motor carrier safety laws and NAFTA-related immigration and cabotage rules. Without having had the opportunity to review and analyze specific data, proposals, and agreements, we are left with a tremendous number of unanswered questions. OOIDA and its members are very interested to hear the testimony of American and Mexican transportation officials this morning on the following questions:

- \* Does DOT plan to publish any detailed findings or analyses describing how it has achieved the requirements outlined in the 2002 appropriations bill?  
If not, then how can Congress or the public evaluate DOT compliance with the law?
- \* Does DOT plan to accept the Mexican Licencia Federal de Conductor in place of a U.S. Commercial Drivers License (CDL)?
- \* Does DOT plan to accept a Mexican logbook in place of a U.S. log book?
- \* Does DOT plan to publish any notice in the Federal Register requesting public comment on any aspect of the Mexican truck program?

If DOT plans to accept any Mexican motor carrier or driver safety requirement in lieu of a U.S. safety requirement, then DOT must go through the procedures for a pilot program or waiver under 49 U.S.C. § 31315.

- \* Does DOT have an English translation of the following safety requirements?

1) Mexican CDL requirements.

2) Mexican driver medical qualification requirements

3) Mexican driver drug-testing requirements

3) A list of events that disqualify an individual from holding a Mexican CDL; i.e. the individual's violation of motor vehicle laws in their personal automobile.

4) Mexican Hours-of-Service rules and logbook record keeping rules.

\* Has DOT performed a comparative analysis of the Mexican safety rules with U.S. rules? The last time DOT performed a comparison of Mexican CDL to the U.S. CDL was in 1992. Since then, the U.S. has implemented many new driver qualification requirements and disqualification rules. Does DOT know whether the Mexican CDL has kept up with these changes?

\* Would DOT make public the translations of Mexican motor carrier safety laws it relied upon and its analyses of such laws?

\* Would DOT make available its assessment of the availability and quality of data concerning Mexican motor carriers and drivers? For example, data related to:

- performance and safety management programs
- a carrier's compliance with hours of service rules.
- a carrier's safety history.
- an individual's driving history, both in commercial vehicle and

personal automobiles?

\* Who will collect data involving Mexican drivers' violations of U.S. laws in the U.S.? How will we know when a Mexican driver will have attained a combination of violations of Mexican law and U.S. law that disqualify that individual to hold a U.S. CDL?

\* How prepared are state officials to inspect Mexican trucks, including drivers? Do state enforcement personnel have access to the same data about Mexican drivers as other officials? Will state officials have access to the same data about Mexican drivers as is collected in CDLIS about U.S. drivers?

\* Only law enforcement personnel inside the United States are in a position to determine whether a Mexican driver has picked up a load in the U.S. for delivery in the U.S. Such action would be a clear violation of their U.S. operating authority, and a violation of both U.S. immigration and cabotage rules. How prepared are U.S. federal and state officials within the U.S. border to recognize when a Mexican driver is violating these rules and to enforce them?

\* Will Mexican carriers be required to pay a heavy vehicle use tax? Will Mexican trucks be required to participate in the International Fuel Tax Agreement (IFTA) to pay their fair share of taxes on fuel purchased in Mexico and used on U.S. highways and how are federal fuel taxes to be collected?

These are the minimal questions that DOT should be able to answer before they can claim to be prepared to permit Mexican trucks and drivers into the country. Without specific information being made available to us, we are forced to primarily rely upon the last audit on cross border trucking completed by the Department of Transportation's Office of the Inspector General (DOT OIG) in January of 2005, as well as anecdotal information gleaned from contact with the trucking community, law enforcement personnel and government officials. The DOT OIG's audit is of course focused on the preconditions to opening U.S. roads to Mexican-domiciled trucks that were set forth by Section 350 of the 2002 Transportation Appropriations Act (PL 107-87). In the remainder of this testimony, I will detail why these questions are so important to Congress's oversight of the Mexican truck matter.

## SAFETY

OOIDA has worked very hard along with the Federal Motor Carrier Safety Administration (FMCSA), other federal and state agencies, and many industry organizations to improve truck safety for truckers themselves and for all highway users. Great strides have been made in many areas with the potential for even more gains just over the horizon. A uniform commercial licensing system with a nationwide computerized data network capable of identifying and weeding out unsafe, problem drivers along with uniform inspection and enforcement programs have resulted in significant improvements in highway safety. OOIDA is very concerned that the lack of safety regulations, and compatible and reciprocal systems in Mexico will result in a significant loss in the hard-won gains that have been made.

We believe that Mexico lacks the safety infrastructure, the resources, and the will to effectively promulgate and enforce compatible motor carrier safety regulations. In the United States, motor carriers' safety programs are extensive and the safety regulations are widely enforced through roadside inspections and compliance reviews. These are working and tested programs designed to ensure motor carrier compliance and highway safety . and even they are not perfect.

Mexico is years away from instituting substantially similar programs necessary to ensure adequate safety compliance of its trucking operations. This safety concern also encompasses Mexico's relatively lax regulation of its truck drivers. Although Mexico does require that a truck driver obtain a Commercial Drivers License (CDL) and undergo some form of a physical examination, the Mexican requirements are much less stringent than those required of U.S. drivers. In addition, U.S. drivers also face strict, specific drug and alcohol testing and are subject to hours-of-service limitations. Mexican drivers allegedly face similar rules, but are they truly compatible? There is no way for federal or state enforcement officials to reasonably believe that a Mexican driver

is drug-free, or know how many hours that driver has been working behind the wheel at the point they cross our border. These are two driver issues that our Department of Transportation and state enforcement agencies take very seriously in regard to U.S. drivers.

### Commercial Drivers License

First, the Association believes there is no true equivalent of the U.S. Commercial Driver License system in place in Mexico. While both U.S. and Mexican government officials claim Mexico's commercial driver licensing requirements are equivalent to the U.S. rules, such has never been proven true. Not only are U.S. regulations on American truckers more stringent in terms of verifying that a driver has been tested, but U.S. licenses can also be verified to show driving history, violations and compliance of any vehicle driver going back many years. When enforcement officials in the U.S. run a check on a Mexican CDL the only information they can access will be that of the driver's previous operations in the U.S., not his or her safety history in Mexico.

CDL rules in the U.S. have changed dramatically since 1992. The most substantial change requires that driver convictions occurring while driving a personal vehicle be tied to CDL qualification. Certain convictions in a personal vehicle will result in disqualification and loss of commercial driving privileges for a specified period of time.

### Hours-of-Service Regulations

In Canada they have very detailed hours-of-service rules and a logbook similar to those used in the U.S. Canadian drivers coming into the U.S. are subject to having their logs checked and face possibly being put out-of-service (OOS) because of logbook violations. Mexico has no driver hours-of-service regulations in place. Consequently, there is no way to begin to verify how many hours a Mexican driver has operated in any given day or week. It has been reported that Mexican drivers commonly operate 16 to 20 hours a day or more. Regardless of whether Mexican drivers adhere to the U.S. standard while operating in the U.S., there is no way of knowing how long the drivers had been driving prior to entering our country.

### Alcohol & Drug Testing

U.S. drivers are extensively tested for use of controlled substances and alcohol. OOIDA believes there is no drug and alcohol testing program in Mexico comparable to that of the U.S. program. Although Mexico claims to have a program in place, the Association believes they have no means or will to enforce the rules. It would be inherently inequitable to allow Mexican drivers to operate in the U.S. without being subject to the same stringent standards required of U.S. drivers. To permit a certain class of drivers to be largely and effectively exempt from these regulations would be a manifest injustice and place U.S. drivers at a disadvantage.

The DOT OIG's audit from 2005 states, "Mexico does not have a certified drug testing lab at this time. ... Collection facilities in Mexico are not reviewed by U.S. officials." OOIDA doubts that Mexico has allowed any U.S. officials to inspect or certify their labs or examine their control of collection sites. This is required by Section 350 (1) (B) (ii), "Verification of a drug and alcohol testing program consistent with part 40 of title 49, CFR." Those carriers that already have the right to operate beyond the border zone send their specimens to U.S. labs, but still no one to our knowledge has ever inspected the collection sites for procedures and controls.

## Safety Inspections

A representative of FMCSA recently claimed that the agency is now performing over 350,000 inspections on Mexican trucks each year. The latest statistics related to this that are available to the public are from 2005. These statistics seem to indicate that FMCSA is embellishing the number of inspections performed in order to "appear" more proactive with inspections of Mexico-domiciled trucks and drivers than it actually has been.

The 350,000 number stated by the FMCSA representative is a compilation of the total variety of CVSA Level I, II and III inspections performed on Mexican trucks in 2005. The actual number of single contacts between inspectors and Mexico-domiciled truck drivers is 194,657. Out of that total population of 194,657 inspections, 180,033 were either Level I or II inspections, which include vehicle inspections.

FMCSA has essentially taken the vehicle inspection data (180,033) derived from driver contact data (194,657) and added that back into the total to arrive at the 350,000-plus number. There really was only one contact with truck and driver, that contact is being counted twice.

Utilizing FMCSA NAFTA Safety Stats data, the agency shows there were 4,675,887 incoming trucks to the U.S. from Mexico in 2005. That 4.65 million represents the entire vehicle population that could be subjected to an inspection. Simple math indicates that the inspection rate of the entire available vehicle population is 3.9 percent. Put another way, on any particular crossing, a Mexican truck has a 96.1 percent chance of not being inspected.

FMCSA has identified 41,101 Mexico-domiciled power units that enter the U.S. annually. The agency could possibly argue that they are effectively inspecting these trucks at an average of four-plus times a year (194,657 divided by 41,101). It seems unlikely the agency has accounted for the entire truck population that crosses into the U.S. Certainly drayage operations could cross the border daily. Long-haul trucking in Mexico would not have the same power unit crossing daily.

## Safety Data

OOIDA believes that there are currently very little if any data existing in Mexico on the integrity and safety performance of Mexican motor carriers. Likely, the only available data on Mexico-domiciled carriers resides in the U.S., and only on those vehicles and drivers that have undergone an inspection or on carriers that have been caught operating illegally in the U.S. All available data on Mexican carriers must first be sought out and compiled, then heavily considered prior to granting U.S. operating authority. OOIDA is unaware of the intention of the DOT to do this for Mexican motor carriers involved in the proposed pilot program.

Section 350(1)(B)(v) states that a review of available data concerning that motor carrier's safety history must be available. Section 350 (E) states that the information infrastructure of the Mexican government must be sufficiently accurate, accessible and integrated with that of the United States enforcement authorities to allow United States authorities to verify the status and validity of licenses, vehicle registrations, operating authority and insurance of Mexican motor carriers while operating in the United States, and that adequate telecommunications links exist at all United States-Mexico border crossings used by Mexican motor carrier commercial vehicles, and in all mobile enforcement units operating adjacent to the border, to ensure that licenses, vehicle registrations, operating authority and insurance information can be easily and quickly verified at border crossings or by mobile enforcement units.

Once a Mexico-domiciled truck enters the U.S. how is the roadside inspector to verify that the driver's license and medical provisions are updated and legal if there is no apparent link to the Mexican data? According to the DOT OIG's last audit, 67 percent of Mexican motor carriers had not submitted updated census forms as compared to 42 percent of U.S. carriers. And, 51 percent of Mexican carriers reported having zero power units as compared to 10.3 percent of U.S. carriers. While this may all be verified and checked during a compliance review, it does point out that the data that is available from a carrier's safety record, which is checked at roadside, will not be available to inspectors. In fact 52 percent of Mexican carriers showed zero drivers, as opposed to 14.5 percent for U.S. carriers. So how can you check violations on a driver at roadside?

#### Enforcement of Operating Authority

Laws governing the trucking industry restrict trucks and drivers from Mexico and Canada to carrying international shipments between their home countries and individual points in the U.S. Those same laws prohibit foreign trucks and drivers from moving loads from point to point within U.S. borders. Under NAFTA, a Mexican truck can only deliver a cross-border shipment to a destination in the United States, pick up another shipment for return to Mexico, or drive through the United States on the way to Canada. We have no system in place to ensure they adhere to these restrictions.

Generally, under U.S. law and the terms of NAFTA, only U.S. carriers can pick up and deliver freight within the U.S. Currently, however under 19 CFR § 123.14(c)(1) the U.S. Customs Service provides an exception allowing foreign-based vehicles to transport domestic shipments when the shipment is incidental to the immediate prior or

subsequent engagement of the vehicle in an international movement. The immigration regulations governing foreign drivers are more restrictive. However, there is currently no effective mechanism in place for Customs, immigration enforcement or any other agency to enforce these restrictions.

Will the U.S. be able to limit Mexican truckers to hauling only international freight during their operations in the U.S.? OOIDA contends the answer is, ~~No~~ for the foreseeable future. In the present deregulated environment and under the current system of motor carrier enforcement the competence of the U.S. to enforce the cabotage restrictions is virtually non-existent.

Mexican truckers willing to haul at substantially lower rates would become a very attractive option to U.S. shippers, brokers and freight forwarders. And, with no credible enforcement effort in place to deter them, Mexican motor carriers will surely seize the opportunity to arrange the pick up and delivery of point-to-point domestic loads all over the U.S. earning far more than they can in their own country. Networks of profiteering freight brokers will provide plenty of business by happily arranging such loads and pocketing a handsome markup for themselves while knowing full well these trucks will skirt many, if not all, of the rules for safety.

Aside from the initial contact when a truck enters the United States at the border, U.S. Customs and Immigration personnel rarely, if ever, come in contact with a foreign-based motor carrier's vehicles and drivers. Most state motor carrier enforcement personnel, those who regularly encounter commercial vehicles and drivers in the interior, are trained only to enforce federal and state vehicle and driver safety regulations. Few consider the origin and destination of a load, and how a truck's movement may relate to the motor carrier's country of domicile. Furthermore, state enforcement agencies appear unwilling at this point to take on the task of enforcing cabotage restrictions. Even if state Commercial Motor Vehicle (CMV) enforcement agencies received the necessary funding, and inspectors were properly trained and had the requisite authority, at current staffing levels there are simply not enough of them to catch more than a token number of violators.

Federal transportation officials recently claimed that FMCSA inspectors have been trained on how to detect if someone is operating beyond the bounds of their authority and they claimed that every state has instituted regulations about enforcing this provision. The Commercial Vehicle Safety Alliance (CVSA), which represents state commercial motor vehicle law enforcement agencies, has admitted that no such formal training exists. It isn't just inspections on the border but on the roadside throughout the country and these are not done for the most part by FMCSA, but rather state enforcement.

The lack of a comprehensive enforcement effort regarding NAFTA rules is a result of the same problems Congress is discovering about our national security efforts. Enforcement jurisdiction is split among several different federal and state agencies. There is no single enforcement official in the United States who can stop a Mexican

truck and determine whether a foreign trucker has a valid commercial driver's license, determine whether the trucker has valid insurance, determine whether the truck is safe, determine whether the foreign truck entered the country properly, and determine whether the load is a legal NAFTA shipment into or out of the U.S. More importantly, even if one enforcement official could identify all of those facts, he or she would not have the authority to enforce all of these rules. As we point out, however, DOT rules are not the only rules foreign trucks are required to follow, but currently they are the only rules that state enforcement officials have the authority to enforce under compatible state law.

Once a truck crosses the border and enters the interior of our country, state officials are the only enforcement personnel that a foreign trucker is ever likely to see. There is little, if any, federal presence beyond the border to inspect the activity of foreign trucks to determine their compliance with our laws under NAFTA. State officials do not have the training to recognize whether a truck is in compliance with customs rules, whether a driver is in compliance with immigration rules, or whether a load is being hauled legally under NAFTA rules.

State enforcement officials have expressed frustration to OOIDA regarding the lack of direction and lack of information they are given in exercising their limited authority over foreign truckers. Some enforcement personnel have told OOIDA that their biggest frustration is not being able to communicate with foreign drivers to get their cooperation to conduct a safety inspection. Being able to communicate in English is a requirement of the Federal Motor Carrier Safety Regulations. Others describe a multitude of problems they find in trucks that have already passed the border. The problem is not that there are not enough inspectors and that truckers avoided inspection, but that those who inspect them do not have the power to take definitive action, even when the problems are egregious.

OOIDA members report to us that the enforcement officials in some states have given up trying to inspect foreign trucks. They just waive foreign trucks through the weigh station while U.S. truckers are stopped and put through the normal inspections. This is an outrageous state of affairs that we did not bargain for with NAFTA. There either needs to be a much larger federal enforcement effort or better federal-state coordination if there is to be a meaningful NAFTA enforcement effort.

## Fees & Taxes

The principal way that highways and bridges are financed in the U.S. is through taxes assessed on the trucking industry. Fees and taxes on highway use are primarily collected through registration fees and through taxes on fuel consumed under the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA), respectively. Because Mexico does not participate in either plan, the fees and taxes cannot currently be collected under the agreements. The states rely on honest, periodic reporting of miles traveled and gallons of fuel purchased by motor carriers to collect user fees and taxes under IRP, IFTA and various other state specific taxation programs.

Apparently, IRP and IFTA credentialing will be accomplished by four Border States. Effective reporting also requires effective auditing. Are Mexican carriers simply to be included in a jurisdiction's total numbers for chance auditing? Will Mexican carriers be grouped separately for auditing? Can auditors legally travel to Mexico for auditing and how will civil penalties be enforced, other than the threat of pulling U.S. operating authority?

As stated previously, no system is yet in place to assure that Mexican trucks will be required to pay even the most easily enforced fuel taxes, those collected at the pump. The more complicated highway use taxes such as the Federal Highway Use Tax, federal excise taxes, Ad Valorem taxes and mileage taxes that are essential to maintaining U.S. highways appear to have not even been considered by the FMCSA. Failure to subject Mexican trucks to an equal share of the tax burden for the highways they will be using will place U.S. truckers at an enormous economic disadvantage, and as more and more U.S. truckers are displaced, this will result in substantial highway funding short falls under this scenario.

American truckers caught with red-dyed (untaxed) fuel in their tanks face significant fines. Mexican trucks can carry as much untaxed, high-sulfur fuel as they deem practical with oversized or additional fuel tanks. The reason anyone would want to carry additional fuel is directly related to fuel tax evasion. Will there be limitations on how much fuel can be carried into the U.S. by Mexican trucks?

#### Extradition

When Mexico domiciled trucks are allowed to travel U.S. highways there is every reason to believe they will at least suffer the same injury/fatal accident involvement rate as American and Canadian trucks. Post-accident investigations will assuredly discover illegal behavior on the part of some drivers. Violations of hours-of-service regulations and delays in post-accident drug testing results are examples of violations that can take time to decipher when determining fault.

Charges against a driver, such as manslaughter, invariably occur well after accident involvement. This time delay will allow a Mexican driver to flee back across the southern border to safety. Unfortunately, Mexico has not adhered particularly well to treaty obligations to extradite indicted/wanted individuals, especially in cases involving a possible life sentence without parole or the death penalty.

Extradition from Mexico has proven to be problematic for U.S. law enforcement agencies. This problem is exemplified by the inability of the Los Angeles District Attorney's Office to secure extraditions from Mexico of hundreds of murder suspects. California Senator Diane Feinstein has called for a renegotiation of the extradition treaty with Mexico. The single-minded rush to open our southern border to Mexican trucks without the assurance that Mexican nationals will be returned to be held accountable before American courts mocks the pursuit of justice in lieu of economic gain for a few.

## CONCLUSION

OOIDA applauds this Committee's continued close scrutiny of the FMCSA's safety enforcement efforts. We encourage you to continue to ask whether the United States is adequately prepared to ensure that Mexican trucks and drivers comply with our laws and are safe; not whether the DOT is doing the best it can with its limited resources and staff.

Whether or not Mexican trucks and drivers can meet our safety standards is the Mexican trucker's responsibility. Whether only those trucks that comply with our regulations are allowed to operate the United States is our responsibility, and it is one that we are not prepared to take on. To allow Mexican trucks to have full reign of our country's highways now would create a safety hazard on our roads and would be unfair to American truckers who spend many hours and thousands of dollars a year complying with our tougher rules

A tremendous amount of questions remain unanswered by the Department of Transportation. It is simply abhorrent to think that our government would allow Mexican trucks full access of U.S. highways before all safety, economic and homeland security concerns are completely and appropriately addressed.

OOIDA believes that no matter what the resolution of the NAFTA trucking issue, when the border is open to Mexican trucks, the benefits will all flow toward Mexico. Mexican truckers will gain access to new markets and customers on the safest and most open highway system in the world. In return, the U.S. truckers are invited to travel on a more dangerous highway system in Mexico while the U.S. government is given the burden of performing the truck safety enforcement function for both countries.

Chairwoman Murray, Senator Bond and members of the Subcommittee, thank you for providing me with this opportunity to testify on behalf of the members of the Owner-Operator Independent Drivers Association.

I would be pleased to answer any questions that you may have.

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