

Before the

Senate Committee on Commerce

"Allowing Mexican Commercial Vehicles to Operate in the United States"

Written Testimony Submitted by

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Summary

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On behalf of 66,000 independent small business truckers who are members of the Owner-Operator Independent Drivers Association ("OOIDA" or "Association"), I am pleased to submit this testimony regarding the operation of Mexican commercial vehicles within the United States.

OOIDA would like to first emphasize that the proposal at issue under the North American Free Trade Agreement ("NAFTA") is not simply the opening of the border to Mexican trucks. At issue is the opening of all interstate highways and local roads throughout the United States to Mexican trucks. Only from this perspective do you begin to understand the great impact that Mexican trucks will have on our country. OOIDA believes that no matter how strong our border enforcement is, the majority of problems our country will face with Mexican trucks will occur within the interior of the states.

It is well known that Mexican carriers and truckers are not required to meet, and frequently fail to meet, U.S. motor carrier safety standards. In response to these safety concerns, the Federal Motor Carrier Safety Administration has proposed that Mexican carriers undergo a "safety review" in the first 18 months of their operation in the United States. Some in Congress have suggested that this review must occur before a Mexican carrier begins its U.S. operation. Although useful and important, this exercise in paperwork would have little practical effect on the safety of Mexican trucks operating in the United States.

The Senate Transportation Appropriations Subcommittee has recommended a much more stringent pre-qualification of Mexican carriers and drivers, a stronger enforcement presence at the border, better tools for enforcement personnel, and consequences for Mexican carrier violation of U.S. laws. These are very positive and necessary actions, but we recommend that more needs to be done. There are NAFTA trade rules that implicate Customs and Immigration issues which are just as important as the safety issues. Specific restrictions in the NAFTA agreement proscribe the activities and movements of Mexican trucks and drivers in the United States. Enforcement of these provisions will require the efforts of the Customs Service and the Immigration and Naturalization Service in coordination with state enforcement officials. No such effort

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has been proposed or contemplated.

Another overlooked issue is the revenue from fuel taxes, heavy truck excise taxes, and highway user fees that the states and the federal government will lose. These are important revenue sources that go to build and maintain our highways and bridges. When Mexican trucks come into the United States fueled up with cheap Mexican diesel, they avoid paying those taxes and replace American trucker who used to pay those taxes. There is no plan in place to address this consequence of NAFTA.

If these issues are not addressed, OOIDA members believe that we will see thousands of unsafe Mexican trucks operating virtually uninhibited on our highways. These trucks will not only endanger the safety of our highways but also create an issue of fairness to U.S. truckers who pay their fair share of taxes and comply with higher safety standards.

The following is a more detailed discussion of these issues.

U.S. Enforcement Efforts at the Border are Inadequate.

The DOT Office of the Inspector General recently published a report that detailed the inadequacy of our border enforcement efforts. [See Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions. Report Number: MH-2001-059, May 8, 2001]. It reported that during the fiscal year 1997, commercial trucks made 3.5 million crossings into the United States at the southern border. Federal and state inspectors performed inspections on less than 0.5% of those trucks. Furthermore, 44 percent of the trucks inspected were removed from service because of serious safety violations. These statistics demonstrate both our weak enforcement presence on the border and the poor

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physical condition of Mexican trucks.

Currently, the only permanent inspection facilities at the U.S.-Mexico border are the state run facilities in California. Of the other 25 border crossings, the Inspector General's report observed that few have a dedicated telephone line to access transportation databases. Furthermore, a majority of border facilities lacked the physical space in which to inspect or place out of service more than two vehicles at a time.

The DOT has proposed hiring 40 new inspectors and 40 new safety investigators. This would bring the number up to 140 total, the level that the Inspector General recommended were needed for Mexican truck traffic in 1998. More substantial inspection facilities and many more inspection personnel need to be in place before our highways are opened to more Mexican trucks.

U.S. Enforcement Efforts Within the United States is Nonexistent

The individual states are on the front line of truck safety enforcement. Once a Mexican truck crosses the border, each state, not the federal government, will have the responsibility of inspecting Mexican trucks and verifying their compliance with U.S. regulations. In this role, it is the state enforcement personnel who must know whether a Mexican truck and driver is operating safely and within the bounds authorized by NAFTA.

OOIDA is aware of no effort by any state, except perhaps California, to adequately take on the enforcement of the laws and regulations raised by Mexican trucks. California's effort is limited to the inspection of the vehicle. OOIDA is aware of no effort by any federal government agency to educate the states on these issues or to give them the authority to enforce these laws and regulations. Such efforts must be a part of any thorough plan to allow more Mexican trucks onto our highways.

Mexican Trucks Rarely Comply With U.S. Safety Law

There is no true equivalent of the U.S. Commercial Driver License ("CDL") 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, statistics from border checks indicate that significant problems exist. Lack of a valid license is the top reason for placing Mexican drivers out-of-service ("OOS") according to the Office of the U.S. Trade Representative. A recent spot check by the Texas Department of Public Safety found 9 of 12 drivers lacked valid licenses. Even if the license is valid and legally obtained, little or no data exists in Mexico that can accurately confirm that information. Nor can U.S. inspectors identify the details of a driver's violation history or accident record. They may not even be able to tell whether the license presented belongs to the driver carrying it.

There is no viable truck safety inspection program in Mexico.

There are few if any trained Mexican commercial motor vehicle inspectors that measure up to the U.S. standards. While the Mexican government insists it enforces very strict commercial vehicle and driver standards, Mexican truckers report that the main condition to compliance is the financial persuasion of enforcement officials.

Although Mexico joined the Commercial Vehicle Safety Alliance ("CVSA") and has agreed to adopt CVSA training, inspection and enforcement practices, the CVSA has failed, despite repeated attempts, to obtain inspection data from the Mexican government. There is no proof that Mexico is inspecting any vehicles or drivers. Unless Mexico quickly makes significant strides to ensure the safety of Mexican motor carrier

equipment and drivers, the entire burden of safety compliance will fall squarely on U.S. enforcement efforts.

There is no drug and alcohol testing program comparable to that of the U.S. program in Mexico

U.S. drivers are extensively tested for use of controlled substances and alcohol. Although Mexico claims to have a program in place, the Association believes they have no means or will to enforce the rules. In fact, it is reported that Mexican drivers frequently use drugs in order to drive longer hours. Amazingly, sometimes the use of these drugs is encouraged by their trucking employer. (See the attached article from the San Francisco Chronicle).

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. truck drivers at a distinct economic disadvantage and all drivers at a safety risk.

Mexico has no driver hours -of-service regulation.

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 driver had been driving prior to entering our country.

Mexico Has No Viable Vehicle Size and Weight Enforcement

Mexico has no effective weight enforcement for its vehicles. There are no fixed weigh station facilities in Mexico, and none on the U.S. side at the border. OOIDA fears that an influx of overweight Mexican trucks will cause a significant degradation in U.S. highway safety and the infrastructure.

Mexican truckers who know or learn their way around state scales could conceivably travel throughout the United States and back into Mexico without ever being weighed. Fixed weigh stations at border crossings must be established in the United States to assure that Mexican trucks meet federal weight restrictions. FMCSA did not consider the additional costs of these facilities in their budget proposal. Millions of dollars in additional funds will be required to erect these weigh station facilities.

Mexican Trucks Avoid State and Federal Fuel Taxes and Highway User Fees

Mexican carriers have in the past installed additional fuel tanks to carry extra high sulfur fuel purchased at a much lower cost in Mexico. These vehicles can travel hundreds and even thousands of miles during each trip on U.S. highways without ever buying fuel in the U.S. In doing so, these Mexican trucks avoid paying any state and federal fuel taxes. Furthermore, they take the place of U.S. trucks and drivers that currently do pay those taxes and every other tax levied on us as citizens, including state and federal income and payroll 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. Since Mexico does not participate in either plan, the fees and taxes cannot be collected under the agreements, and U.S. truck owners bear the entire cost of highway repair and new highway construction.

Mexican Trucks Already Violate NAFTA Rules

Once a Mexican truck passes through the border, the United States has no plan to ensure that they only perform the limited operations allowed by NAFTA. 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.

When a Mexican truck driver begins to violate NAFTA by hauling between two points within the United States, he or she has begun to perform domestic work within the U.S. and must have proper documentation (such as a green card) to do so. When a Mexican truck begins to haul between two points within the United States, "technically" that truck has been imported into the U.S. and all applicable duties and tariffs must be paid on it.

The INS and Customs Service are unprepared to supervise Mexican truck compliance with these rules. As the Inspector General of the Department of Transportation has reported, Mexican trucks, ostensibly allowed into the country for shipments to the commercial border zones, are already flaunting this NAFTA rule by operating throughout the United States.

Aside from the initial contact when a truck enters the United States at the border, U.S. Customs and INS 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 in the interior of the country, are trained only to enforce federal and state vehicle and driver safety regulations. Few consider the origin and destination of a load, and how the movement may relate to the motor carrier's country of

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domicile. Furthermore, state enforcement agencies appear unwilling at this point to take on the task of enforcing cabotage restrictions. Even if state CMV enforcement agencies received the necessary funding, and inspectors were properly trained and had the requisite authority, there is simply not enough staff to catch more than a token number of violators.

There Will Be No Reciprocal Benefit From Mexico To the United States

Under NAFTA each country has promised the others to give equal access to its markets. Practically speaking, however, Mexico is not prepared to give American trucking companies the same kind of safe and secure highways as their trucks will find in the United States. The reputation of the crime rate in Mexico and of Mexican law enforcement inspires few U.S. truckers to risk their own safety and security by trucking south of the border. We have attached an article that describes the routine danger of truck shipments being hijacked in Mexico.

In terms of trucking, the benefits of opening the border all flow toward Mexico. Mexican truckers 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 more dangerous highways while the U.S. government gets the burden of performing safety enforcement for both countries.

Conclusion

Allowing Mexican trucks into the United States at this time is not in the best interest of the American public or U.S. drivers and small business truckers. Truck safety and highway conditions will suffer greatly. Mexican motor carrier and driver safety regulations are either inadequate or non-existent. Allowing the border

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to open without correcting these inadequacies will result in a substantial decline in truck safety.

Border enforcement capabilities will need to be strengthened prior to allowing Mexican trucks into the U.S. Unless adequate personnel are deployed at border zones and additional funding is committed to provide permanent border weight and inspection facilities, there will be no way to ensure that Mexican carriers comply with United States laws and regulations. The U.S. Senate Appropriations Committee has recommended some strong, realistic rules to address these safety issues.

It is OOIDA's belief that few Mexican carriers are educated in the numerous federal and state laws they will encounter. While many of these regulations and laws are within the control of the FMCSA, implementation of the entry provisions of NAFTA will require a cooperative effort among members of the FMCSA, INS, U.S. Customs Service and state enforcement officials. Coordination between the federal and state governments will also be necessary to recover the fuel taxes and user fees not paid by Mexican trucks.

Allowing Mexican trucks into the U.S. should not compromise the safety of our highways. Until measures are put in place to ensure that Mexican trucks and drivers entering the U.S. are in compliance with NAFTA trade rules and all United States transportation laws and regulations, OOIDA remains adamant that the United States-Mexico border remain closed. Thank you for the opportunity to present these comments.