



**Owner-Operator Independent Drivers Association Inc.**

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**James J. Johnston**

*President*

Oct. 1, 2010

**BY E-MAIL AND FAX**

Air and Radiation Docket  
U.S. Environmental Protection Agency  
Mailcode: 6102T  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: **Initial Comments of Owner-Operator Independent Drivers Association  
& Request for Additional Time to Provide Additional Comments  
Docket ID No. EPA-HQ-OAR-2010-0317**

To whom it may concern:

In a July 27, 2010 notice, published at 75 Fed. Reg. 43975, the EPA sought public comments on a request from the California Air Resources Board ("CARB") for confirmation that certain new requirements intended to reduce idling emissions from new and in-use trucks beginning in 2008 ("Truck Idling Requirements" or "Requirements") are not preempted by section 209(a) of the Clean Air Act ("Act"); that certain requirements are conditions precedent under section 209(a) of the Act; and that certain provisions are within-the-scope of previous waivers and authorizations issued to CARB pursuant to sections 209(b) and 209(e) of the Act. CARB also advised EPA that "at least one [new] provision requires and merits a full authorization pursuant to section 209(e) of the Act" and sought that authorization. As set forth in EPA's notice, the agency is seeking input, as a threshold matter, on whether to treat various elements of CARB's 2008 Truck Idling Requirements as conditions precedent, within-the-scope of previous waivers and authorizations, not preempted by section 209, or in need of a full waiver or authorization. Only after it has determining which type of analysis to conduct, will EPA review the specific CARB requirements.

This letter sets forth the initial reactions of the Owner-Operator Independent Drivers Association ("OOIDA") to CARB's actions in connection with these Truck Idling Requirements. OOIDA is a not-for-profit trade association representing approximately 155,000 owner-operators,

small business motor carriers, and professional truck drivers (“small-business truckers”) who operate more than 200,000 trucks in all 50 states and Canada, on all issues affecting their operations. Such small- business truckers have a significant presence in the trucking industry. Indeed, one-truck motor carriers represent nearly half of all active motor carriers operating in the United States while approximately 96 percent of active motor carriers operate 20 or fewer trucks. Thus, CARB’s proposed Truck Idling Requirements already have a significant impact on OOIDA’s membership.

OOIDA will briefly address several issues that seem to have been overlooked by EPA thusfar, including CARB’s delay in requesting EPA review of Truck Idling Requirements adopted in 2005; CARB’s premature implementation and enforcement of those Requirements without waiting for an EPA determination; and CARB’s failure to consider the potential adverse impact of these requirements on the health and welfare of the affected truck drivers. OOIDA also requests an additional 45 days to fully consider and submit further comments in light of the decision filed September 15, 2010 by the Ninth Circuit in *Association of American Railroads v. South Coast Air Quality Management District*, Case No. 07-55804 (“*American Railroads*”), where the appellate court found that SCAQMD’s regulations imposing restrictions on idling by trains were preempted by federal law because they improperly interfere with the management or governance of railroads thus “unreasonably interfering with interstate commerce.”

## DISCUSSION

### I. CARB Should Be Prohibited From Enforcing its Truck Idling Requirements Until They Are Approved by EPA.

CARB’s Truck Idling Requirements were approved by resolution adopted at a hearing held on October 20, 2005 and took effect on November 15, 2006. However, CARB did not ask EPA for a waiver and/or confirmation of the validity of the various regulatory requirements until May 9, 2008, more than one and a half years later. By that time, according to CARB, new vehicle engines were already expected to have engine idle shutdown devices and drivers operating sleeper trucks were expected to manually shut down their engines while idling, all in compliance with the Truck Idling Requirements. Any alternate power devices used to provide climate controls for sleeper berths was also subject to those Requirements. So far as we are aware, CARB has not provided or even attempted to provide any justification for its extensive delay in seeking the necessary EPA-approval for the new Requirements.

Further, starting at the beginning of 2008, even before CARB finally submitted its request to EPA, CARB has been actively enforcing those Truck Idling Requirements. Indeed, OOIDA has received numerous reports from member drivers who have been fined for failing to comply with the requirements. Criminal charges are also permitted for violations.

CARB’s implementation and enforcement of rules requiring EPA review and approval before that federal approval has been obtained is contrary to standard accepted practice. For

example, when CARB establishing performance standards for transport refrigeration units (“TRU”) in refrigerated truck vans or trailers brought into California, CARB sought EPA authorization before the standard was implemented. *See* 70 Fed. Reg. 70075 (Nov. 21, 2005). Similarly, CARB sought a waiver for its 2007 heavy-duty diesel engine standards by letter dated July 16, 2004 and was granted a waiver in August of 2005, long before the standards were expected to take effect. *See* 70 Fed. Reg. 50322 (Aug. 26, 2005).

Premature enforcement, like that taking place here, has resulted in drivers whose vehicles and idling practices are fully compliant with current EPA requirements being penalized for the violation of a one-state California requirement that may ultimately fail to pass muster and be invalidated. EPA could disapprove some part of the proposed requirements or require certain changes to be made. EPA’s authority to determine whether California’s new Requirements are valid is seriously undermined if the rules may be enforced before the statutorily-mandated approval process is followed, and the EPA waiver and approval process is largely rendered meaningless.

## II. The New Sleeper Truck Idling Requirements Will Have an Adverse Effect on the Health and Welfare of Drivers.

Under the current EPA-approved rules, sleeper-berth equipped trucks are exempted from the five-minute engine idling requirements when the operator is resting or sleeping in the sleeper berth and the engine is idling for climate control or to power on-board accessories. Those regulations recognize that temperature control is essential in California’s deserts and hot, dry climates and mountainous areas. However, the Truck Idling Requirements enforced by CARB since 2008 require the operator of a sleeper truck to manually shut down the engine after five minutes of continuous idling starting January 1, 2008. This, of course, leaves the driver without any temperature control, either heating or air conditioning, unless a financial investment is made in compliant equipment that provides an alternate source of power to the sleeper berth.

CARB simply assumes that all drivers have the ability to invest thousands of dollars in anti-idling equipment because the costs should be recovered in an estimated two and a half years through associated savings due to reduced fuel consumption and maintenance costs. They have ignored that in most cases, it is the vehicle owner - not the driver - who makes purchasing decisions concerning all equipment purchases, yet drivers are held directly accountable for violations. Also, CARB’s assumptions do not consider whether the additional lump-sum investment is feasible and likely to be made by long-haul truck drivers who on average earn under \$40,000 per year after expenses, and who are based in or operate primarily in other states. In fact, it is OOIDA’s impression that many small-business truckers in this poor economy have decided that the cost of complying is unreasonable under all the circumstances. Consequently, they have opted not to purchase the additional equipment required in California and instead subject themselves to unhealthy and unsafe cab temperatures and conditions when hauling cargo in that state.

While CARB has in its submissions to EPA emphasized the health and welfare benefits for drivers who are no longer confronted during extended rest of sleep periods with highly localized and concentrated emissions from idling, it has totally ignored the adverse health effects on drivers who find themselves cooped up in their sleeper berths for extended periods (due to hours-of-service rules) without any air conditioning or heating because of the non-idling requirement. This is not simply a hypothetical problem. A closed compartment like the sleeper berth can easily become unbearably hot or cold after the engine is turned off for even a short time. Poor conditions for rest or sleep will deprive a driver of restorative sleep, impairing the driver's ability to focus while behind the wheel. It can also have a very detrimental impact on a driver's health. Just last week in Los Angeles, a driver died in her truck where temperatures were above 100 degrees and inside cab temperatures were much higher.

Consequently, in determining whether CARB's sleeper truck and alternative power source requirements should be approved, under any analysis, EPA should take care to fully consider and balance against the benefits to be gained by reducing emissions from idling sleeper trucks, the very real adverse impact such a requirement could have on the health and welfare of the operators of those trucks and negative affects on highway safety from truck operators not being properly rested. When both the positive and negative effects are fully and fairly considered, it might be determined that CARB's requirements are not as protective of public health and welfare as the relevant federal standards.

### III. The Truck Idling Requirements May Be Preempted by Federal Law.

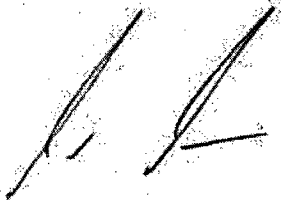
Both CARB and the EPA have focused on the status of the Truck Idling Regulations using the preemption and other criteria established by the Clean Air Act. However, the recent Ninth Circuit *American Railroads* opinion, in Case No. 07-55804, suggests that CARB's new Truck Idling Requirements might be preempted by another federal statute. In that case, the Court found that the ICC Termination Act ("ICCTA") preempted rules pertaining to idling emissions from trains, that were issued by the South Coast Air Quality Management District for submission to CARB. The Court reasoned that the ICCTA preempts all state laws that may have the effect of managing or governing rail transportation, and the idling rules clearly had such an effect on rail transportation.

Although the ICCTA does not contain preemptive provisions pertaining to the motor carrier industry, the Federal Aviation Administration Authorization Act ("FAAAA") has similar provisions. As provided in the FAAAA, codified at 49 U.S.C. § 14501(c), a state or local government "may not enact or enforce a law, regulation, or other provision having the force and effect of law, related to a price, route, or service of any motor carrier. . . with respect to the transportation of property." This provision has been broadly interpreted to go beyond economic regulations and to include health-related provisions that have even an "indirect" effect on motor carrier pricing, routes, or services provided. *See, e.g., Rowe v. New Hampshire Motor Transport Ass'n.*, 552 U.S. 364 (2008). Just as the idling restrictions imposed on railroads had an impermissible effect on interstate rail transportation, CARB's Truck Idling Requirements would appear to have an impermissible effect on motor carrier routes to the extent that they preclude

motor carriers and truck operators whose trucks comply with EPA-approved idling requirements but not CARB's new requirements from coming into California without risking a substantial fine and even possible criminal charges.

Because of the lack of adequate time to fully consider this issue in light of the recent issuance of the *American Railroads* decision, OOIDA respectfully requests a forty-five day extension, until November 15, 2010, to provide additional comments pertaining to this issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Johnston', written in a cursive style.

James Johnston  
President