

**BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY**

**COMMENTS OF
THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.**

**IN RESPONSE TO AN
ADVANCE NOTICE OF PROPOSED RULEMAKING
Regulating Greenhouse Gas Emissions under the Clean Air Act**

Docket ID No. EPA-HQ-OAR-2008-0318

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Drivers Association, Inc.**

November 28, 2008

I. INTRODUCTION

A. Procedural Statement

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) in response to the Environmental Protection Agency (“EPA” or “Agency”) Advance Notice of Proposed Rulemaking: “Regulating Greenhouse Gas Emissions under the Clean Air Act,” Docket ID No.EPA-HQ-OAR-2008-0318.

B. The Interest of the Owner-Operator Independent Drivers Association, Inc.

The Owner Operator Independent Drivers Association, Inc. is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators, small business motor carriers and professional drivers. The more than 160,000 members of OOIDA are professional drivers and small business men and women located in all 50 states and Canada who collectively own and operate approximately 230,000 individual heavy-duty trucks and small truck fleets. One-truck motor carriers represent nearly half the total number of active motor carriers operating in the United States while approximately 96 percent of active motor carriers operate 20 or fewer trucks. The address of the Association is:

Owner-Operator Independent Drivers Association, Inc.
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www.ooida.com

The Association actively promotes the views of small business truckers and professional drivers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the position of small business truckers and professional drivers on numerous committees and in various forums on the local, state, national, and international levels.

While the Court in *Massachusetts v. EPA*¹ held that the Clean Air Act (“CAA”) authorized the EPA to regulate greenhouse gases (“GHGs”) from new vehicles, the EPA has asked for more expansive comments beyond new vehicle emission regulation including (i) issues relevant for Congress to consider for possible future climate legislation and the potential for overlap between future legislation and CAA regulation and (ii) information regarding regulatory approaches and technologies for reducing GHG emissions.

The members of OOIDA as truck owners, investors, and operators would be impacted by not only new emission standards, if such standards are extended to heavy-duty trucks, but also impacted if the Agency makes recommendations that Congress legislate changes to the trucking industry or chooses to promulgate rules related to new trucking technology. Therefore, comments from the Association on these topics are germane and appropriate.

¹ *Massachusetts v. EPA* 127 S.Ct. 1438

II. SUMMARY

As the Court noted in *Massachusetts v. EPA*, “the harms associated with climate change are serious and well recognized.”² OOIDA understands the threat associated with global warming and the need for cultural, governmental and industry-wide change in order to preserve and protect our planet and its resources. OOIDA appreciates the importance of air quality and the impact that it has not only on environmental changes, but also the more immediate impact that diminished air quality can have on human life. A recent analysis of the OOIDA database indicates that the average life span for owner-operators is 56 years old, while the average life span for men in the U.S is around 72 years of age according to the Centers for Disease Control. Truck drivers know full well that diesel truck emissions can contribute in part to significant health consequences. It is clear that obtaining additional mileage standards and complying with continued ongoing engine emission requirements is a challenging objective. However, forcing new, untested technology into the marketplace has often proven detrimental to the industry and counter-productive in obtaining the clean air that EPA and all of us would like to see.

The Court’s decision interpreting the CAA as necessitating regulation from the EPA on the matter of GHGs places an onerous and sizeable task on the EPA’s docket and arguably could produce excessive and far reaching regulations. As EPA Administrator Johnson warned, “The potential regulation of greenhouse gases under any portion of the Clean Air Act could result in an unprecedented expansion of EPA authority that would have a profound effect on virtually every sector of the economy and touch every household in the land.”³

² *Id.* 142

³ Federal Register, Volume 73, Number 147, p. 44355, July 30, 2008

OOIDA believes that the Administrator is correct in proceeding cautiously particularly as the issue pertains to the trucking industry. If careless or reckless, the EPA could promulgate rules which produce a de minimis environmental benefit while negatively impacting the struggling American economy, resulting in a number of ancillary effects. An example of the profound effect on the economy mentioned by Administrator Johnson is the government subsidy and monetary incentive to grow corn and soybeans for use in bio-fuels that has added to the cost of food products and other environmental land and water use issues not originally anticipated.

For many years large motor carrier interests have been encouraging operational and mechanical changes that promote an agenda designed to eliminate competition. These same groups, still promoting the same agenda, are now espousing good stewardship of the environment as their primary motivation. Their arguments are without merit, are a result of ulterior economic motives, and are emblematic of the Administrator's fears of far reaching regulation that provides little benefit along with significant consequences. OOIDA's comments will further expound upon this point in the pages that follow.

In turn, OOIDA's comments will discuss areas where government involvement may be appropriate and actually accomplish environmental savings. While the regulatory framework may not be the place to promote all such endeavors, the EPA's expertise on air quality may play an appropriate role in promoting such measures to Congress or in creating an interagency collaboration to oversee implementation.

In an effort to construct order in a near boundless ANPR, OOIDA's comments will predominantly stem from, respond to, and follow the order of the EPA memo

provided with the ANPR entitled, “Summary of Greenhouse Gas Emission Control Technologies for Heavy-Duty Trucks” dated June 12, 2008 (the “EPA Memo”).

III. COMMENTS OF THE ASSOCIATION

A. Modifications to Operational Systems in the Trucking Industry

1. Speed Limiting Heavy Duty Trucks will Impact Highway Safety; Not Achieve Desired Environmental Results.

For years, large motor carrier interests have recklessly promoted engaging engine governors, or “speed limiters” under the guise of safety, and more recently emission reduction, in an attempt to reduce small business competition in the trucking industry. Speed limited engines are nearly exclusive to trucks owned and operated by large carriers who primarily do so for economic reasons which include saving on fuel costs. Large carriers that voluntarily select a speed limiter setting of their choosing based upon the operational characteristics of their equipment specifications are not adversely impacted and may well realize an overall cost benefit. However, drivers paid by the mile and regulated by the hours-of-service rules are often negatively impacted economically. In addition, smaller carriers and leased owner-operators, which comprise the vast majority of the trucking industry, typically choose not to employ speed limiters because of various harmful consequences.

While speed limiting is trumpeted by large motor carriers as a panacea to reduce emissions, those same carriers are adverse to investments in anti-idling technology that arguably create more significant reductions in emissions. Small fleets and owner-operators have embraced anti-idling technology as a cornerstone strategy to reduce over-

all emissions. While the Association believes this approach has more promise to achieve reductions, it would simply be presumptuous to suggest a one-size-fits-all strategy.

Trucks limited to speeds set below the posted speed limit create a safety hazard on the highways because of the speed differential engendered between them and other more rapidly moving traffic. The result is an increased number of vehicle interactions, often referred to as “cluster congestion.” For example, the frequency of interactions between other vehicles and a vehicle traveling 10 mph below the posted speed limit is 227% higher than when it is moving with the flow of traffic. The simple irrefutable fact is, the more interaction between vehicles the greater likelihood of an accident. When slowed from the rest of the flow of traffic, trucks essentially become rolling roadblocks creating a situation that can lead to dangerous actions such as erratic lane changes, tailgating, and reckless acts associated with road rage, all of which contribute significantly to crashes.

Drivers raise a number of other concerns about driving speed limited trucks. When surveyed, truck drivers cited the top three concerns associated with driving a speed limited truck as being: (i) lack of passing speed, (ii) increased congestion, and (iii) fear of being rear-ended. When engine speed is restricted, the driver may not have the maneuverability necessary to accelerate and avoid danger. In addition, truck drivers face a continuous threat of being rear-ended by faster moving vehicles, as 19 percent of all fatal accidents between cars and trucks involve another vehicle rear-ending a truck.⁴ When the ability to make decisions about a truck’s operation is removed from the driver’s control our nation’s highways become increasingly hazardous.

Proponents of speed limiters now claim that there are significant environmental benefits from speed limiting heavy-duty trucks, but research to that effect is generally

⁴ Report, National Highway Traffic Safety Administration: National Center for Statistics (2007).

non-existent. The EPA has limited data on the emissions emitted by heavy-duty diesel trucks that differentiate between operational realms including freeways, ramps and arterials. The change in speed limit would impact only the “running emissions” that are produced when the engine is warm and the vehicle is in motion. But these are only a part of the total emissions produced. Therefore, the amount of increase in overall emissions due to increased highway speed is probably overestimated by these speed correction factors.

Studies conducted so far have not taken into consideration the number of trucks that are now more acquiescent to air quality considerations by using mandated 2007 diesel engines and ultra-low sulfur diesel fuel. As older trucks are phased out, regulations already in effect will achieve much lower GHG emissions. Transport Canada recently studied the potential impact of speed limiters on the environment and found that in theory slight reductions in GHGs could be realized. But that particular study was limited in scope and therefore unrealistic in that it did not take into account the numerous ancillary effects that result from the use of speed limiters.

In order to make sound judgments and implement fair regulations it is important to understand the driver’s economic world. In a study done of OOIDA’s employee driver members the OOIDA Foundation in 2007 found that when driving a speed limited truck there was an incentive to drive faster on those roads where the posted speed limit was less than the restricted speed limiter setting as well as in hazardous locations or under adverse conditions. The reason is that drivers are limited in the number of hours they can work while being paid by the number of miles they drive. Carriers rarely, if ever,

correspondingly increase driver compensation to offset compelling economic and operational needs to exceed the posted speed limit or drive too fast for conditions.

In trucking there is a term, “sweet spot” which is the RPM range at which an engine is designed to operate relative to various factors including tonnage, terrain, tire size and gear ratio in order to achieve maximum fuel efficiency. Experienced drivers are acutely aware of the benefits of operating within the sweet spot to maximize efficiency and economics. The most important fuel economy variable is the driver, and the difference between a good driver and a bad driver can be up to a 35% difference in fuel efficiency. This is one of the reasons that OOIDA has strongly supported the need for stricter and better driver training standards.

Another ancillary effect from the mandated use of speed limiters is the increased acceleration and deceleration by other vehicle drivers when slower moving trucks impede traffic flow. This effect was acknowledged by Dr. Barry Prentice, Director of the Transport Institute at the University of Manitoba in a recent article where he noted that any net reduction in GHG emissions attributable to speed limiters assumes that the remainder of the traffic flow is not affected. If speed governors on trucks cause increased traffic congestion or force more speed adjustments by cars and light trucks, GHG emissions could increase. Accelerating and decelerating can create more emissions than traveling at a constant speed⁵.

The EPA Memo states, “Reducing speed of a line-haul truck from 70 to 65 mph can reduce CO₂ emissions by 6% and reducing from 65 to 60 mph can reduce CO₂ emissions by 7.6%.” However, the memo then implies that the desired reduction can be achieved by speed limiters. It states, “[s]peed limiters are generally available on new

⁵ Todaystrucking.com, “Argument for Speed Limiters is Weak”. November 9, 2007

trucks or as a low-cost retrofit, and assuming a five mph decrease in speed, pay back within a few months.” This assumes that line-haul trucks are travelling at 70 mph which is rarely the case. Speed limiters will not achieve the desired results and as discussed, will impact highway safety. However, environmental results may be achieved through increased enforcement of the posted speed limit on all traffic.

Not all trucks are equipped with speed limiters and retrofitting is an expensive proposition. As of the third quarter of 2008, total failures for the trucking industry exceeded 127,000 trucks, or 6.5 percent of the nation’s hauling capacity.⁶ However, this data only accounts for trucking companies with fleets of five or more trucks. Thousands of owner-operators and smaller fleet carriers who also failed in that same time period are not directly tracked by government or private sector analysts. Many of these trucks, which were idled, were owned by small business owner-operators, whose operational costs come directly out of the pocket of the operator. On average, a small business trucker earns approximately \$37,000 each year, but with the cost of fuel, the rising costs of parts, and the sluggish economy, this figure is dropping precipitously. It is not only unsafe to mandate speed limiters on all heavy-trucks, but in this economy, to require enabling a speed limiter can mean certain closure for many small trucking operations.

The EPA should not pursue speed limiters as implied in the EPA Memo, but rather should work with the Department of Transportation and Congress to improve highway enforcement of the posted speed limit and promote comprehensive driver training and education.

⁶ Avondale Partners, LLC. “Trucking, Still Driving Into the Ditch-Record Number of Trucks Exit Highways in 2008” (October 27, 2008).

2. Increased Size and Weight Limits on Trucks Will Impact Highway Safety, and Cause Detriment to Our Nation's Infrastructure.

Much like the speed limiter issue in the previous section, proponents of increasing truck size and weight limitations have recently claimed to support such initiatives on the basis of environmentalism and “decreasing trucking’s carbon footprint.” However, for years proponents of the issue have supported increased truck sizes and weights including the expanded use of Longer Combination Vehicles, such as triple trailer combinations, on our nation’s highways solely on the basis of perceived economic benefit to their corporate bottom line.

While it is true that fewer drivers are needed if sizes and weights are increased, the costs related to reductions in safety and the damage to our nation’s infrastructure will far exceed any economic benefit to the industry. Further consider, a large percentage of trucks traveling down the highway are underutilized today, either because of stipulations by shippers or because logistics chains are not utilizing the current capacity. OOIDA believes that in addition to the safety and roadway damage concerns caused by heavier and longer vehicles, policymakers should also consider how current truck fleets and small business operators are utilized today. Increasing truck size and weight limitations is a dangerous and costly initiative that should not be considered regardless of any environmental savings.

Although OOIDA does not support an increase in the weight and length of trucks, the 109th Congress passed comprehensive energy legislation that included a 400 lb weight exemption (above the 80,000 lb federal limit) for heavy-duty, long-haul trucks that utilize a certified idle reduction technology, to include an Auxiliary Power Unit (“APU”). An

APU at maximum weight is usually around 400lbs. Unfortunately, the Federal Highway Administration (“FHWA”) determined that this legislation was not a mandate, but rather a state prerogative. Several states have begun to take notice of this legislation and have passed enabling legislation to allow the 400 lb weight exemption. OOIDA will work with the 111th Congress, FHWA, and the EPA to make modifications to the original legislation to provide a nationwide exemption as an incentive to using anti-idling technologies.

B. Modifications to Engine Systems in the Trucking Industry.

1. Alternative fuels.

OOIDA’s research into alternative fuel sources has until recently focused primarily on bio-fuels since bio-diesel is perhaps the most widely supported form of alternative energy source for use in heavy-duty trucks today. The widespread (though still limited) availability of bio-diesel exceeds that of other alternative energy sources however, its environmental, economic and operational benefits are highly questionable.

First, bio-fuels often contain fewer BTUs than diesel which leads to poorer fuel mileage making it extremely costly as a viable energy source for long-haul trucking operations. There is no infrastructure in place to deliver the product to retail fueling locations apart from tanker trucks, largely negating the alternative energy value. In addition, they are not a panacea to environmental problems because while they often produce less carbon dioxide, they produce more nitrous oxide. Finally, at this point there are only suggested standards for fuel content and mixing methods for bio-diesel.

Recent studies show that many blenders/suppliers will use a technique known as splash-blending, which involves making separate purchases of bio-diesel and diesel fuel then “splashing” the biodiesel into the storage tank. Many studies conclude that this is a widespread practice that can have disastrous consequences for the trucking industry because a bad blend can cause severe engine damage. While bio-fuel use does merit more research, at this point the fuel is too unreliable to warrant a mandate for widespread use in the trucking industry. It is imperative that we not rush to solve one problem while creating another, particularly in this unsound economic climate.

Certain other alternative fuels hold much greater promise to provide substantive, near- and long-term environmental, operational and economic benefits. That which currently exhibits the most promise for the trucking industry is natural gas and Liquefied Natural Gas (“LNG”) which have been extensively tested and proven reliable in in-use commercial heavy-vehicle applications. LNG has none of the Particulate Matter (“PM”) emissions associated with diesel fuel. The absence of PM eliminates the need to install particulate filters on diesel powered trucks. The significant savings could easily off-set the necessary modifications to engine systems required to accommodate LNG use. Currently, LNG powered class 8 trucks are being deployed in the port drayage industry of southern California. Unfortunately, their environmental benefit is geographically limited due to the lack of an adequate fueling infrastructure. For LNG to become a reality to the nation’s trucking fleet, a dedicated national policy is imperative to build the required retail fueling infrastructure.

Natural gas domestic reserves are vast. Utilizing natural gas to power the nation’s trucking fleets removes the significant demand for imported foreign oil into the United

States. Energy self-sufficiency is long overdue and has yet to be seriously addressed, though promised by three decades of administrations. It is even more important today under the mantle of national security to eliminate our dependency on non-domestic energy sources from unfriendly nations. Currently, no alternative fuel exists today for the trucking industry that is as viable and promising as LNG.

C. Modifications to Vehicle Systems in the Trucking Industry.

1. Alternative Power Units; Anti-Idling Laws.

On average, OOIDA members drive 115,000 miles per year throughout the United States and Canada and spend 240 nights on the road, sleeping in the cab of their trucks. Heating and cooling the cab is a critical matter of health and security for truck drivers. However, idling for long periods of time in an effort to maintain power, heating and/or cooling in the cab is no longer cost efficient, environmentally responsible, or legal in many jurisdictions. Therefore, OOIDA has promoted the use of APUs to its members and has worked with the EPA and Congress, as well as other associations and coalitions to make purchasing APUs a reality for small business truckers.

The 110th Congress recently passed legislation that eliminates the 12% excise tax on the purchase of an APU when a new truck is purchased. Prior to passage of this legislation there was a 12% excise tax on the purchase price of a factory installed APU. While this is a huge step toward making APUs more accessible, more incentives need to be offered to truckers with older equipment to make the purchase, which can easily exceed \$7,000 for a truck owner. Currently, there is legislation in the U.S. House of Representatives and U.S. Senate to provide a tax credit for the purchase of an APU,

which helps offset the out-of-pocket costs drivers face⁷. We hope that in the 111th Congress similar legislation will be introduced, and encourage EPA to play a role in emphasizing to Congress the importance of this legislation.

Another way that the EPA can promote the need for APUs is by adopting the model guidance developed by EPA that would address the patchwork quilt of state and local idling restrictions that are become increasingly prevalent throughout the nation. This patchwork of idling laws can be very confusing and costly to truckers. Any move to make these laws and regulations more uniform for the benefit of interstate commerce is necessary. Additionally, it is important to note that the EPA Model contains the language “owner or operator” in the enforcement provisions. Several state and local laws place accountability on the driver, but where it truly belongs is on the vehicle owner/motor carrier. Simply enforcing these laws on the driver will not raise the level of compliance sought. There must be a clear and strong inducement for the owners of the equipment to provide other options for their employee drivers. These drivers are forced to live with whatever equipment is provided to them and do whatever the company demands of them.

2. Tires and Aerodynamic Drag Components.

Despite the numerous technological advancements that have occurred in the trucking industry over the past few decades, educating drivers to operate a truck for maximum fuel efficiency will arguably provide the most environmental benefit. That is not to say that new tire technology isn't beneficial in saving fuel in the proper application, however, widespread use of the technology is not always practical.

Single, wide-base tires reduce the amount of rolling resistance and provide weight reduction which in turn reduces fuel consumption. However, it is cost prohibitive for

⁷ H.R. 139 and S. 894.

most truck owners to retrofit because purchasing the tires also requires new wheels and other components which can exceed \$3,000. In addition, since they are not widely used, when a driver experiences a blow-out in a remote location, finding a replacement wide-base tire is of significant concern. In addition, these tires cannot be recapped, requiring outright replacement. This can be economically devastating for a small business trucker whose average net income is only \$37,000 annually.

Low rolling resistance dual tires also contribute to a reduction in fuel consumption, but mandating their use at this point is impractical and uneconomical for trucking operations as these types of tires must be replaced often due to the shallow tread depth. Currently, these tires are expensive and, like wide-base tires, harder to find. Truckers cannot afford the up front cost, frequent tire replacement, or the additional down time due to unavailability.

Like new tire technology, aerodynamic drag components improve fuel efficiency. OOIDA supports installation of aerodynamic devices, and urges the EPA to work with Congress and the Department of Transportation to create incentives for truck owners to install the technology. Tax breaks would provide a tremendous inducement for small business trucking operations and owner-operators to purchase more fuel efficient equipment.

IV. CONCLUSION

As Administrator Johnson warned, the EPA must be cautious in determining which rules should be promulgated in the effort to combat GHGs. While it is imperative that we address certain global concerns, we must ensure that we do not impact highway safety or create more economic uncertainty for our nation's truckers. The EPA would

best serve the environment, our nation, and the trucking industry by working with Congress and other agencies to promote increased driver training and education in addition to tax incentives for technology upgrades like APUs. But if the Agency chooses to pursue ill-conceived measures such as speed limiters and increases to truck size and weight, then only large motor carriers will be served at the expense of small businesses, the environment, safety and the economy.

Respectfully submitted,

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November 28, 2008