

**BEFORE THE  
CALIFORNIA AIR RESOURCES BOARD**

---

---

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

**IN RESPONSE TO  
A NOTICE OF PUBLIC HEARING AND  
REQUEST FOR PUBLIC COMMENT**

**[drayage07]**

**Consider Adoption of a Proposed Regulation to Control  
Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty  
Drayage Trucks at Ports and Intermodal Rail Yard Facilities**

---

---

**JAMES JOHNSTON  
President  
Owner-Operator Independent  
Drivers Association, Inc**

**December 3, 2007**

**BEFORE THE  
CALIFORNIA AIR RESOURCES BOARD**

---

**I. INTRODUCTION**

**A. Procedural Statement**

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) in response to the California Air Resources Board (“ARB”) Notice of Public Hearing scheduled in El Monte, California on December 6-7, 2007 to consider adoption of a proposed regulation to control emissions from in-use on-road diesel-fueled heavy-duty drayage trucks at ports and intermodal rail yard facilities in California.

**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 157,000 members of OOIDA are professional drivers and small business men and women located in all 50 states and Canada who collectively own and operate more than 250,000 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. OOIDA has approximately

5,500 active members who reside in the State of California. The address of the Association is:

Owner-Operator Independent Drivers Association, Inc.  
P.O. Box 1000  
1 NW OOIDA Drive  
Grain Valley, Missouri 64029  
[www.oida.com](http://www.oida.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.

Adoption of the Proposed Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks at Ports and Intermodal Rail Yard Facilities (the “Proposed Regulation”) would have a significant negative impact on a certain segment of OOIDA’s membership. Many members of OOIDA are infrequent visitors to California ports and rail yards and will face negative consequences from potential loss of access to those facilities.

## **II. SUMMARY**

As a membership driven organization that places great emphasis on education and regulatory compliance, OOIDA values its role as a conduit for information to small business trucking professionals and professional truck drivers across North America. The Association expends considerable efforts and resources to educate the trucking

community on all laws, regulatory actions, and proposals that impact small business motor carriers and owner-operators in an effort to help achieve compliance. In recent history, these communication efforts have included regulations promulgated by the California Air Resources Board (“ARB”) as OOIDA has a significant membership presence in California as well as an overwhelming number of members who travel to, from, and within the state. OOIDA acknowledges that California is confronted by serious air quality problems and that the people of California have approved aggressive action through referendum to improve air quality. Utilizing our media and outreach (i.e. *Land Line Magazine* and our *Land Line Now* daily satellite radio program, newsletters, websites, etc.) we regularly convey to truckers nationwide the potential impact ARB regulatory actions will have on their businesses and how they may comply with those regulations.

OOIDA has participated in ARB public meetings concerning the Proposed Regulation and the statewide Private Fleet proposed regulation. Our interaction with ARB has primarily been focused on educating ARB on how the various proposed regulations related to heavy-duty trucks will impact small business motor carriers and owner-operators nationwide. OOIDA believes that while the intent of the proposed regulation is laudable, the proposal contains some fundamental flaws. The Association believes that the “drayage truck” definition in the Proposed Regulation is overly broad, is in violation of Federal Statute 4306, and creates an unfair burden on interstate commerce. OOIDA is confident that the environmental goals of ARB can be achieved through less restrictive measures and efforts that will not be in violation of federal law. OOIDA is willing to work with ARB to develop regulations that will achieve its goals

while also allowing long-haul trucks engaged in interstate commerce to continue to bring goods to and from the ports and rail yards.

### **III. COMMENTS OF THE ASSOCIATION**

#### **A. Definition of Drayage Truck is Overly Broad**

Under the proposed regulation, a “drayage truck” is defined as “any in-use on-road vehicle with a gross vehicle weight rating (GVWR) of 33,000 pounds or greater operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.” ARB proposes language that effectively captures all heavy-duty trucks regardless of their operation, the frequency of their travel into ports and intermodal rail yards, or how much (or little) they contribute to air quality concerns.

ARB cites to studies acknowledging that heavy-duty drayage trucks which exclusively service ports and rail yards are statistically much older and more polluting than trucks engaged in long-haul operations. These heavy polluting vehicles travel in and around the ports and rail yards and with great frequency. However, under the proposed definition the distinction between the newer less polluting long-haul trucks that service the ports and rail yards with much less frequency, and the heavy polluting trucks that primarily service these facilities daily is completely lost.

Long-haul operators are already subject to regulatory enforcement at roadside that in some states includes emissions testing while engaged in interstate trucking operations. These vehicles comprise a very small minority of the traffic at port and rail facilities. Under the definition in the Proposed Regulation nearly all heavy-duty trucks that travel into the ports will be impacted, not just those used in true drayage operations. Therefore,

the definition is overly broad and unfairly impacts those engaged in nationwide trucking operations.

**B. The Need to Regulate Drayage Trucks**

Drayage trucks, when properly identified and defined, account for approximately 80% of traffic at southern California ports according to a 2004 study conducted by California State University Long Beach.<sup>1</sup> The study classified the remainder as *long-haul* operations. The vast majority of OOIDA members are long-haul operators that enter California ports and rail yards only infrequently. Their varied operations include hauling commodities that range from meat for export to over-dimensional construction equipment. Because of the nature of the trucking industry, long-haul trucking operations do not typically include dedicated-use vehicles whose sole business purpose is to service California ports and rail yards. But, rather include heavy-duty trucks that transport goods and commodities great distances which often involves traveling into not only the California ports, but to ports all across the U.S and Canada.

**C. ARB Can Accomplish Its Environmental Goals Through Less Restrictive Means**

By redefining drayage trucks in the Proposed Regulation, ARB can effectively regulate 80% of port trucking traffic and achieve significant improvement to air quality if not the desired environmental result since drayage trucks, as noted above, are recognized as emitting greater pollutants than long-haul trucks. Furthermore, ARB is in the process of promulgating a statewide regulation under the “Diesel On-Road Private Fleets Control

---

<sup>1</sup> *A Study of Drayage at the Ports of Los Angeles and Long Beach*. By Kristen Monaco and Lisa Grobar. Department of Economics. California State University Long Beach. December 2004.

Measures” initiative. Therefore, long-haul trucks will be required to comply with this regulation when they cross the geographic borders of California.

Since heavy-duty trucks engaged in long-haul operations seldom know if they will visit a California port or rail yard, they effectively are placed in a regulatory Catch-22. They could expend significant monetary resources to comply with a regulation and never be offered a load into or out of an affected port or rail yard. Due to the uncertainty of economic opportunity, many will likely choose not to go to California ports and rail yards ultimately affecting the nationwide availability of trucks to service these facilities.

Heavy-duty trucks engaged in long-haul operations should be exempted from this regulation in lieu of compliance with the eventual statewide Private Fleet regulation. Specialized auto-haulers have been exempted from complying with this regulation due to potential significant hardship. It is difficult for OOIDA to understand why ARB would not exempt trucks engaged in long-haul operations from the imposition of an equally onerous burden. They are clearly not the trucks engaged in local drayage operations, those trucks that should be the focus of this regulation.

**D. The Illegality of the Proposed Regulation as It Applies to Long-haul Operators and the Burdens it Places on Interstate Commerce**

**1. Federal Statute**

Requiring heavy-duty trucks engaged in interstate commerce to comply with the Drayage Truck Registry (“DTR”) component of the Proposed Regulation violates federal law. According to Section 4306 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”) states may not require

trucks to display any form of identification beyond basic registration of the vehicle. The applicable section reads:

**§ 14506. Identification of vehicles**

“(a) RESTRICTION ON REQUIREMENTS.- No state, political subdivision of a State, interstate agency, or other political agency of two or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle (as defined in section 14504a) other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.”

Initiatives of various jurisdictions throughout the United States requiring competing credentials for trucks engaged in interstate commerce have resulted in significant litigation. The United States Congress under section 4306 of SAFETEA-LU has preempted any state or political subdivision from requiring long-haul trucks to carry any form of identification other than those specifically allowed under the Act.

The proposed DTR would place the requirement of long-haul trucks to register and affix a label in violation of the above provision. Additionally, long-haul operators would be required to “maintain and keep VDECS<sup>2</sup> maintenance logs” in the truck which are to be available upon request. OOIDA views these requirements as a violation of Section 4306.

**2. The Interstate Commerce Clause**

In addition to the prohibition established by SAFETEA-LU, the proposed regulation unfairly burdens interstate commerce because (i) it impacts those engaged in long-haul operations although, as noted above, research indicates that local drayage

---

<sup>2</sup> VDECS. Verified Diesel Emission Control Strategy which is an emission control strategy that has been verified pursuant to the “Verification Procedure, Warrantee and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines” in Title 13, California Code of Regulations, commencing with section 2700, and incorporated by reference.

trucks are typically the polluting vehicles and not the long-haul trucks, and (ii) long-haul truckers would suffer an unfair burden because other ports will likely follow suit and create similar restrictions, requirements, fees, and penalties thus achieving a restraint on the free flow of commerce.<sup>3</sup>

The Commerce Clause of the United States Constitution acts as an implicit restraint on state authority even in the absence of a federal statute. Furthermore, it significantly limits the ability of states and localities to regulate or otherwise burden the flow of interstate commerce. The United States Supreme Court has determined that where a state or local statute even-handedly regulates a local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the local benefits. The extent the burden is tolerated depends on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The proposed regulation is excessive because, as discussed earlier in Section II, C above, the definition of drayage driver is overly broad and encompasses nearly all trucks traveling to and from the ports. Also, as previously noted, research indicates that the drayage trucks are the most egregious polluters, therefore the proposed regulation punishes drivers of those vehicles that travel to and from the ports with far less frequency than the local drayage trucks, emit far less pollutants on average than the drayage trucks, and are already subject to environmental regulations.

---

<sup>3</sup> OOIDA is aware that the ports of Seattle, Tacoma and Vancouver, British Columbia have issued a joint draft, the “Northwest Ports Clean Air Strategy.” On page 14 of that draft they reference a *West Coast* model for addressing port-related truck emissions. Clearly, California is the model others are seeking to emulate when dealing with diesel emissions from trucks. It is important that ARB “get it right” otherwise it is probable that the desired results sought by many environmental agencies and ports on the west-coast will be needlessly delayed through years of litigation

If the proposed regulation is codified, and long-haul operators are required to pay additional fees, affix additional decals on long-haul vehicles and keep additional maintenance logs, the potential exists for other ports across the United States and Canada to follow suit creating an inconsistent system throughout much of North America that burdens the free flowing exchange of goods across this nation. There are numerous ports throughout the United States and Canada, to all of which a certain portion of our members travel from time to time. If the proposed regulation is enacted, the lack of uniformity among the ports will create confusion among drivers about the regulations and will ultimately prevent long-haul drivers from obtaining the right criteria to enter the ports to pick up or deliver goods. Furthermore, the fees associated with the proposed regulation, as well as the cumbersome task of maintaining separate maintenance logs for all ports, act as an unfair burden to long-haul operators because of its impracticality and excessive expense. Such lack of uniformity nationwide will either discourage long-haul operators from conducting business at the ports or will create a system where long-haul truckers are entirely dependent on local port drivers to enter the ports and deliver or pick up goods on their behalf. Clearly, this proposed regulation acts as a burden on interstate commerce in its application to long-haul drivers, and is plainly excessive. As previously noted, an environmental clean-up can be achieved in a far less restrictive manner through applying such proposed regulation only to true drayage trucks.

OOIDA is also aware that attaching radio frequency identifiers (“RFID”) to trucks has been discussed as another enforcement mechanism to be utilized to ensure compliance with this proposed regulation. OOIDA firmly believes that any RFID requirement is also in violation of Section 4306.

#### **IV. CONCLUSION**

In order to achieve its primary environmental goals at California ports and be in compliance with Constitutional and Federal requirements, ARB must redefine drayage trucks in the Proposed Regulation. OOIDA would like to work with ARB and the respective ports in an effort to help them codify regulations that improve environmental quality while not unfairly impacting small business trucking operations. Furthermore, OOIDA believes strongly that long-haul trucks engaged in interstate commerce should be exempted from participating in the Proposed Regulation. We look forward to working with you in developing an alternative proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Johnston', written over a horizontal line.

JAMES JOHNSTON  
President  
Owner-Operator Independent  
Drivers Association, Inc.