

**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**

**[GHGHDV08]**

**Rulemaking to Consider Adoption of a Regulation to Reduce  
Greenhouse Gas Emissions from Heavy-Duty Vehicles.**

---

---

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

**December 9, 2008**

**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 Sacramento, California on December 11-12, 2008 to consider adoption of a proposed regulation intended to decrease Greenhouse Gas (“GHG”) emissions from heavy-duty vehicles operating within the State of 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 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 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. 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.ooida.com](http://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. The adoption by the ARB of this regulation will impose significant costs upon small business truckers and owner-operators nationally, including all members of the Association who conduct business within the State of California.

## **II. SUMMARY**

OOIDA recognizes the unique environmental challenges faced by the State of California and that the people of California through its legislature adopted the Global Warming Solutions Act of 2006 (“Assembly Bill 32 or AB 32”). Contained in AB 32 is a requirement for the ARB to identify a list of *discrete early action measures* intended to aggressively address GHG and oxides of nitrogen (“NOx”) emissions. One of nine *discrete early action measures* approved by the ARB board was a measure entitled “Smartway Truck Efficiency” and this proposed regulation is intended to implement that measure.

In promulgating this regulation, ARB staff appears to have at least recognized the significant financial impact of compliance from this regulation on small business motor carriers and owner-operators by proposing a two tiered system of compliance implementation dates. However, OOIDA believes ARB has overstated both the economic payback for the required technological investment as well as the total estimated reduction in GHG emissions. Additionally, ARB staff while proposing certain exemptions from the regulation failed to

recognize that not all fifty-three foot trailers are well adapted to choosing between the proposed compliance options. ARB has also proposed a complicated bureaucratic scheme of administration which when coupled with other trucking centric ARB regulations and proposals<sup>1</sup> is ironically inefficient and cumbersome for the regulated motor carrier community. ARB should seriously consider how they may unify all the required equipment reporting requirements for motor carriers and owner-operators of ARB imposed regulations into one centralized database that eliminates redundancy.

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

#### **A. Using US EPA Smartway partnership as a regulatory model.**

Recent regulatory actions by the ARB targeting the motor carrier industry and its emissions footprint combined with a significant economic downturn places the economic viability of many small business motor carriers and owner-operators at stake. This particular proposed regulation piles on an already reeling industry without a meaningful real world cost benefit analysis and is viewed odiously by many stakeholders because of the degree to which it attempts to micro-manage business decisions better left to motor carriers and owner-operators themselves. While OOIDA can appreciate why the ARB looked to the Smartway model as a means of potentially reducing GHG emissions from heavy-duty vehicles operating on California highways, it is disconcerting that a program designed as a voluntary partnership between the United States Environmental Protection Agency (“US EPA”) and industry stakeholders would instead be co-opted to regulate the motor carrier industry.

---

<sup>1</sup> The ARB currently has regulations in place which require trucks that transit certain port or rail property to register in a Drayage Truck Registry (“DTR”) database. For California based motor carriers operating trailers equipped with a refrigeration units they must register with ARB via a mail application or through the ARB equipment registration (“ARBER”) on-line system. This proposed regulation requires further notifications to be submitted to the ARB.

A key component of the Smartway partnership is for stakeholders to identify and form fit emission reduction strategies for their particular business model. Reduction in fuel usage is an obvious solution to both operating costs and related environmental emissions. OOIDA is a Smartway partner and financially assists its members and educates them on the many various strategies to accomplish both objectives. Trucking is brutally competitive and it is difficult for most small businesses to achieve cost recovery from the many regulatory and economic requirements placed upon them by government and unfair market manipulation. Hence, purchasing decisions are driven by an individual cost benefit analysis to determine whether the up-front expense will ultimately be profitable. The answer for many small business motor carriers and owner-operators is to embrace anti-idling technology such as Auxiliary Power Units (“APUs”) as their primary means of accomplishing the goal of reducing fuel usage and emissions. The investment in APUs requires a significant financial outlay that can approach ten thousand dollars to purchase and install the units. Many large fleets will not make this particular operational choice or investment for many reasons, the least of which is concern for driver comfort.

Since small business motor carriers and owner-operators tend to keep equipment for a longer period of time when compared to large fleets, the economic justification and payback to invest in anti-idling technology has naturally become the strategy of choice to reduce fuel consumption and associated emissions. In the real world of trucking having to pay for unnecessary idling is costly, yet federally mandated rest periods along with significant delays when engaged in loading and unloading leaves a driver inside the cab of a truck to often endure temperature extremes that make it all but impossible to get recuperative rest without the aid of an environmentally friendly APU. The economic incentive to shut down the main drive engine

under non-revenue producing circumstances is simply too great to ignore. However, large motor carriers have failed to embrace this technology, instead wanting to focus on other specious strategies such as speed limiting trucks and increasing truck size and weights as their favored focus to reduce GHG emissions. These strategies are wholly spurious because large motor carrier interests are cloaking themselves in environmental issues as political cover to push a self serving agenda that provides financial benefits only for themselves while increasing operating expenses for small business truckers. Furthermore, highway safety will undoubtedly suffer.

The financial burden of this proposed regulation will undoubtedly fall upon the dominant purveyors of ground transportation in the United States. It is clear from any reading of ARB material related to this proposed regulation that the target is the long-haul motor carrier community. Nationally, motor carriers which control twenty or fewer trucks comprise nearly 96% of registered motor carriers. Considering the afore mentioned preferred strategy of reducing emissions with anti-idling technology, this proposed regulation will drive up non-recoupable investment costs, and depending upon a particular business model, will have a minimal impact on the environment. Essentially, small business truckers would be economically punished with little likelihood for appreciable environmental gains.

Mandating Smartway certified tractors and trailers assumes the entire motor carrier industry operates as an entirely one dimensional, homogenized group that can be easily grouped. A large motor carrier may very likely operate one particular make and model of truck and trailer throughout its entire system, thus making one-size-fits-all assumptions applicable. However, many of these large motor carriers will not even fall under this proposed regulation such as exhibited in Appendix E of the Fleet Summaries. (pp E-16) J.B.Hunt Transportation Services, Inc., one of the largest motor carriers in the U.S., is paraphrased responding that, “they no longer

send over-the-road trucks to California from east of the Rockies (only by rail).” It is additionally stated, “Their average dray distance in California is 49 miles.” Because of mileage exemptions placed within this proposed regulation and based on the above statements, one of the largest motor carriers in the U.S. will not have to comply with this regulation if adopted. Yet, small business motor carriers and owner-operators who do not possess the economy of scale in pricing and purchasing, and cannot utilize intermodal services for their operations, will be forced to comply and be placed at an even further economic disadvantage in the marketplace due to increased compliance costs easily avoided by large motor carriers. ARB, by placing Appendix E within the public record as justification for this proposed regulation in which only interviews with large motor carriers are placed, inserts a distorted view into the public record related to how goods movement actually works on a nationwide basis and why particular business decisions are made.

Many small motor carriers and owner-operators interchange trailers for different operational requirements. While one week they may pull a 48 foot flatbed trailer due to a business opportunity, the next week could easily find them hooked to a 53 foot box-type trailer which brings them under this proposed regulation. Essentially, the tractor is utilized as a multi-use vehicle depending upon the available economic opportunity. Operational flexibility has always been the market strength of small business motor carriers and owner-operators that allowed them to effectively compete with their larger counterparts whose market power dictates freight rates. Mandating a Smartway certified tractor to pull a 53 foot box-type trailer will expose many small businesses and owner-operators to added expense for what could simply be a small percentage of their total operational income. Most likely, the choice that is going to be made is not to service clients who do not represent a core business. Without question, removing small

business motor carriers and owner-operators from the truck-available marketplace will force increased transportation rates onto California based businesses.

ARB has failed to understand how rates are set in the marketplace and how this proposed regulation will negatively affect California businesses in a global market. California is the “salad bowl” of America. Yet, the state produce industry faces significant seasonal fluctuations in available product and transportation costs. Many long-haul trucks that specialize in transporting produce follow those seasonal fluctuations throughout the U.S. The summer months bring additional produce trucks to California that otherwise do not service the state’s growers. Mandating their compliance with this proposed regulation for what could be only a few annual trips into California is likely to cause them to stay away. Significant shortages in available trucks to haul seasonal produce out of California will have a crippling affect on the state’s economic locomotive. Imposition of this proposed regulation could very easily accelerate the already ongoing transfer of agricultural assets to Mexico and Arizona and the further utilization of the gateways at Yuma and Nogales for shipment throughout the U.S. and Canada.

The ARB board should absolutely consider temporary permits tied to seasonal fluctuations in the produce market. For example, 15 annual trips into California under a temporary permit yields only 4 percent of the mileage easily possible under the proposed exemptions to in-state motor carriers operating within a 100-mile radius of their local haul base. Under the 50,000 mile exemption, a temporary permit would accrue about 15 to 20 percent of the miles permissible for use of this exemption. This single action would ameliorate supply and demand issues that otherwise are certain to arise.

Finally, ARB staff has ignored information that not all 53 foot box-type trailers are conducive to being equipped with Smartway technologies. Both owner-operators and small fleet

motor carriers extensively utilize 53 foot trailers equipped in a “spread axle” configuration. This kind of specialized trailer allows for the forward and rearward axle to be spaced approximately 10 feet apart. The use of these types of trailers occurs because state laws between the Midwest and most western states allow for significantly increased weights beyond the normally permissible 80,000 pounds. Even within California the use of these trailers allows for operational loading flexibility since the operator is allowed 40,000 pounds on two axles versus the 34,000 pound federal limitation. Mandating any use of certain tires, especially low rolling resistance or wide-base singles is anathema to the operating characteristics of these trailers. Low rolling resistance tires and wide-base singles are not recommended in this type of application due to significantly increased “scuffing” of tires which in quick order destroys them, or the catastrophic consequences from tire failure of a super-single, under load, at highway speeds. Spread axle 53 foot box-type trailers should be exempted from the proposed regulation.

B. Flawed Emission Inventory Analysis as basis of proposed regulation.

It is simply astounding that any government agency, whether state or federal, proposing such a significant regulatory regiment would produce as basis for regulation a document full of flawed assumptions. Appendix C seems to actually represent an attempt to construct a parallel reality in order to substantiate a preordained conclusion that this rulemaking is necessary.

EMFAC2007 is the model utilized by ARB staff to estimate both the current population and future projections of the population of Class 8 tractors in California and traveling to California. This model is also being used as a basis for projecting the supposed total benefits of this proposed regulation from decreases in GHG. The current economic crisis faced by this country along with changes projected in the global supply chain and changes in how freight is going to be moved domestically, strains the credulity of any ARB staff estimation that between

2010 and 2020 California will face a nearly 35 percent increase in Class 8 tractors operating in the state.<sup>2</sup> By assuming an increase from estimated current population 640,648 to 858,021 by 2020, ARB staff interjects a purported value to emissions savings that is at odds with many trends within the goods movement industry. By accepting this premise, the environmental value of this proposed regulation is vastly overstated.

The ports of Los Angeles and Long Beach actually provide a text book study in overstating both growth projections and how the supply chain reacts to global events and pricing mechanisms placed upon it by regulators. Imports to both ports are down by double digits and future growth rates are going to be negatively affected by a widened Panama Canal allowing diversion of Asian cargo to east coast ports. Additionally, a stretched supply chain was shocked back into reality by record high energy prices this past year causing significant reevaluations on placement of factories so far from where the demand exists for manufactured products. Many production facilities are likely to relocate to the western hemisphere and California will not necessarily be the gateway through which these goods enter the U.S. Hence, California's current position as the gateway for a significant percentage of our nation's imports and projections made about future growth rates with the ancillary need for trucks is very likely overstated.

Domestically, transportation priorities intended to increase railroad infrastructure to handle ever more intermodal freight will further increase freight diversions from long-haul trucking operations to the rails. On a pure cost basis trucks cannot compete with intermodal pricing of railroads. California being geographically located away from the majority of U.S. population and manufacturing capacity is purely form fitted for further increases in intermodal usage. Previously mentioned statements regarding one of the largest motor carriers in the U.S. - J.B.Hunt (*see page 6*) underscores this point precisely.

---

<sup>2</sup> Appendix C: Emission Inventory Analysis and Results. See graph on page C-3 with projections of Class 8 tractors.

The ARB Board should instruct staff to revisit its EMFAC2007 modeling assumptions. The economic meltdown of 2008 has dramatically changed the business landscape and how business leaders view the future. Assumptions made at the height of economic growth will not stand the scrutiny of today's new realities and how the supply chain is reacting to reduce its vulnerability to energy price shocks.

C. Alternative strategies to reduce GHG and financial assistance.

Efforts are underway nationally to equate environmental policy by speed limiting trucks and increasing size and weights. The Canadian provinces of Ontario and Quebec have rashly agreed to large motor carrier sponsored legislation that mandates an arbitrary speed limiter setting on heavy-duty trucks. Of course, adoption of this restriction was couched as a green initiative. OOIDA has vigorously fought against speed limiting trucks both in the U.S. and Canada. The Association will be taking action under provisions contained within the North American Free Trade Agreement ("NAFTA") as well as strongly considering initiating further legal challenges. Any state attempting to mandate speed limiters on trucks engaged in interstate commerce can be assured that OOIDA will respond swiftly.

A longstanding push to increase truck size, and allowable weight to something in excess of the current federal maximum limit of 80,000 pounds is another so called green initiative of large motor carriers allied with shippers. As with speed limiters, couching support for these initiatives by invoking emissions savings ignores the larger reality of the impact on highway safety, accelerated infrastructure deterioration, and the ability of most small business motor carriers and owner-operators to get maintenance cost recovery from shipper demands to haul significantly more payload at existing rates. While the ARB may think the last statement is of no concern for itself, the ramifications of motor carriers and owner-operators being required to haul

significantly higher payloads will accelerate the aging of equipment and this coy green initiative does not make allowances for the environmental affect due to the need to replace a truck prematurely- it is a manufactured product with ancillary environmental costs associated with its initial manufacture. Early engine wear and failure, decreased tire and brake life, and the obvious highway safety implications from a result of increased braking distance cannot be easily dismissed in pursuit of what is in reality a sham environmental strategy.

While it may seem appropriate for taxpayers to underwrite some of the compliance costs with these regulations, OOIDA believes creating a system of public assistance that favors one interest over another actually undermines the ability of the marketplace to properly price transportation services to account for the associated increased cost of compliance. For the winners who secure outright grants or subsidized loans, they are able to resist increasing transportation rates since their particular endeavor is being subsidized and not exposed to true market forces. An argument can also be made that the subsidy can actually be used to cut market-based rates since whatever entity has garnered such a subsidy no longer needs the same level of rate. These non-market oriented schemes place all non-winners at a distinct disadvantage while at the same time they are required to comply with mandates, find the financial resources themselves and then attempt cost recovery in a market where others do not face the same compliance cost.

#### D. Cumulative effect of ARB trucking related regulation.

ARB has embarked upon the most aggressive environmental agenda nationally to address statewide air quality. The motor carrier industry has been targeted by ARB with a host of new regulatory requirements with some still proposed.<sup>3</sup> The cumulative cost of compliance with all

---

<sup>3</sup> (1)Rulemaking on Airborne Toxic Control Measure [ATCM] to Limit Diesel-Fueled Commercial Motor Vehicle Idling, (2)Heavy-Duty Diesel Engine Certification Label [ECL] Inspection Program, (3)Regulation to Control

of these regulations is nothing short of stunning. Many motor carriers and owner-operators will actually find themselves needing to comply with each and every one of these regulations because of their particular operation model. While the industry struggles through difficult economic hardships, many stakeholders are already engaged in good environmental stewardship principles because it's simply good businesses practice. Long before most Americans were concerned with fuel efficiency, the trucking community, especially those responsible for paying expenses out of their own pockets recognized that unnecessary waste of this expensive resource impacted their bottom line.

While OOIDA recognizes there is no turning back the clock on these regulations, it is incomprehensible that ARB has not considered some type of unified database for all reporting requirements being made of the motor carrier community. While ARB wishes the trucking community to become more efficient and thus "greener" with their regulations, ARB has instituted an unwieldy and potentially very costly process for motor carriers and owner-operators to comply with.

#### **IV. CONCLUSION**

OOIDA strongly urges the ARB Board to send this proposed regulation back to staff for further economic and environmental analysis. Many of the assumptions used by staff in working up this regulation can no longer be deemed valid. Both the U.S. and world economic status has dramatically changed the goods movement landscape. While much effort has been expended in

---

Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks, (4)Rulemaking on ACTM for In-Use Diesel-Fueled Transport Refrigeration Unit [TRUs], (5)Rulemaking on proposed adoption of Regulation to Reduce Greenhouse Gas Emissions From Heavy-Duty Vehicles, (6)Rulemaking on proposed adoption of Regulation to Reduce Emissions of Diesel Particulate Matter and Other Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles

crafting this regulation, more thorough analysis needs to be done before saddling motor carriers and owner-operators with another regulation that does not live up to the hypothesized benefits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Johnston', with a long horizontal stroke at the end.

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