



Owner-Operator Independent Drivers Association

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May 26, 2022

Liane M. Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, California 95814

Re: Comments of Owner-Operator Independent Drivers Association on Heavy-Duty Inspection and Maintenance Regulation (HD I/M)

Dear Ms. Randolph:

I am writing on behalf of the Owner-Operator Independent Drivers Association (OOIDA) to comment on CARB's HD I/M Regulation.

OOIDA is the nation's largest trade association representing the interests of independent owner-operators, small-business motor carriers, and professional truck drivers. OOIDA has over 150,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA is the leading advocate of single truck motor carriers, which represent nearly half of the total active motor carriers in the United States, and independent owner-operators, a critical component of today's motor carrier industry. OOIDA's mission is to promote and protect the interests of its members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation's highways.

On December 9, 2021, the CARB Board issued Resolution 21-29 which stated:

Increasing periodic testing frequency from two times (sic) year to four times per year for OBD-equipped vehicles at an appropriate time, and with due regard to initial program implementation experience, would enhance public health benefits and save more lives, while maintaining a streamlined and convenient testing method for owners of OBD-equipped vehicles.

Id. at 6. The Board directed the CARB Staff to multiply the testing requirements from two to four times a year, and to make its modified proposal available for a 15-day public comment period. *Id.* at 9. On May 11, 2022, CARB Staff issued a "Notice of Public Availability of Modified Text and Availability of Additional Documents and Information," in which it invited

comments on the new text and further comments on additional documents it has added to the record. *Id.* at 2, 20 (“In the interest of completeness and in accordance with Government Code section 11347.1, subdivision (a), staff has also added to the rulemaking record and invites comments on the following additional documents....”).

First, OOIDA objects to the multiplication of testing from two to four times a year. CARB has provided no explanation as to why interstate truckers, who drive comparatively fewer miles on California highways than California-based truckers, should be required to expend the additional direct, administrative, and overhead costs for such testing. Doubling the testing requirements—when the testing methods themselves have not been demonstrated to be reliable, efficient, and economical—is patently unreasonable. Notably, the first commenter on the modified regulation, Douglas Grote, who is a certified opacity tester, stated:

I am a certified opacity tester and know first hand the manufacture[r]s do not have the ability yet to test only the emissions required per the regulation from OBD. I am also aware the DMV does not have capability to accept downloads from vehicles over 14,000 GVWR. *** ***The proposal to increase testing from 2 times in 2023 and then 4 times per year after is ridiculous and will require owners to have their vehicles tested more than actually working.***

See Comment 1 for Proposed Heavy-Duty Inspection and Maintenance Regulation (hdim2021)-15-1 (emphasis added). Furthermore, CARB *appears* to have doubled the testing requirement based solely upon the conclusory rationale provided by one commenter, without publishing an updated cost impact analysis of its own. *See* Comment 5, November 29, 2021, Comments of Coalition for Clean Air:

Quarterly Data Submission Would Save More Lives and Reduce More Air Pollution Owners of vehicles equipped with on-board diagnostics (OBD) should be required to submit emissions data quarterly. Allowing a longer gap between submissions, as the proposal allows, could result in excess emissions continuing for many months, which is unacceptable in a state where the vast majority of residents are unable to breathe clean air. In fact, CARB staff estimate that requiring quarterly submission would add 5 per cent to the emission reductions achieved by the rule, and we cannot afford to leave those several tons per day of NOx reductions on the table. The submission requirement for OBD-equipped trucks is quick and simple, not at all burdensome. Stepping up the frequency of data submission from twice to four times a year would save hundreds of additional lives.

It is difficult to comprehend how a single commenter’s speculative remarks could cause CARB to second-guess its own prior cost impact analysis concluding that biannual testing was sufficient. Moreover, the assertion that the requirement is “quick and simple, not at all burdensome” is belied by CARB’s own data and the comments of others who are much more familiar with the technology in question. *See, e.g.*, Comment 9, from the Truck and Engine Manufacturers Association:

As EMA has previously commented to CARB Staff, there will be very little, if any, time for a full prove-out of the remote onboard diagnostic (OBD) devices that are

proposed to be a key element of the HD I/M program. There are many questions and concerns regarding the feasibility, compatibility, and readiness of devices, especially given the short amount of time between planned issuance of the final HD I/M program, device manufacturers' field testing, and the anticipated program implementation. Most importantly, any device that CARB approves for use must not have any impact on heavy-duty vehicle OBD system normal operations and communication. The current timeline will not provide adequate leadtime for device manufacturers and vehicle manufacturers alike to ensure the feasibility and compatibility of the technology, or to protect against any unintended impacts to critical vehicle systems.

In addition, if the Coalition for Clean Air comment proposing increased frequency of testing has any factual basis, it is the suggestion that the emissions equipment required by HD I/M lacks reliability, *i.e.*, as confirmed by the comments of the Truck and Engine Manufacturers Association. The procedure proposed by the comment surmises that at least four times a year such equipment might be expected to fail to meet CARB's standards. Whether such failures are attributable to the truck's emissions—or to the testing equipment itself—truck owners will be required to pay for even more frequent maintenance (and the accompanying loss of revenue when the truck is in the shop) than acknowledged by CARB in the rulemaking.

These burdens are unreasonably multiplied when applied to interstate truckers who only intermittently travel to California but face the full brunt of this and other California regulatory requirements, which are not applied by many (or any) other States in the country. The inordinate burdens these testing requirements place on interstate owner-operators constitute a clear violation of the Commerce Clause of the U.S. Constitution. “[A]lthough a state has power to regulate commercial matters of local concern, a state’s regulations violate the Commerce Clause if they are discriminatory in nature or impose an undue burden on interstate commerce.”¹ “[T]he purpose of the Commerce Clause is to protect the nation against economic Balkanization.”² If California can impose such burdensome standards for entering its borders, “so can every other state, and there is no guarantee that the standards will be similar.”³

Second, CARB does not adequately explain the totality of the costs and burdens its regulations impose on owner-operators. It is noteworthy that in one of the documents CARB Staff has added to the record, there is scant attention paid to the economic pinch owner-operators feel as a result of unusual State taxes and costs like those imposed by the HD I/M Regulation. In the

¹ *Shamrock Farms Co. v. Veneman*, 146 F.3d 1177, 1179 (9th Cir. 1998) (citations and internal quotations omitted).

² *Pac. Nw. Venison Producers v. Smitch*, 20 F.3d 1008, 1015 (9th Cir. 1994).

³ *Union Pac. R.R. v. Cal. Pub. Utils. Comm’n*, 346 F.3d 851, 871 (9th Cir. 2003). In *Alamo Recycling, LLC v. Anheuser Busch InBev Worldwide, Inc.*, 239 Cal. App. 4th 983, 998 (2015), the California Court of Appeal embraced these same principles in concluding that an action to enjoin defendants from selling in other states beverage containers bearing California redemption markings violated the Commerce Clause, concluding “[s]uch cross-border commercial compulsion is precisely the type of extraterritorial effect that the Commerce Clause forbids.”

article CARB has added to the record written by Adam Hoeksema, “How Much Does An Owner Operator Truck Driver Make | Learn If A Trucking Business Is Profitable With A Trucking Accounting Spreadsheet” ProjectionHub, November 14, 2016 (attached), the author states that the average truck driver salary is expected to be \$140,000, and that after assumed expenses, the trucker’s take home salary is \$52,000. The essential problem with the article’s description of variable and fixed expenses is that it does not seem to take into account many of the extraordinary and excessive costs imposed by California. Here, the article generally concludes that a trucker should assume a monthly expense of \$350 for “permits and licenses,” but it does not identify aberrational costs like those the HD I/M Regulation imposes which deplete a trucker’s take home pay.

Interstate truckers face a panoply of atypical California regulations, taxes, and fees which are not acknowledged in the article, nor by CARB, in identifying the economic impact of its regulations. For example, interstate truckers have previously been required to spend many thousands of dollars under the California Truck and Bus regulation. Other unusual assessments, like the \$30 CARB “compliance” tax under “SB-210 Heavy-Duty Vehicle Inspection and Maintenance Program,” are also conspicuously absent from these assumptions. *Id.* (“44154(a)(1) The state board shall assess a compliance fee, not to exceed thirty dollars (\$30), to fund the reasonable costs of implementing the program.”).

Moreover, neither the CARB Board, nor the CARB Staff, have yet to provide a legally sufficient response to concerns raised in the comments that the CARB tax violates the Commerce Clause because it is not apportioned or reduced for interstate truckers who drive comparatively fewer miles on California highways than California-based truckers. *See, e.g.*, Comment 4, November 29, 2021 Comments by ATA/CTA. Just like the flat non-prorated fees that were held unconstitutional in *American Trucking Ass’ns, Inc. v. Scheiner*, 483 U.S. 266 (1987), and the flat permit and decal fees in *Owner-Operator Independent Drivers Ass’n v. N.Y. State Dept. of Taxation and Finance*, 34 N.Y.S.3d 332, 337 (N.Y. Sup. Ct. 2016) (“*NYHUT*”), the flat \$30 HD I/M fee violates the Commerce Clause of the U.S. Constitution. *Scheiner* held that such flat fees “are plainly discriminatory” against interstate commerce because “[i]n practical effect” local users will routinely obtain a greater benefit, in cost-per-mile terms, than out-of-state users. 483 U.S. at 286. Here too, the proposed \$30 flat fee would have “a forbidden impact on interstate commerce because it exerts an inexorable hydraulic pressure on interstate businesses to ply their trade within [California] rather than ‘among the several States.’” *Id.* at 286-87.⁴

Finally, we note that CARB has also failed to provide a legally adequate response to comments establishing that federal preemption principles prohibit it from requiring In-Cab Certificates of Compliance. *See* ATA/CTA Comment 4. Section 2196(e) of the proposed regulation requires drivers to carry certificates of compliance in the cab of their truck: “Upon request from CARB staff, inspectors, or peace officers, the vehicle operator shall present a valid compliance certificate.” *See also* § 2196(a)(1) (“the vehicle owner shall [o]btain a valid

⁴ As noted in CARB’s EMFAC 2021 Technical Document, “Using calendar years 2008 through 2018 International Fuel Tax Agreement (IFTA) mileage data, the historical ratio of VMT for out-of-state trucks as compared to VMT by CA IRP trucks was updated ... to 0.374 for T7 Neighboring Out-of-state truck (NOOS) for EMFAC2021.”

compliance certificate ... and be able to present the certificate during inspections”); § 2198.1(a)(2) (“[t]he driver of a heavy-duty vehicle selected to undergo the in-person field inspection shall ... [s]how proof of ... compliance certificate to the inspector or officer upon request”). This requirement is contrary to federal law which preempts any state law or regulation “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.” 49 U.S.C. §14506(a).

Thank you for your consideration of OOIDA’s comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Spencer", with a long horizontal flourish extending to the right.

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.

How Much Does An Owner Operator Truck Driver Make | Learn If A Trucking Business Is Profitable With A Trucking Accounting Spreadsheet

November 14, 2016 by [Adam Hoeksema](#) + [Leave a Comment](#)

How Much Do Trucking Companies Make? Uncover The Average Owner Operator Truck Driver Salary



A Truck Driver is the most common job in 29 of the 50 states in the United States according to [a report released by NPR](#). So if you are thinking “how much do trucking companies make?” or you are already a driver and are considering becoming an owner operator then you need to know the average owner operator truck driver salary. This can be done easily with a trucking income and expense excel spreadsheet.

There are differing opinions as to whether it is more profitable to drive for a company as an employee and simply drive their truck, OR is it best for you to own your own truck and work for yourself. The good news is that you can simply calculate what the best option for you will be with our [truck driver owner operator spreadsheet](#) for financial projections.

Calculating The Average Owner Operator Truck Driver Salary

So let’s assume that you own your own truck and you pick up contract work. According to this helpful [article by TruckDriverSalary.com](#) the average owner operator truck driver salary is expected to be \$140,000 in revenue per year. Let’s assume you drive 5 days per week, 50 weeks per year, that is 250 days of work. So to earn \$140,000 in revenue in 250 working days, you need to make \$560 per day on average. So the question at this point is, based on the work you have lined up, does \$560 per day seem reasonable?

On the revenue page you will be able to add your monthly expected sales. \$140,000 divided by 12 months is \$11,667 per month.

Trucking Profit & Loss Spreadsheet To Calculate Expenses

Now as long as you have steady work, the revenue side of your projections should be pretty easy to estimate, but the expenses can be a lot more difficult. There are a number of variables when it comes to expenses, I will walk you through most of the major expenses and how to estimate them below:

Variable Costs for a Trucking Business

Fuel – Your fuel cost will probably be your largest monthly expense. To calculate your monthly expected fuel cost you should follow this equation – Number of miles driven per day X 21 days per month driven = Total miles driven per month. Then take Total miles drive per month divided by the number of miles per gallon that your truck gets X the price per gallon of gas.

So as an example, let's say you drive 500 miles per day X 21 days per month = 10,500 miles. Then assume your truck gets 7 miles per gallon so 10,500 divided by 7 miles per gallon is 1,500 gallons of fuel per month at \$2 per gallon = \$3,000 per month in fuel cost.

Truck Maintenance – According to this [truck driver owner operator spreadsheet](#) the average maintenance cost per mile for a semi is .14 cents. So $10,500 \times .14 = \$1,470$ per month.

Travel – If you are doing long haul driving and have lodging expenses, or are sleeping in your truck, RTS Financial estimates about \$400 per month in lodging and meals.

Fixed Costs for a Trucking Business

There are a number of fixed costs for a trucking business as well. You can see the expenses that I added as a default for a 1 person owner operator trucking business:

TRUCKING

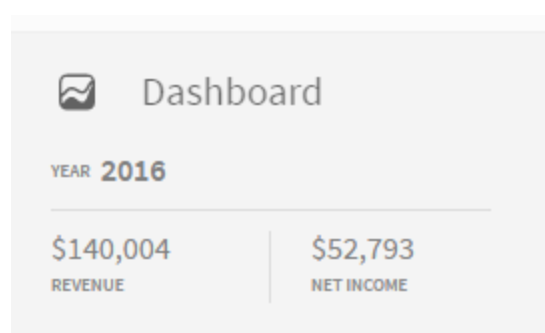
	JAN	FEB	MAR
Fuel	3000.00	3000.00	3000.00
Truck Maintenance	1470.00	1470.00	1470.00
Accounting	100.00	100.00	100.00
Insurance	600.00	600.00	600.00
Legal And Professional	0	0	0
Meals And Entertainment	200.00	200.00	200.00
Parking Fees And Tolls	275.00	275.00	275.00
Permits And Licenses	350.00	350.00	350.00
Telephone	100.00	100.00	100.00
Salaries	0	0	0
Travel	200.00	200.00	200.00
TOTAL (\$)	6295	6295	6295

[+ ADD EXPENSE](#)

I did not add any salary expense because I am assuming that you are the owner and you will simply keep all of the profits.

Is a Trucking Business Profitable?

So when I used all of these assumptions above it turns out that the average owner operator truck driver salary is \$52,000. You can find out [how to start a trucking business with one truck](#) here.



That might sound pretty good, or maybe not so good depending on your current job, but the important thing to remember is that just because your profit is \$52,793, we need to think about how much cash you can actually take home.

Assets Edit

Asset Name

Is the asset pre-existing? 

 NO YES

Initial Value

Number of years the asset will last (useful life)

years

Value at the end of the useful life

Month Purchased

or [Cancel](#)

The truck is going to depreciate which is a non cash expense, but you will also have loan payments and the principal portion of your loan payment is not an expense, so when it is all said and done the question is:

How Much Does An Owner Operator Truck Driver Make In Cash Annually?

Based on this example, we are projecting that your average owner operator truck driver salary is \$55,163 per year.

So the question for you is, can you do better as an employee of a trucking company? Maybe you can take home \$50,000 as an employee, but you don't have to worry about getting any work lined up or any of the other stressful issues that come with owning a business. Whether the \$50,000 is worth the effort or not is up to you but now you have the information you need to make a sound decision before you seek to become an owner operator truck driver.

Contact us at support@projectionhub.com for further questions or pick an [excel financial projection template](#) from our collection and get started on your own project.

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