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Subject: ATA's Comments on Draft Report to Congress

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John:

Please accept the attached comments on behalf of the American Trucking Associations, Inc., on OMB's "Draft Report to Congress on the Costs and Benefits of Federal Regulations," 67 Federal Register 15014 (March 28, 2002). A separate copy of our comments will be sent via facsimile to your attention. Once again, thank you for the opportunity to submit our comments.

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*Before the*  
United States Office of Management and Budget

Comments of  
AMERICAN TRUCKING ASSOCIATIONS, INC.



***Driving Trucking's Success***

*on the*  
Draft Report to Congress on the Costs and Benefits of  
Federal Regulations:  
67 Federal Register 15014 (March 28, 2002)

May 28, 2002

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## INTRODUCTION

The American Trucking Associations, Inc. (“ATA”) submits the following comments in response to the United States Office of Management and Budget’s (“OMB”) notice of its Draft Report to Congress published in the Federal Register on March 28, 2002, entitled “Draft Report to Congress on the Costs and Benefits of Federal Regulations,” 67 Fed. Reg. 15014 (2002) (the “Draft Report”).

ATA is the trade association of the American trucking industry. As the national representative of the trucking industry, ATA is vitally interested in matters affecting the nation’s trucking fleet. This is especially true in regards to EPA’s development and use of costs and benefits analyses used in developing EPA’s 2007 diesel fuel and engine regulations.

## SUMMARY OF COMMENTS

The membership of ATA strongly supports the goal of ensuring that the true costs and benefits of regulations are carefully developed, analyzed, and weighed before the federal government issues proposed regulations. Often costs and benefits are not fully considered in the decision-making process and such estimates are made in a vacuum by federal agencies without input from the regulated community. ATA has particular concern with the cost and benefit information relied upon by EPA in developing the rule referenced in OMB’s Draft Report known as the “Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel **Sulfur** Control Requirements” (the “Rule”). Under the Rule, new diesel fuel standards lowering the sulfur content in diesel fuel to 15 parts per million will be phased in

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<sup>i</sup> 66 Fed. Reg. 5002 (2001).

beginning in 2006 through 2010. Likewise, new diesel engine standards lowering oxides of nitrogen ("NOx") and particulate matter ("PM") will begin to take effect in 2007.

A cost-benefit analysis was not included in either the Proposed Rule or the Proposed Regulatory Impact Analysis.<sup>2</sup> EPA did not release a copy of its cost-benefit analysis until publication of the Final Rule. Thus, commentors were not afforded time to conduct a thorough review of EPA's cost-benefit analysis before the end of the public comment period on the Proposed Rule.

A cost-benefit analysis is of "central relevance" to any rulemaking. This is especially true regarding the analysis of this significant Rule. The Rule requires truck manufacturers, engine makers, and refiners to make substantial investments if they wish to remain a participant in their respective markets. After the Rule was published in the Federal Register, EPA was required to provide stakeholders with specified substantive changes made by OMB's Office of Information and Regulatory Affairs.<sup>3</sup> More specifically, EPA was required to make available to the public the Agency's cost-benefit assessment and analysis. As noted above, the Agency's cost-benefit analysis was not provided to stakeholders in time to offer substantive input. Affording stakeholders sufficient time to thoroughly analyze and comment on the Agency's cost-benefit approach could result in changes in some aspects of the program adopted by the Agency, including the engine technology implementation dates, the distribution system needed to deliver the sulfur levels established for diesel fuel, and the effective dates for implementation of the Rule.

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<sup>2</sup> 65 FR 35500 (2000).

<sup>3</sup> Executive Order 12866, "Regulatory Planning and Review," September 30, 1993.

ATA has been engaged throughout the rulemaking process including the notice and comment period, stakeholder meetings, and with EPA itself. ATA therefore wishes to reiterate its previous positions on the record as questioning the adequacy of EPA's costs and benefits associated with this critical Rule.

## COMMENTS AND ANALYSIS

### I. Background to ATA's Comments

#### A. ATA's Representation of the National Trucking Industry

ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over **34,000** companies and every type and class of motor carrier operation. As such, it effectively represents the interests of the trucking industry in the United States.

ATA's longstanding role of representing the interests of the trucking industry is all the more significant in this instance because the Rule will have a dramatic impact on the trucking industry. In terms of scope, the highway diesel fuel and heavy-duty engines that **are** the subject of the Rule are used almost exclusively by members of the trucking industry. In terms of impact, the Rule will impose requirements that potentially affect every aspect of the trucking business, including capital costs of acquisition, the availability and cost of fuel for operations, equipment life, maintenance requirements and regulatory compliance,

## **B. Overview of the Trucking Industry in the United States**

The trucking industry is composed of both large national enterprises as well as a host of small businesses whose livelihood can be dramatically impacted by new regulatory requirements. According to the Department of Transportation, almost 50% of motor carriers have only one truck, and fully 95% of motor carriers (nearly 395,000 in number) have 20 or fewer trucks.<sup>4</sup>

The trucking industry is a major force in the United States economy,<sup>5</sup> employing 9.7 million people in jobs that directly relate to trucking.<sup>6</sup> Trucking accounts for 86 cents of every dollar collected for freight transportation in the U.S., and trucking hauls practically every type and kind of product and raw material used in the manufacturing and retail sectors of the economy.

Moreover, as the predominant mode by which U.S. consumers receive virtually all of their goods, the trucking industry ensures the availability and cost-effective distribution of finished goods and raw materials throughout all segments of the economy. In this regard, over 70 percent of all communities in the United States rely *exclusively* on trucks to deliver all of their fuel, clothing, medicine, and other consumer goods. In sum, the nation's trucking industry provides the essential transportation resources,

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<sup>4</sup> Federal Motor Carrier Safety Administration, Docket Item FMCSA 1997-2350-954, Preliminary Regulatory Evaluation (Truck Driver Hours of Service), page 60, paragraph 3.

<sup>5</sup> The importance of the trucking industry to the nation's economic well-being has been documented previously in the context of EPA's September 16, 1997 Regulatory Impact Analysis accompanying the final rule establishing emissions standards for Heavy Duty Engines. See 62 Fed. Reg. 54694 (October 21, 1997).

<sup>6</sup> American Trucking Trends: The Essential Guide to Trucking Facts and Figures (2000).

infrastructure and services that are necessary to sustain the growing economy that benefits all Americans.

## 11. Comments

### A. EPA's Annualized Costs Under the 2006/2007 Diesel Rule are Grossly Underestimated

EPA estimated that the Rule would result in \$2.4 billion in costs (annualized in 2001 dollars). EPA's analysis only begins to address the costs that will be borne by motor carriers and the communities they serve. EPA's figures are stark enough, estimating that costs associated with new trucks will rise by more than \$6,000 and the price of diesel fuel will go up by more than four cents per gallon as a result of the Rule. These estimates, however, do not tell the whole story.<sup>7</sup>

EPA estimates that the increase in cost of a new truck (engine, emission controls) as a result of the Rule will be \$2,768, and the increase in life-cycle operating cost of a new truck will be \$3,362.<sup>8</sup> Thus, the total cost per truck will be \$6,230, according to EPA's estimates.<sup>9</sup> In addition, EPA estimates that fuel costs will increase four cents per gallon.<sup>10</sup> According to the American Petroleum Institute ("API"), increased diesel fuel

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<sup>7</sup> Indeed, EPA has not accurately assessed the costs of producing very low sulfur fuel itself. According to industry sources, the 15 ppm sulfur cap "will be substantially more expensive than EPA claims. EPA based its cost estimate on expectations that existing diesel hydrotreating could be modified to produce adequate volumes of 15 parts per million diesel fuel, assuming that improved catalysts would be available; but such catalyst improvements have not been demonstrated and are beyond the realm of reasonable expectation." Medley Testimony, Transcript of Atlanta hearing, at 15:3-11.

<sup>8</sup> 65 Fed. Reg. at 35490, Table V.A-1.

<sup>9</sup> *Id.*

<sup>10</sup> 65 Fed. Reg. at 35493.



prices will add an average of \$2,600 to each trucker's annual operating costs." In addition, exhaust gas recirculation technology, which is being developed to reduce NOx emission levels, will likely result in a fuel economy loss of roughly 3-5 percent. However, required technological "fixes" for NOx emissions after-treatment are still admittedly on the drawing board and not in any actual fleet use. Thus, significant maintenance and cost issues associated with the standards are simply not capable of being evaluated and addressed (or perhaps even identified) at this time.<sup>12</sup>

In addition, motor carriers that supply fuel for fleets will have to go to great lengths to ensure the purity of this very low sulfur diesel fuel supply and comply with the Rule. "Current practices which are critical to minimizing contamination and which may need to be more carefully performed include: Properly leveling tank trucks to ensure that they can drain completely of high-sulfur product prior to being filled with the proposed diesel fuel[;] allowing sufficient time for transport tanks to drain off high-sulfur product prior to being filled with the proposed diesel fuel[;] [and] purging delivery hoses of higher sulfur product prior to their use to deliver the proposed diesel fuel. . . . [S]uch practices would need to be followed each and every time with adequate care. . . ."<sup>13</sup>

The Rule presents a rather optimistic view, assuming that such efforts will be virtually cost-free: "We believe that, although tank-truck operators may need to more carefully observe current industry practices used to limit product contamination, this will

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<sup>11</sup> See Testimony of Jim Williams, Products Manager, American Petroleum Institute, Transcript of Atlanta hearing, at 164:8-10.

<sup>12</sup> The problematic nature of these cost considerations is more fully discussed at Section V, *infra*.

<sup>13</sup> 65 Fed. Reg. at 35486.

not result in a significant increase in costs.”<sup>14</sup> Such assumptions by EPA are unrealistic and unsupported by the record. Anything that causes tank truck operators to change operating practices and increase paperwork will result in higher costs. Moreover, this aspect of the Rule will be felt most acutely by motor carriers with small fleets who cannot spread these costs among numerous revenue-generating units.

Furthermore, it is a simple matter of economics that, given the demand for diesel fuel, a decrease in diesel fuel supply will cause fuel prices to increase. As discussed above,<sup>15</sup> the American Petroleum Institute (API) has estimated that the implementation of EPA-enforced very low sulfur diesel fuel standards will cause refiners to decrease the production of diesel fuel for highway vehicles by about 30% from current levels. Using a statistical regression model to estimate the impact of such a reduction in distillate on the national level, ATA has found that a 30% decrease in the highway diesel fuel supply would cause a 25.1% increase in diesel prices over 12 months.<sup>16</sup>

Even assuming, *arguendo*, that API has overestimated the reduction in output, ATA’s model shows that a 15% reduction in supply would cause a 13.5% increase in the retail price of diesel fuel, and an output reduction of only 5% would cause a **6.3%** retail price rise.” In sum, ATA estimates that the increase in retail diesel fuel prices will cost

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<sup>14</sup> 65 Fed. Reg. at 35496.

<sup>15</sup> See Section II.B, *supra*.

<sup>16</sup> The model assumes that lower production progressively diminishes distillate inventories, resulting in a decrease in the highway diesel fuel supply of 30% over 12 months.

<sup>17</sup> The analysis above does not include an additional 12-cent per gallon increase in production costs that API predicts very low sulfur technology will cause.

the trucking industry in excess of \$2 billion just in the first year that the proposed standards take effect.

Moreover, these figures do not reflect additional significant upward price pressures that will be occasioned by potential disruptions and capacity shortfalls in the distribution system. As seen with reformulated gas prices in the Midwest,<sup>18</sup> EPA's cost estimates often bear little relation to the price end-users ultimately experience in the market.

**B. EPA's 2004 Heavy-Duty Diesel Engine Emission Rule Should Serve as Notice to EPA as to the True Costs Associated with the 2006/2007 Diesel Rule**

Federal agencies have a tendency to calculate cost-benefit figures that are skewed towards a targeted, predetermined result. In addition, original cost and benefit estimates often *vary* significantly from the actual costs and benefits recognized in the actual implementation of a rule. A stellar example of miscalculated costs and benefits can be found by looking at EPA's emission standards for Model Year 2004 through Model Year 2006 heavy heavy-duty class diesel engines ("2004 Rule").<sup>19</sup> Following an October 29, 1999 proposal to reaffirm the appropriateness of the 2004 Rule, EPA issued an October 2000 final rulemaking finding that the 2004 non-methane hydrocarbons ("NMHC") + NOx standard for heavy-duty diesel engines (HDDEs) was technologically feasible, cost-effective, and appropriate under the Clean Air Act. On January 16, 2002, EPA issued a

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<sup>18</sup> See Section III.D, *infra*.

<sup>19</sup> 65 Fed. Reg. 59,896 (2000).

Non-Conformance Penalty Proposal ("NCP") that essentially reexamined the costs associated with the 2004 Rule.<sup>20</sup>

Comparing information contained in the NCP proposal and its original docket (Docket No. A-2001-30) to the information used to reaffirm the 2004 Rule revealed that the economic impacts of regulations would be considerably higher than originally projected. Specifically, the 2004 Rule estimated an \$879 life cycle cost for 2004 discounted to present value. Based on the costs identified in the NCP, EPA assessed the average incremental cost per engine in 2004 to be \$8,940 - more than an order of magnitude higher than the projection contained in the 2004 Rule. EPA estimates the 90<sup>th</sup> percentile incremental cost to be \$14,790.

Similarly, whereas the 2004 Rule estimated the cost-effectiveness in 2004 would be \$272 per ton, the NCP estimates resulted in an average cost effectiveness per engine in 2004 of \$3,051 - again more than an order of magnitude higher. With regards to fuel economy, the 2004 Rule identified no impacts, while the NCP estimated that fuel economy will degrade by 2.5 to 4.0 percent, resulting in a life-cycle fuel cost discounted to present value in the range of \$3,620 to \$7,130.

This example is just one of many examples which serves to illustrate just how far off economic impact analyses can stray. A regulation's economic impact may be grossly underestimated yet the real costs of regulations are never truly recognized until implementation of the rule commences. At the time of rule implementation, cost-benefit analysis plays no further role in the regulatory process. There are no mechanisms in place to rectify miscalculations and either under- or over-estimations. Ultimately,

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<sup>20</sup> 62 Fed. Reg. 2,159 (2002).

businesses and consumers bear the monetary costs of regulations. Minor economic missteps at the earliest stages in the rulemaking process can lead to devastating results in the end.

### **CONCLUSION**

A cost-benefit analysis is of "central relevance" to any rulemaking. OMB should be aware that any costs and benefits associated with EPA's 2006/2007 Diesel Rule were not reviewed by interested stakeholders prior to the final rule and will likely change dramatically between now and the Rule's 2006/2007 implementation dates. The trucking industry is suspect of EPA's low cost estimates and has relayed these concerns to EPA both verbally and in writing during the notice and comment period. ATA requests OMB ask **EPA** to revisit its cost-benefit estimates and work closely with stakeholders to ensure the Rule's implementation is practical, timely, and feasible.

Respectfully submitted,

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