BEFORE THE CALIFORNIA AIR RESOURCES BOARD

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

IN RESPONSE TO A NOTICE OF PUBLIC HEARING AND
REQUEST FOR PUBLIC COMMENTS

[on-off-road10]

Proposed Modifications to the Regulation to Reduce Greenhouse Gas Emissions
From Heavy-Duty Vehicles

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**BEFORE THE**

**CALIFORNIA AIR RESOURCES BOARD**

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## INTRODUCTION

On October 28, 2010, the California Air Resources Board ("CARB") issued a Notice advising the public that it would consider proposed amendments to the Regulation to Reduce Emissions **of** Diesel Particulate Matter, Oxides of Nitrogen, and Other Criteria Pollutants From In-use On-road Diesel-fueled Vehicles ("Truck and Bus Regulation") the Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Measure ("GHG Regulation" or "Regulation"), and the Drayage Truck Regulation, at a public hearing beginning December 16, 2010, and would accept written comments regarding the proposed amendments until the day before the hearing. OOIDA hereby submits its comments addressing CARB's proposed modifications to the GHG Regulation.

In December of 2008, the CARB adopted the GHG Regulation requiring 2011 model year and newer tractors that pull 53 foot and longer box type trailers to be U.S. Environmental Protection Agency ("EPA") SmartWay certified and pre-2011 model year tractors to use Smart Way verified tires. The GHG Regulation also required 53 foot or longer box type trailers to be either EPA SmartWay certified or retrofitted with SmartWay approved technologies (i.e., low rolling resistance tires and aerodynamic devices). Responding, in large part, to concerns raised by motor carriers whose operations have suffered due to the ongoing severe economic downturn that started shortly after this Regulation was adopted, CARB began considering amendments to the GHG Regulation that would provide delayed compliance and registration schedules, plus additional reporting options. The GHG Regulation also included provisions that exempt local-

haul tractors, local-haul trailers, short-haul tractors and the trailers they pull, and drayage tractors and the trailers they pull, from some or all of the compliance requirements. These exemptions, in their original form and as expanded by the proposed modifications, effectively exclude from coverage a large majority of in-state trucks that would otherwise be subject to the Regulation. Consequently, this Regulation applies predominantly to motor carriers engaged in interstate commerce who may only infrequently make trips into California.

OOIDA is a not-for-profit trade association incorporated in 1973 in Missouri with its principal place of business located at 1 NW OOIDA Drive, Grain Valley, Missouri 64029. The nearly 153,000 owner-operators, small-business motor carriers, and professional truck drivers ("small-business truckers") that make up OOIDA's membership, including more than 5,000 members in California alone, operate approximately 200,000 trucks in all 50 states and Canada. OOIDA is the largest international trade association representing the interests of these small-business truckers on all issues affecting their operations. OOIDA actively promotes their views in a broad variety of forums – including federal, state, and provincial agencies, legislatures, courts, others trade association, and private businesses – and committees on the local, state, national, and international level.

Small-business truckers, like those belonging to OOIDA, have a significant presence in the trucking industry. Indeed, one-truck motor carriers represent nearly half of all active motor carriers operating in the United States while approximately 96 percent of active motor carriers operate 20 or fewer trucks. *See* American Trucking Associations, Economic and Group Statistics 2004. This segment of the goods movement industry has been hit particularly hard by the economic contraction, with historically low profit margins and levels of compensation that have left them struggling to survive. The multiple CARB regulatory requirements have added to

the difficulties of those who transport goods to and from California. In some cases, these small-business truckers must comply with CARB's Truck and Bus Regulation, Transportation Refrigeration Unit Regulation, and/or Drayage Truck Regulation, in addition to the GHG Regulation.

Because compliance with the GHG Regulation imposes a significant financial burden on the large number of OOIDA's members who are primarily engaged in interstate commerce, which sometimes takes them to and from California, generally on an intermittent and irregular basis, OOIDA appreciates CARB's consideration of amendments to the GHG Regulation that would delay existing compliance schedules. However, the Association also believes that the Regulation has unfairly and unconstitutionally focused its efforts to reduce the emission of greenhouse gases on out-of-state motor carriers who contribute less to the problem than exempted in-state motor carriers because they operate significantly fewer miles and burn less fuel within California. This inequity, which violates the Interstate Commerce Clause, needs to be addressed by CARB staff in this proceeding.

Before CARB addresses this inequality issue, there is a preliminary matter that raises serious doubts about the continuing need for or propriety of California's GHG Regulation.[1] Although California initially began the process of targeting heavy-duty trucks for greenhouse gas regulation, the federal government is now engaged. Because of the complexity of freight movement in the United States, and the nationwide scope and nature of the problem these emissions create, this effort properly should reside in Washington, D.C., not Sacramento.

[1] OOIDA also questions CARB's authority to regulate trailers in addition to tractors. Trailers are neither motor vehicles nor motor vehicle engines, the only two permissible mobile source points of emissions that CARB is allowed to regulate with a specific waiver under the Clean Air Act issued by EPA. *See* 42 U.S.C. §7543. Indeed, trailers are not even a "mobile source," since they have no independent means of propulsion and do not by themselves generate any emissions of greenhouse gases.

Accordingly, at the President's direction, EPA and the National Highway Traffic Safety Administration ("NHTSA") are taking coordinated steps to enable the production of a new generation of clean vehicles with better fuel efficiency and reduced greenhouse gas emissions. More specifically, EPA and NHTSA have formally announced a joint rulemaking that will culminate with the adoption of comprehensive federal regulations governing greenhouse gas emissions from heavy-duty engines and vehicles. *See* 75 Fed. Reg. 74152 (Nov. 30, 2010). Under the EPA/NHTSA proposal, regulated entities will begin to comply by model year 2014, and fuel consumption standards would become mandatory by model year 2016. *Id*. Since the federal rulemaking, in many respects, covers the same subjects as CARB's GHG regulation, OOIDA believes CARB should defer or sunset the relevant parts of its GHG Regulation that overlap with federal efforts.

## DISCUSSION

### I. The GHG Regulation Contains Exemptions That Strongly Favor In-State Trucking Interests.

The stated purpose of the GHG Regulation is to "reduce greenhouse gas emissions from heavy-duty (HD) tractors and 53-foot or longer box-type semitrailers (trailers) that transport freight on a highway within California." *See* GHG Regulation, § 95300.[2] To achieve this goal, the Regulation purports to apply to owners and drivers of the regulated tractors and/or trailers "when driven on a highway within California, as well as motor carriers, California-based brokers, and California-based shippers that use, or cause to be used, the [covered equipment]. *Id*. at § 95301(a). Thus, the Regulation appears to apply broadly to the covered equipment whenever it enters California.

[2] Unless specifically stated otherwise, all citations to the GHG Regulation refer to the version of the Regulation with proposed amendments.

These seemingly broad statements of purpose and applicability, however, are gutted by exemptions that effectively exclude a significant number of motor carriers who operate only in California from the scope of the Regulation. Specifically, the Regulation does not apply to:

(1) local-haul trailers and the tractors pulling local-haul trailers,
(2) local-haul tractors and the trailers pulled by local-haul tractors,
(3) short-haul tractors and the trailers pulled by short-haul tractors, and
(4) drayage tractors and the trailers pulled by drayage tractors.

*Id*. at §§ 95301(c) & 95305(a)-(d). Local-haul tractors and trailers are defined as those that travel exclusively within a 100-mile radius of their local-haul base. *Id*. at §95302(34)-(36). A short-haul tractor is defined as a heavy-duty tractor that travels less than 50,000 miles per year, and, as added in newly proposed language, the mileage limit includes "all miles accrued both inside and outside of California." *Id*. at §95302(52). Finally, drayage tractors are those that operate on or through ports or intermodal railyards to load or unload freight. *Id*. at § 95302(5). Clearly, the local-haul and drayage exemptions are directed at in-state truckers. The short-haul exemption, while not limited on its face to local interests, would in practice eliminate virtually all otherwise covered trucks and trailers that operate predominantly within the state or even regionally. Data collected by the International Registration Plan (IRP) – which is the mandatory vehicle registration program for commercial motor vehicles operating in interstate commerce including heavy-duty trucks – shows that California-based IRP-registered interstate motor carriers average 42,243 miles in California, an amount that might qualify them for the short-haul exemption when only their miles operated in California were factored in.

As a result, it is primarily motor carriers operating in interstate commerce that would actually be regulated. Indeed, CARB made it clear that was precisely its intent. As explained in CARB's press release accompanying adoption of both the Truck and Bus Regulation and the GHG Regulation in December, 2008:

> Also adopted today, the Heavy Duty Vehicle Greenhouse Gas Emission Reduction measure requires long-haul truckers to install fuel efficient tires and aerodynamic devices on their trailers that lower greenhouse gas emissions and improve fuel economy.

*See* www.arb.ca.gov/newsrel/nr121208.htm. In its December 12, 2008 Resolution 08-44 proposing adoption of the GHG Regulation, CARB also noted that "most long-haul heavy-duty trucks" are not using available technologies that improve fuel efficiency. Accordingly, it designed a set of rules aimed at those long-haul truckers, which did not contain any exemptions directed primarily to them. In these amendments, CARB has proposed a once annual three-day "Non-compliant Tractor Pass" that would be available to long-haul truckers but, as discussed at section III below, this exemption has been crafted in a way that renders it largely unusable.

The justification for the local and short-haul exemptions is fundamentally flawed. CARB has simply ignored the fact that the tens of thousands of in-state heavy-duty trucks being exempted from the Regulation, like their long-haul counterparts, for the most part also are not using the technologies that improve fuel efficiency. Further, a study performed for CARB placed accountability for only 30 percent of annual heavy-duty vehicle miles traveled in California on out-of-state trucks. *See Assessment of Out-of State Heavy Duty Truck Activity Trends in California*, UC Davis, Institute of Transportation Studies (2008). Obviously, any model justifying this Regulation must account for the in-state vehicles that are responsible for the bulk of the annual vehicle miles traveled inside California.

In addition, CARB exempts this wide swath of in-state heavy-duty vehicles on an assumption that they do not operate a sufficient amount of time at highway speeds to justify being required to meet the same stringent requirements placed on motor carriers operating in interstate commerce. *Staff Report: Initial Statement of Reasons for Proposed Rulemaking. Proposed Amendments to the Truck and Bus Regulation, the Drayage Truck Regulation, and the*

*Tractor-Trailer Greenhouse Gas Regulation* (Oct, 2010) ("SOR"), Appendix F, at p.1. While it is true that "the technologies required by the regulation are most effective at highway speeds. . .," there is no concrete evidence, as CARB contends, that the exempted tractors and trailers have "limited operation at highway speeds. . ." *Id*. So far as OOIDA is aware, CARB did not conduct any studies to demonstrate that local or short-haul tractors are not operating at highway speeds. That assumption was based upon pure conjecture about the nature of goods movement within California. But California has many highways with truck-only 55 mile-per-hour speed limits, located in urban, suburban, and rural areas. There is no logical reason to believe that these highways are not used on a regular basis by those same motor carriers operating heavy-duty vehicles driving less than 50,000 miles per year who qualify for the short-haul exemption as well as those going short distances from their urban local bases.

Finally, to the extent that the short and local-haul exemptions are also justified by their "limited overall annual mileage" (*see* SOR, Appendix F, at p.1), the California highway mileage accrued by exempt trucks will be higher for these exempted operations than for interstate long-haul motor carriers who put on relatively few miles in California. A cursory examination of that IRP data for 28 geographically scattered states shows that, with the exception of vehicles from states that border or are close to California, the average mileage in California is quite low and gets lower as the base state gets further away.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Alabama | 2,891 | Arizona | 32,143 | California | 42,243 | Delaware | 910 |
| Georgia | 2,388 | Idaho | 6,658 | Iowa | 1,956 | Illinois | 2,985 |
| Kentucky | 980 | Maryland | 424 | Mass. | 231 | Michigan | 2,016 |
| Montana | 5,184 | Mississippi | 4,718 | Missouri | 3,323 | Nebraska | 3,379 |
| Nevada | 8,568 | New Jersey | 2,160 | New Mexico | 4,446 | New York | 944 |
| N. Carolina | 2,177 | Oregon | 15,404 | Ohio | 2,005 | Oklahoma | 7,386 |
| S. Dakota | 3,344 | Tennessee | 3,092 | Vermont | 2,496 | Washington | 15,041 |

*Source:* IRP Estimated mileage/distance charts from each jurisdiction's respective motor carrier licensing division.

For all these reasons, the stated justifications for focusing nearly exclusively on long-haul motor carriers, while exempting many in-state motor carriers, simply do not support CARB's actions.

## II. The Interstate Commerce Act Prevents States From Discriminating Against Out-of-State Interests.

It is beyond dispute that a state and its various agencies may only regulate conduct within their own state's boundaries. Laws or regulations that impose liability on or otherwise regulate conduct occurring wholly outside of the state go beyond the inherent limits on the state's authority and may not be allowed to stand. *Healy v. Beer Inst. Inc.*, 491 U.S. 324, 336 (1989); *Edgar v. MITE Corp.,* 457 U.S. 624, 642-643 (1982). This is so regardless of whether or not the extraterritorial reach was intended. *Id*. This general principle is reflected in the Interstate Commerce Clause of the U.S. Constitution, which gives the federal government authority over commerce between the various states and, in so doing, relegates each of the states to the regulation of commerce within its own borders. Article I, Section 8, Clause 3. Thus, even if we assume that CARB has authority to regulate greenhouse gas emissions from heavy-duty trucks now that the federal government is doing the same,[3] CARB's authority only extends to the regulation of greenhouse gas emissions within the state, which for heavy-duty vehicles correlates to miles operated within the state. As stated in CARB's enabling statute, the agency is to engage in a coordinated effort, with state, regional, and local authorities to "protect and enhance the ambient air quality **of the state**." *See* Cal. Health & Safety Code 39001 (emphasis added). What

[3] CARB's attempts to regulate greenhouse gas emission are also limited by the preemption provision of the Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501(c), which prohibits states from adopting any law or regulation related to a price, route, or service of any motor carrier with respect to the transportation of property. Although the FAAAA's pre-emptive effect on the GHG Regulation is not addressed in these comments, it is worth noting that barriers to interstate operations, such as those created by the GHG Regulation in both its current and proposed form, might also run afoul of the FAAAA because they will raise the costs of long-haul operations and could accordingly cause motor carriers to raise their prices or alter their routes for services provided to and from California.

happens outside of California is not and cannot be of concern – specifically regarding how vehicle miles are accumulated.

Thus, state laws that directly regulate interstate commerce are unconstitutional. *Brown-Forman Distillers Corp. v. New York State Liquor Auth.,* 476 U.S. 573, 579 (1986). Recognizing the reality that state laws and regulations will often have incidental and indirect effects on interstate commerce, however, such effects are ordinarily allowed if the benefits to the local state interest outweigh the burden on interstate commerce. *New Energy Co. of Ind. v. Limbach, 486 U.S. 269, 273 (1988); Brown-Forman Distillers, supra*. The burden is undue when a balancing of national and local interests reveals that the costs of complying are disproportionate (i.e., clearly excessive) when compared to the demonstrable local benefits that cannot otherwise be obtained by the state. *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt Auth.*, 550 U.S. 330, 339 (2007); *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142 (1970).

Because of the obviously interstate nature of the transportation industry, the interstate commerce issue has often arisen in U.S. Supreme Court cases involving state regulation of transportation. For example, in *Raymond Motor Trans., Inc. v. Rice*, 434 U.S. 429 (1978), the Supreme Court struck down on Commerce Clause grounds a state statute that prohibited trucks longer than 55 feet with one trailer and trucks pulling more than one trailer to be operated within that state without a permit, based upon the finding that it substantially interfered with the movement of goods in interstate commerce without a meaningful contribution to highway safety. *See also Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662 (1981) (invalidating state statute banning trucks over 60 feet); *Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959) (invalidating state law requiring mudflaps that could not be used in adjacent states); *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945) (invalidating state law restricting length of trains).

Although discrimination against out-of-state interests was not the decisive factor in the *Raymond Motor* case, the Court did note that the numerous exemptions from the general rule, some of which were found to discriminate in favor of local industry, raised additional doubts about the validity of the regulation. *Raymond Motor*, *supra*, 434 U.S. at 446-447.

Indeed, express discrimination against out-of-state interests is, by itself, a *per se* violation of the Interstate Commerce Clause. *Brown-Forman Distillers*, *supra*. However, state regulation is also problematic where discrimination is not entirely clear based upon statutory language if its provisions, in practice, favor in-state over out-of-state economic interests, and as a result the cost of doing business for out-of-state interests, but not their in-state counterparts, is raised. *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979); *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 350-351 (1977). When in-state versus out-of-state discrimination is demonstrated, the burden falls on the involved state to justify it both in terms of the local benefits flowing from the regulation and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake. *Hunt, supra*, at 353.

In sum, California's right to regulate greenhouse gas emissions, through CARB, must be exercised consistent with constitutional limitations, including the Interstate Commerce Clause. As discussed above, this precludes both regulations that unduly burden interstate commerce or that discriminates against out-of-state interests via provisions that either expressly or in practice favor in-state interests.

## III. The GHG Regulation, through its Exemptions, Improperly Discriminates Against Motor Carriers Operating In Interstate Commerce.

When the interstate commerce analysis described above is applied to the GHG Regulation, it is apparent that the Regulation is readily subject to challenge on interstate commerce grounds.

First, whether California is intentionally attempting to reach beyond its own boundaries to regulate transportation that is provided totally outside of the state by motor carriers, that is the indirect effect of the Regulation. The OOIDA Foundation surveys OOIDA membership and those results indicate our members who are primarily long-haul truckers average 108,072 miles per year. Thus, as CARB intended, they do not qualify for either the short or local-haul exemptions. This means that they will have to equip the tractors and trailers they use with the requisite aerodynamic equipment and low-rolling resistance tires for the miles operated outside of California transporting freight for shippers and receivers also located outside of California. They are forced to comply with this Regulation if they want to hold themselves out to provide even intermittent and irregular transportation services in California with the same equipment. California's regulatory regime is therefore improperly being projected into other states. *See Healy v. Beer Inst.*, *supra*; 491 U.S. 324, 336 (1989); *Edgar v. MITE, supra*.

Second, the regulation unduly burdens interstate commerce. *See New Energy v. Limbach*, *supra*; *United Haulers Ass'n, Inc. v. Oneida-Herkimer*, *supra*. Motor carriers operating in interstate commerce must either avoid California altogether or expend substantial funds to purchase new compliant equipment or retrofit old equipment.[4] That expense is difficult to justify for those motor carriers who only occasionally make trips into California. As shown in the table of IRP data on page 8 above, once vehicles from states near California are eliminated, the average mileage in California is quite low and gets lower as the base state gets further away.

[4] The expenditure is not insignificant in spite of CARB's contention that there will be a financial payback to the truck owner from fuel savings. First, CARB has ignored the difficulty that financially stressed small-business motor carriers will have coming up with thousands of dollars in the upfront capital for the required technologies. Second, OOIDA would argue that many small-business motor carriers are acutely aware of their fuel mileage and, since fuel represents their single largest cost, they are already operating their equipment as efficiently as practicable. Indeed, many have made large investments in anti-idle technology. Thus, the hypothesized payback for the capital investment required under by this Regulation may well be illusory and overstated in CARB justifications.

Accordingly, the expenditures for the equipment required by the GHG Regulation cannot be justified based upon the mileage traveled in the state. More distant motor carriers are likely to avoid California altogether. On the other hand, the benefit to California, in terms of reduced greenhouse gas emissions, will be minimal if the Regulation keeps out only those truck operators who are not likely to drive many miles or consume much fuel in the state. Thus, as with the various transportation cases invalidating state laws banning certain trucks on safety grounds, the ban here on certain tractors and trailers places a burden on interstate commerce that outweighs any demonstrable local benefits. *Cf. Raymond Motor v. Rice, supra*; *Kassel v. Consolidated Freightways*, *supra*.

Finally, the GHG Regulation clearly discriminates against out-of state motor carriers. As discussed above, CARB has taken great pains, in crafting the original GHG Regulation and in the proposed modifications, to minimize the burden imposed on California-based entities. Short-haul, as well as drayage and local-haul equipment, is exempted from many compliance requirements. *Raymond Motor v. Rice, supra*. In this proceeding, CARB has even proposed expanding the exemptions for local interests. Storage trailers are exempted for the first time. GHG Regulation, § 95305(e). Further, owners can obtain up to four three-day relocation passes for exempt local-haul and storage trailers. *Id*. at § 95305(f)(5). Such relocation passes are not even required for empty local-haul trailers to be moved more than 100 miles from the local base. *Id*. at § 95305(c)(1)(B).

Because of its focus on regulation of long-haul truckers, CARB did not provide any meaningful exemptions from the Regulation for long-haul out-of-state truckers, even those who drive relatively few miles in California and, accordingly, do not individually make a meaningful contribution to the greenhouse gas emissions problem in the state. In fact, the current regulation

has **no exemptions** that directly address the needs of those out-of-state motor carriers. CARB has gone through the motions of attempting in this proceeding to reduce the in-state/out-of-state inequity through the creation of a "Non-compliant Tractor Pass" exemption (*id*. at § 95305(h)), but this exemption will not be usable by most out-of-state truckers. Under the proposal, a truck owner is entitled to only one such pass per year, whether he owns a single tractor or a fleet. The pass will not be good for more than three consecutive days, and CARB has 15 days from the date of application to notify the owner whether the pass was issued. *Id*. at §§ 95305(h)(2),(4), &(5).

A long-haul trucker with non-compliant equipment, whether he owns one or a fleet of trucks and trailers, cannot hold himself out as providing service to California on any basis if he can only expect to get one pass per year. Moreover, goods movement is a dynamic business, where truckers usually do not know their next freight offering until shortly before or on the exact day when it is tendered for pick-up with delivery expected in mere days. Thus, the proposed "15 days" allowed for a response from the Executive Officer would by itself make usage of this exemption unworkable for the vast majority of out-of-state truckers attempting to utilize this exemption.

Limiting the pass to a maximum three-day timeframe is also problematic. There are significant seasonal fluctuations in freight availability, mostly driven by agricultural and import availability. If goods are not available for pick-up immediately after a delivery (in industry parlance – a quick turnaround) a motor carrier utilizing a three-day pass runs the very real risk of having to leave the state empty in order to not exceed the arbitrary time allotted by the pass.

The lack of any meaningful opportunity for a long-haul interstate trucker to come into California without first complying with the GHG Regulation raises the costs for out-of-state motor carriers who want to do business in the state, while many in-state motor carriers are

exempted from the Regulation's requirements. *Cf. Hughes v. Oklahoma*, *supra*; *Hunt v. Washington State*, *supra*. Whether the discrimination is express or simply the effect of the numerous useful exemptions for in-state interests without any corresponding exemptions for out-of-state motor carriers, it is clearly discriminatory. As such, it violates the Interstate Commerce Clause.

VI. There Are Less Burdensome and Reasonable Yet Non-discriminatory Alternatives.

As discussed above, the three-day pass is not sufficient to offset the favoritism shown to in-state interests by other exemptions. However, CARB could both reduce the burden on interstate commerce and equalize the discriminatory treatment of in-state and out-of-state truckers in two different ways.

First, CARB could refocus the short-haul exemption exclusively on miles operated in California, since this is the only factor that truly affects greenhouse emissions originating within California. Since the Regulation allows qualifying motor carriers to operate up to 50,000 miles in the state without being subjected to its strictures, there is no logical reason why out-of-state long-haul truckers should not be allowed to do the same. Alternatively, CARB could keep the short-haul exemption as it is now and instead make the non-compliant tractor pass exemption more readily available. OOIDA would suggest that it be made applicable to multiple single vehicles in a fleet as are the local and short-haul exemptions, instead of being the only exemption that is available and limited to one vehicle in a fleet. In addition, since relocation passes are available for a single trailer up to four times a year, non-compliant tractor passes should similarly be available up to four times per year for single vehicles.

While either of these suggested modifications to the currently-proposed exemptions would allow non-compliant out-of-state vehicles to operate more miles in California than would

be allowed by the currently proposed once yearly three-day pass exemption, the trucks making use of the exemption would not contribute any more greenhouse gas emissions than local and short-haul vehicles already exempted from coverage.

## CONCLUSION

As CARB proceeds with its board meeting to consider proposed amendments, OOIDA believes that CARB must seriously consider modifications to the GHG Regulation that will equalize the disparity in treatment between in-state and out-of-state truckers. Absent significant changes, for all the reasons discussed above, the GHG Regulation will continue to impede interstate commerce and discriminate against out-of-state interests in a way that is subject to challenge under the Interstate Commerce Clause of the U.S. Constitution.

Respectfully submitted,

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