COMMENTS OF

THE TRUCK RENTING AND LEASING ASSSOCIATION

TO THE

CALIFORNIA AIR RESOURCES BOARD

ON THE PROPOSED ADOPTION OF THE REGULATION TO REDUCE GREENHOUSE GAS EMISSIONS FROM HEAVY-DUTY VEHICLES.

October 2, 2009

The Truck Renting and Leasing Association (TRALA) submits these comments on the California Air Resources Board (ARB)'s proposed modifications to sections 95300 through 95311, title 17, of the California Code of Regulations (CCR), the Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Measure ("regulations"). In particular, TRALA comments on the regulations' proposed changes to the definition of "owner" and the proposed insertion of a default provision rendering "owners" responsible for compliance obligations unless specific contractual language is included (and in the case of trailers leased prior to January 1, 2013, specific circumstances are met). See generally Proposed Section 95302 (39).

TRALA supports reasonable efforts to limit GHG emissions and to that end is receptive to substantive requirements that can be used to reduce emissions from heavy-duty vehicles in California. At the same time, these interests must be balanced with the realities of equipment leasing and rental arrangements and interstate commerce, as well as the interests of allowing parties to most effectively and efficiently allocate responsibilities pursuant to contractual arrangements tailored to fit given situations.

About TRALA

TRALA represents more than five hundred companies engaged in renting and leasing trucks used for commercial transportation purposes. These companies operate out of approximately three thousand commercial rental and lease locations in the United States and Canada. Member companies range in size from single-facility companies with

several power units to those with facilities in multiple states and thousands of power units and trailers. TRALA members are responsible for purchasing nearly 35% of all new trucks, Classes 3 through 8, put into commercial service in the United States. On average, the national fleet of rented and leased vehicles includes the newest, safest, and most technologically advanced trucks on the road.

The Realities of Leasing and Trucking Operations

TRALA member companies contract with their customers for both long-term leases and short-term rentals of commercial vehicles. These contracts normally do not include the services of a driver. Importantly, the truck renting and leasing companies that own these vehicles do not control their operation. To the contrary, these companies' customers and their trained drivers determine how, when, and where the vehicles are operated. It is not feasible for truck renting and leasing companies to segregate portions of their fleet to operations inside or outside of the state of California. It is the rental and leasing customer who is responsible for directing drivers and their vehicles through routes, pick-ups, and deliveries. The owners of rented and leased vehicles have little control over the geographical operation of their vehicles.

It is also not feasible for truck renting and leasing companies to contractually restrict their customers from operating specific vehicles within the state of California. A typical full-service lease may have a term of four to ten years (tractors and trailers), during which time a customer's operations may change significantly and frequently. At the other end

of the spectrum, a short-term rental may be necessitated by unexpected circumstances or peak demand, and such restrictions would severely limit the ability of lessees to respond accordingly.

Given the numerous and inherent variables in play, it is, and should be, the responsibility of the lease customer/motor carrier to ensure that the vehicles it operates in California are operated in compliance with California laws and regulations. TRALA submits that the regulations should be shaped accordingly. Rather than allowing the particulars of a contract to dictate responsibility for compliance obligations, TRALA submits that the registered operator of a leased or rented vehicle—who is clearly the party in the position to most effectively control compliance-related activities—bears responsibility for compliance with ARB's regulations.

Specific Comments on Proposed Modifications to the Regulations

As currently drafted, the proposed modifications to the regulations provide for some consideration of contractual arrangements made at arms-length between lessors and lessees related to compliance obligations. However, this consideration comes in the form of a default rule that the "owner" of a leased tractor or trailer (generally the entity effecting its registration with the applicable state agency) is responsible for compliance, *except where* specific regulatory language has been inserted stating that it is the responsibility of the lessee to ensure compliance. See Proposed Section 95302 (39) (C)-(E). TRALA submits that such a "default" provision is unnecessary and unduly

burdensome, and that the registered operator of a leased or rented vehicle bear responsibility for compliance.

Requiring an explicit provision in order for the lessee to be responsible for compliance is not in keeping with the reality of many lease situations. Consider the likely situation in which use of equipment in California is not contemplated by either party at the time of the transaction. If equipment is later operated in California without the lessor's knowledge—a likely scenario, as lessees generally control how, when, and where they operate—the lessor could be responsible for any lack of compliance with the regulations even though it had no reason to believe that such regulations would even come into play. Requiring specific language making explicit reference to the California provisions in order for responsibility to be placed with the party making the decision to operate in the state in these situations presents a lessor with unnecessary risks.

Further, the proposed changes would essentially treat all leases alike, whether they are for periods of three days or three years. Again, placing responsibility for compliance on the registered operator of the vehicle would be a more efficient and effective approach.

We also point out that the proposed changes to the regulations related to leases of trailers prior to January 1, 2013, see Proposed Section 95302 (39)(D), present additional difficulties. The proposed changes would mandate, in addition to the language referenced above, that in order to remove the default provision of compliance responsibility, a lessor demonstrate that either (i) the lease agreement permits the lessee to modify the trailer to be compliant with the substantive requirements, or (ii) the lessor

has provided a reasonable method to exchange the trailer at issue for one that is compliant. Requiring such demonstrations (which could necessitate amendments to numerous leases) to overcome application of a default rule presents significant transaction costs without the promise of additional substantive benefits.

To the extent ARB determines that rather than placing responsibility for compliance on the registered operator, a default provision placing responsibility on the owner that may be overcome through the use of specific contractual language is the preferred approach, TRALA offers several suggestions regarding the specific contractual language that should be required and the related regulatory provisions. First, the language should clearly provide that the lessor has no liability for any failure of the lessee to comply with the regulations where the specified language is included. Second, as the above discussion suggests, the regulations should provide for situations in which the language is not included in a lease, and the lessee operates equipment in California without the lessor's knowledge.

The discussion above focuses on the standpoint of the equipment lessor vis-à-vis a lessee or renter controlling and conducting the actual operation. In addition to leasing equipment, however, many lessors also provide contract maintenance for equipment through Vehicle Maintenance Agreements (VMAs) on vehicles which they do not in fact own (and with which they have no involvement in operation). The proposed changes in the definition of "owner" appear to potentially impose compliance obligations on these entities. Under Proposed Section 39(A), such an entity would be considered an "owner"

where the registered owner "clearly demonstrates" that a person who is "financially and contractually responsible for maintaining the tractor or trailer" is responsible for "installing and maintaining the tires and aerodynamic technologies" required by the regulations. This provision should be deleted. Compliance responsibility is more properly imposed upon the entity directing operation of the equipment at issue in California, not on an entity retained to perform maintenance that has no involvement in the operation. Even under circumstances in which a maintenance provider is required by contract with the owner or operator to install the required tires and other technologies, existing provisions of law are sufficient to ensure that the owner or operator may recover any losses associated with a maintenance provider's failure to properly install or maintain such equipment or devices.

TRALA appreciates this opportunity to participate in this important rulemaking effort. Any questions regarding TRALA's comments may be directed to the undersigned.

Respectfully submitted,

Thomas M. James
Acting President and CEO
For the Truck Renting and Leasing Association