

First Federal Enforcement of California Truck & Bus Regulation

On October 8, 2015, the U.S. Environmental Protection Agency (EPA) announced the first federal enforcement action under the California Truck & Bus Regulation (TBR) – and triggered concerns that other enforcement actions will be brought by EPA against other trucking companies based outside California. EPA announced that it is collaborating with the California Air Resources Board (CARB) to enforce the TBR, and that this "is the first of many cases" that EPA and CARB will bring against trucking companies to enforce the TBR.

Under the settlement agreement with Estes Express Lines, a nationwide truck carrier based in Virginia, Estes will pay \$100,000 in fines and \$285,000 to fund projects related to air quality. Estes claims to have spent millions of dollars over the last few years to improve its carbon footprint and asserts that it did not knowingly violate the TBR. According to EPA, Estes failed to install diesel particulate filters on 73 of its trucks (15% of its California fleet) and did not verify compliance for all of its subcontractors.

California is the only state in the country to mandate use of diesel particulate filters on older commercial heavy diesel trucks and buses. The TBR applies to motor carriers operating in California, to California based-brokers, and to California residents. Where vehicles are leased, the TBR holds both the lessor and lessee responsible for compliance unless the lease agreement is less than a year (in which case the lessor is deemed responsible) or the agreement includes specific language to allocate responsibility to lessor or lessee. Where the lease agreement has an effective date after 2010, the lessee is responsible for compliance unless the agreement states the vehicle is not excluded from the lessor's fleet. Where vehicles are hired or dispatched, the motor carrier must certify and document on an annual basis that the vehicles are in compliance.

CARB has been actively enforcing the TBR as well, through on-the-road inspections and written audits. From 2012 through 2014, CARB has conducted more than 14,000 inspections and opened some 900 investigations resulting in over 130 enforcement actions.

Companies subject to the TBR should be prepared to respond to a CARB or EPA information request or enforcement action.