

## Ready for Enforcement of the Truck & Bus Regulation? An Eight Step Compliance Plan

California's Truck & Bus Regulation (TBR) requires retrofits of heavy duty vehicles with diesel particular filters (DPFs) and newer engines. The expenses involved in compliance are significant, and have transformed the industry as many companies have been forced out of business – unable to afford the expensive retrofits.

Now that the rule has been in place for a few years, and phased-in compliance is almost complete, the California Air Resources Board (CARB) and the U.S. EPA are stepping up enforcement action. CARB has been making hundreds of spot checks and initiated over \_\_\_ enforcement actions just within the last two years. Meanwhile, under its separate enforcement authority, the U.S. EPA has started issuing information requests to some of the largest national transportation companies and federal agencies to evaluate compliance with the TBR.

Last year, EPA initiated its first enforcement action, and announced it would be the first of many more such enforcement actions. Motor carriers, fleet owners, logistics companies and others regulated by the TBR should be prepared for enforcement by both CARB and EPA. There are seven steps that all motor carriers should take to prepare for the stepped-up enforcement of the TBR.

### **1. Evaluate Applicability of the TBR**

The first step is to evaluate how and if the TBR applies to your company. The TBR imposes requirements on owners of regulated – but certain requirements also apply to companies that lease vehicle or use independent contractors for hire or dispatch. Even vehicles that are used in California for short periods of time may be subject to the TBR. Logistics companies also have their own, separate reporting requirements.

### **2. Assemble a List of All Owned Vehicles**

If your company owns vehicles regulated by the TBR (with some exceptions, heavy-duty vehicles with a gross weight rating of greater than 14,000 pounds), prepare a list of the vehicles, and

for each vehicle determine whether it operates in California. If the vehicles are in California for only minor periods of time, evaluate whether the vehicle is subject to an exemption under the TBR.

### **3. Identify DPFs and Engine Model Year for Owned Vehicles**

The transportation industry is accustomed to tracking vehicles by model year. For purposes of the TBR, however, compliance depends on the engine year of the vehicle. For each owned vehicle, identify whether the vehicle is equipped with a DPF and appropriate engine model year as required by the TBR. Be aware that only DPFs approved by CARB satisfy the requirements of the TBR. CARB maintains an on-line data base of approved DPFs. Also, some DPFs that were previously approved have been deleted from the list.

### **4. Evaluate Lease Agreements and Update if Needed**

The TBR permits lessors and lessees of vehicles to allocate responsibility for the TBR between themselves; however, the TBR requires that specific language be used before the allocation is effective. An assertion that one party is responsible for compliance with applicable law is not sufficient to transfer that liability for purposes of the TBR. Without certain “magic language,” the TBR presumes the lessee is responsible for compliance. Lease agreements may need to be modified to reflect the parties’ intent.

### **5. Evaluate Agreements for Hire and Dispatch and Update if Needed**

Non-owned vehicles have been a particular target of EPA enforcement action. As with lease agreements, agreements for hire and dispatch – typically in the form of independent contractor agreements – should be reviewed to evaluate whether the intent of the parties to allocate liability is effective for purposes of the TBR – and update that agreement if needed. Any revisions should be handled with an eye toward preserving the independent contractor status of the contracts.

### **6. Verify Compliance of Hired and Dispatched Vehicles**

Under the TBR, where the motor carrier or broker is not directly responsible for compliance of vehicles used for hire or dispatch, they must verify compliance. CARB has specific requirements and documents that can or must be used to document compliance. Written confirmation from the independent contractors are required, and must be obtained on an annual basis.

In addition, CARB imposes additional requirements, including reasonable inquiry into the accuracy of the representations. As a practical matter, companies will need to assemble a list of information about hired and dispatched vehicles much like the list for vehicles they own. Companies should also consider whether they want to consider options for verifying compliance that may not be required by the regulation, but will better satisfy state and federal regulators.

## 7. Organize Data and Information

One of the more frustrating and unexpected ramifications of the TBR is that it requires the organization of data in a format that many companies are not currently using. For example, companies may maintain an inventory of vehicles designed to best accommodate payment in different states – rather than geared to the requirements of the TBR. Some vendors are already prepared to assist with the organization of data and information to comply with the TBR.

## 8. Document Compliance

Maintain files and data so that you can easily retrieve the information necessary to establish compliance with the TBR – and can update this information as necessary. For example, maintain a file of your efforts to verify compliance with independent contractors. If you opted for the phase-in compliance option, maintain a file for the record-keeping and reporting requirements for the phase-in option.

## Conclusion

As EPA and CARB step up enforcement of the TBR, taking steps to demonstrate compliance with the TBR is a prudent measure.

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