

PUBLICATION

California Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulations [Ober|Kaler]

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Lessors of tractors or trailers may be subject to California's regulations pertaining to the reduction of greenhouse gas emissions. California's regulations pertain to heavy-duty tractors and 53-foot or longer box-type semi-trailers that transport freight on a highway within California, regardless of where the tractor or trailer is titled or registered. Those tractors and trailers are required to comply with Sections 95300-95312, Title 17, California Code of Regulations (which include requirements that the vehicles have low-rolling resistance tires and aerodynamic technologies that are U.S. EPA SmartWay Verified Technologies, or may entirely prohibit use of a tractor in California if it is a model year 2011 or later tractor and is not a U.S. EPA SmartWay Certified Tractor).

The regulations impose the burden of compliance on the "owner" of the tractor or trailer, requiring replacing or retrofitting affected vehicles. If the tractor or trailer is leased and registered in the name of the lessor, the lessee may be treated as the "owner" for purposes of compliance with the regulations if the lessor provides the lessee with certain prescribed statements. The statements may be provided on a document separate from the lease agreement or in the lease agreement itself. From the regulations, it appears that the statements must be used verbatim without change. We are attaching a [suggested transmittal letter \[PDF\]](#) which includes the specific statements required by the California regulations. With respect to a trailer that is leased prior to January 1, 2013, in addition to the prescribed statement, the lessor must demonstrate and inform the lessee that either: (a) the lease agreement does not prohibit the lessee from modifying the trailer to be compliant with the requirements of the regulations; or (b) the lessor provides a reasonable method to exchange the trailer for one that is compliant with the regulation. Section 95302(42), Title 17, California Code of Regulations.

If you have not already done so, we suggest that you prepare and provide the required statements in connection with all leases of tractors and trailers used in California entered into on or after January 1, 2010 (the date on which the initial California regulations became effective). To comply with the additional requirement noted above for trailers leased prior to January 1, 2013, the Statement for Leased Trailers included in the suggested transmittal letter includes an additional provision which is applicable only if your transaction includes trailers which were leased prior to January 1, 2013. Compliance with the California regulations would fall within the category of governmentally mandated modifications which the lessee is required to make under the lease.

You should maintain records of the delivery of the prescribed statements for at least three years. If you have any questions with respect to this matter, please contact Ober|Kaler's Finance Group.