



BEFORE THE CALIFORNIA
AIR RESOURCES BOARD

STATEWIDE TRUCK AND BUS REGULATION 2008

COMMENTS OF THE
UNION PACIFIC RAILROAD COMPANY

September 3, 2009

Union Pacific Railroad (UPRR) requests that the Board modify Staff's Suggested Changes to the Proposed Regulation for In-Use On-Road Heavy Duty Diesel Fueled Vehicles Rule presented to the Board at the December 2008 Board Hearing. Staff proposed amendments to Sections 2025(d)(34) and (35) to clarify which party assumes compliance responsibility for rented or leased vehicles according to the Notice of Public Availability of Modified Text. The Board-adopted version contained provisions that assigned default compliance responsibility to the rental or leasing company as follows:

2025(d)(34)(C)(2) After the effective date of this regulation, vehicles that are subsequently rented or leased by the rental or leasing entity to the same renter or lessee for a period of one year or more may be excluded from the rental or leasing entity's fleet and included in the fleet of the renter or lessee only if the written rental or lease agreement or amendment thereto specifically delineates such an arrangement.

Staff proposed the following modification to this provision, and moved it within the regulation:

2025(d)(35)(B)(1)(b) For vehicles that are rented or leased, the rental or lease agreement for the vehicle is for a period of one year or longer, unless the terms of the rental or lease agreement or other equally reliable evidence identifies the party responsible for compliance with state laws for the vehicle to be the renting operator or lessee of the vehicle.

UPRR agrees that clear assignment of compliance responsibility is necessary and valuable. However, the modification weakens the rule and creates uncertainty by assigning compliance responsibility to the party responsible for compliance with "state laws for the vehicle," which are vague and undefined terms. California has many laws applicable to vehicles operating in California, which assign compliance responsibility to different parties, depending on the circumstances.

If the Board adopts the staff's suggested changes, compliance responsibility will be shifted to the lessee based on general lease terms and conditions, such as "The lessee shall comply with all local, state, and federal laws and regulations pertaining to the vehicle." Lessees will be responsible for retrofitting or repowering vehicles not owned by them.

We propose the following modification to achieve the clarification intended by Staff, by modifying 2025(d)(35)(B)(1)(b) and 2025(d)(35)(B)(2), as follows:

2025(d)(35) "Fleet Owner" means, except as modified below in paragraphs (A) and (B), either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country; as evidenced on the vehicle registration document carried in the vehicle.

* * *

(B) For vehicles that are rented or leased:

1. The owner shall be presumed to be the rental or leasing entity for purposes of compliance with section 2025(e), if:

* * *

b. The rental or lease agreement for the vehicle is for a period of one year or longer, unless the terms of the rental or lease agreement or other equally reliable evidence identifies the party responsible for compliance with ~~Section 2025 state laws~~ for the vehicle to be the renting operator or lessee of the vehicle.

2. For purpose of enforcement, if at the time that the vehicle is inspected and cited for noncompliance with this regulation and the operator of the vehicle does not possess evidence of the party responsible for compliance with ~~Section 2025 state laws~~, the owner shall be presumed to be both the rental or leasing entity and the renting operator or lessees of the vehicle.

Finally, UPRR notes that the effect of Staff's modification broadly modifies the compliance responsibility of the regulation, and that such modification exceeds the scope allowed in a 15-day change. If you have any questions, we would be happy to discuss this issue with you in more detail.

Thank you for the opportunity to comment on this proposed rule.