

Frequently Asked Questions Regulation for In-Use Off-Road Diesel-Fueled Fleets (Off-Road Regulation)

Disclosure of Regulation Applicability (Sales Disclosure) FAQ Revised November 2015

Q – What is “disclosure”?

A – The In-Use Off-Road Diesel Vehicle Regulation (Off-Road Regulation) requires the seller of a vehicle with an engine subject to the Off-Road Regulation in California to notify the buyer that the vehicle may be subject to the Off-Road Regulation and therefore could be subject to retrofit or accelerated replacement/repower requirements. The disclosure must be printed on the bill of sale when the vehicle is sold. Section 2449(j) of the Off-Road Regulation includes the specific language that must be used for the disclosure, which is reproduced here for your convenience:

“When operated in California, any off-road diesel vehicle may be subject to the California Air Resources Board In-Use Off-road Diesel Vehicle Regulation. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board website at <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm>. ”

Q – Am I required to include the disclosure if I’m selling a vehicle with an engine subject to the Off-Road Regulation in California to someone who will only use it outside of California?

A – If the sales transaction occurs in California, the disclosure is still required, even if the seller knows or discovers that the buyer is going to move the vehicle outside of the state.

Q – If I buy a vehicle with an engine that is subject to the Off-Road Regulation from a seller located outside of California and inform the seller I am bringing it to California, is the seller required to include the disclosure on the bill of sale?

A – No; the disclosure requirement does not apply to sales transactions occurring entirely outside of California. However, the Off-Road Regulation would still apply once the vehicle is brought into California.

While this document is intended to assist fleets with their compliance efforts, it does not alter or modify the terms of any ARB regulation, nor does it constitute legal advice. It is the sole responsibility of fleets to ensure compliance with the In-Use Off-Road Diesel-Fueled Fleets Regulation.

Q – As a seller, am I required to maintain a copy of the disclosure after I’ve sold a vehicle with an engine subject to the Off-Road Regulation in California?

A – Yes; section 2449(h)(10) of the Off-Road Regulation requires any person selling a vehicle with an engine subject to the Off-Road Regulation in California to maintain records of the disclosure of regulation applicability required by section 2449(j) for three years after the sale.

Q – Are vehicles with engines subject to the Off-Road Regulation purchased at an auction in California required to include the disclosure statement?

A – Yes; the seller, even if it is an auction house, is required to include the disclosure on the bill of sale or invoice.

Q – If an auction house sells a vehicle with an engine subject to the Off-Road Regulation for a fleet owner, is the fleet owner required to provide the disclosure to the auction house?

A – It depends on whether or not ownership is first transferred to the auction house. If ownership is not transferred before the auction house sells a vehicle on behalf of the fleet owner (e.g., the fleet owner enters into an agreement for the auction house to sell the vehicle, but ownership is not transferred to the auction house), the fleet owner does not need to provide disclosure to the auction house. However, the fleet owner is still responsible for providing the disclosure to the buyer, so the fleet owner must ensure that the sales disclosure is provided on the bill of sale. Additionally, the fleet owner must maintain a copy of that bill of sale showing the disclosure statement for at least three years following the sale.

If ownership is transferred from the selling fleet owner to the auction house, the selling fleet owner is required to provide the disclosure statement to the auction house at the time ownership is transferred, and must maintain those records for at least three years. The auction house must also provide the disclosure when the auction house sells the vehicle, if the vehicle is sold in California, but the fleet owner no longer has any responsibility for that.

Q – If I sell a vehicle with an engine subject to the Off-Road Regulation to a scrap yard, am I still required to include the disclosure?

A – Yes; if the sale occurs in California, the disclosure is still required, since the scrap yard could either use the vehicle or sell it to another buyer (in which case, the scrap yard would also be required to include the disclosure of regulation applicability).

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Q – If I trade in a vehicle with an engine subject to the Off-Road Regulation to a dealer, am I still required to include the disclosure?

A – Yes; if the trade-in occurs in California, the seller is still required to include the disclosure on the bill of sale, since the trade-in is a type of sale or transfer of ownership. If the dealer is preparing the bill of sale for the seller upon trade-in, the seller is still ultimately responsible for ensuring the disclosure is included on the document, and for keeping a copy for three years.

Q – If I sell off-road vehicles with engines subject to the Off-Road Regulation, as well as vehicles subject to the On-Road Heavy-Duty Diesel Vehicles Regulation (Truck and Bus Regulation), may I provide combined disclosure language that fulfills the disclosure requirement for both regulations?

A – Yes; the seller may provide combined disclosure language to satisfy the disclosure requirement for both the Off-Road Regulation and Truck and Bus Regulation, as long as the seller includes all the language and information required by each regulation in the disclosure. An example of acceptable combined disclosure language is:

“Any on-road heavy-duty diesel, alternative-diesel, or off-road diesel vehicle, operated in California, may be subject to the California Air Resources Board In-Use On-Road (Truck and Bus) or In-Use Off-Road Diesel Vehicle Regulations. It therefore could be subject to exhaust retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board websites at <http://www.arb.ca.gov/dieseltruck> for the Truck and Bus Regulation or <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm> for the Off-Road Regulation.”

Q – My fleet is not subject to the Off-Road Regulation because my vehicles only operate at a California port or intermodal rail yard; am I still required to include the disclosure of regulation applicability when I sell one of my off-road diesel vehicles in California?

A – While the disclosure is not required, ARB encourages the seller to include the disclosure when selling a vehicle with an engine subject to the Off-Road Regulation so that the buyer is aware of the Off-Road Regulation (in case the buyer chooses to operate the vehicle at a location other than a California port or intermodal rail yard).

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Q – If one of my fleet portions sells a vehicle with an engine subject to the Off-Road Regulation to another one of my fleet portions, am I required to include a disclosure?

A – Yes, if the sale takes place in California. For purposes of the Off-Road Regulation, fleet portions are considered to be like separate fleets.

Q – Is a seller required to include the disclosure *prior* to the sale?

A – While not required, ARB encourages sellers to provide the disclosure prior to the sale so that the buyer can be aware of the Off-Road Regulation when making a buying decision. The disclosure is required, however, on the bill of sale.

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