

Frequently Asked Questions In-Use Off-Road Diesel Vehicle Regulation

Rental/Leased Vehicles FAQ Revised September 2014

Q – I plan on renting or leasing some off-road diesel vehicles this summer from a local rental company. For future rentals or leases, will compliance with the In-Use Off-Road Diesel Vehicle Regulation’s (Off-Road Regulation) reporting, labeling, and emission control requirements be my responsibility or the responsibility of the rental company?

A – Except in very specific instances described below, compliance with the Off-Road Regulation will be the responsibility of the rental company (i.e., the lessor). The rental company must report and label the vehicles and ensure they have the proper emissions controls.

The only situation where compliance will be the responsibility of the renter (or lessee) for future rentals or leases is if the lease is for a year or longer **and** it is written into the lease agreement that compliance is the responsibility of the lessee. Per title 13, California Code of Regulations, section 2449(c)(23), “Vehicles that are owned by a rental or leasing company and that are leased by the same lessee for a period of one year or more may be excluded from the rental company fleet and included in the fleet of the lessee only if such arrangement is delineated in the written lease agreement.”

Q – What about leases or rentals already in place? Then, who is responsible for compliance with the regulation’s reporting, labeling, and emission control requirements?

A – Vehicles that were leased for the duration of one year or more are considered part of the lessee’s fleet instead of the rental company’s fleet if the lease was signed before June 15, 2008. Therefore, if you are leasing a vehicle, and your lease is for one year or more and it was signed before June 15, 2008, the vehicle needs to be reported and included in your fleet and you are responsible for compliance with the regulation’s reporting, labeling, and emission control requirements. Per title 13, California Code of Regulations, section 2449(c)(23), “Off-road vehicles and engines subject to this regulation that are owned by a lessor and leased to a lessee under a “lease” as defined in California Uniform Commercial Code, section 10103(a)(10), for a duration of at least one year, dated prior to the effective date of these regulations, are considered part of the fleet of the lessee rather than the lessor.”

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If, on the other hand, the lease or rental duration is less than one year with the responsibility for compliance not explicitly assigned to the lessee or the lease was signed on or after June 15, 2008, compliance will be the responsibility of the rental company (i.e., the lessor).

Q – Will compliance with the off-road regulation’s idling restrictions be my responsibility or the responsibility of the rental company?

A – Compliance with idling limitations (i.e., the five-minute limit on unnecessary idling) is the responsibility of the operator of the vehicle (i.e., the lessee) and should so be stated in the rental agreement. For more information about idling limitations, please see our enforcement advisory at <http://www.arb.ca.gov/enf/advs/advs377.pdf>. For suggested language to include in the rental or lease agreement, see below.

Q – As a rental or leasing company, is there any additional language I should include in the rental agreement in order to comply with this regulation?

A – If your company leases out a vehicle for a period of one year or more, you may choose to have that vehicle included with the lessee’s fleet instead of with your fleet. To place responsibility on the lessee for reporting a vehicle and complying with the emissions requirements of the Off-Road Regulation, the rental/lease contract must disclose information and specifically assign that responsibility.

The rental/lease agreement should also include information about the 5 minute idling limit. Below is some suggested language regarding idling for the rental agreement:

“Compliance with California Air Resources Board (CARB) Idling Regulation (Title 13, California Code of Regulations: §2449(d)(2)):
Any in-use off-road diesel vehicle may not idle for more than 5 consecutive minutes. Lessee is responsible for compliance with CARB off-road diesel engine idling limits and is responsible for any penalties or fines incurred for non-compliance.”

Q – As a national rental company, if I include a general disclosure such as “the lessee must comply with all environmental regulations,” is that sufficient to assign responsibility onto the lessee’s fleet?

A – No. Per title 13, California Code of Regulations, section 2449(c)(23), “Vehicles that are owned by a rental or leasing company and that are leased by the same lessee for a period of one year or more may be excluded from the rental company fleet and included in the fleet of the lessee only if such arrangement is

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delineated in the written lease agreement”. In other words, the lease agreement must specifically state that the responsibility of reporting under and complying with the Off-Road Regulation falls on the lessee, and such responsibility may only be delegated to the lessee if the lease is for a period of more than one year.

Q – As a rental company and equipment dealer, we have customers that set up lease-to-own agreements when they rent a vehicle for the first time. Who is responsible for compliance with the Off-Road Regulation while the vehicle is leased?

A – It depends. Per title 13, California Code of Regulations, section 2449(c)(23), if the lease agreement is for a term of one year or longer, the responsibility for reporting under and compliance with the Off-Road Regulation may fall on the lessee, but ONLY if it is specifically stated in the lease agreement. Otherwise, responsibility falls on the current owner of the vehicle (i.e., the lessor or rental company; a finance company does not “own” the vehicle under the Off-Road Regulation). Once the vehicle is purchased through a loan/finance agreement, the new owner is responsible for reporting under and complying with the Off-Road Regulation.

If the rental transaction was reported in DOORS, once the lessee takes ownership of the vehicle, they would need to return the vehicle to the rental company’s fleet. The rental company would then “Sell/Retire” the vehicle in DOORS, and the new owner would need to add the vehicle to their fleet by the vehicle’s EIN.

Q – I own a rental company and we currently have Tier 0 vehicles leased or rented to customers with long term leases (more than 1 year). Will I be able to add these Tier 0 vehicles back to my fleet after the lease is up?

A – Yes; although Tier 0 vehicles may not be added to fleets in the future, leased vehicles returning to the lessor’s fleet do not have to meet the adding vehicles requirements in section 2449(d)(6) of the regulation. The vehicle, however, must be included in the lessor’s fleet for the following year’s fleet averages and targets.

Q – Will I earn Best Available Control Technologies (BACT) turnover credit for returning long-term leased vehicles? Alternatively, will rental companies earn credit for leasing vehicles?

A – No; as specified in title 13, California Code of Regulations, section 2449(c)(55), neither the lessor nor the lessee will earn turnover credit for the lease or return of rental vehicles. Returning a Tier 0 vehicle, for example, may improve the

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lessee's fleet averages, but the lessee will not receive additional BACT credit. For more information, please see the BACT FAQ, which is available at <http://www.arb.ca.gov/msprog/ordiesel/faq/bactfaq.pdf>.

Furthermore, neither the lessor nor the lessee will receive credit for reducing their fleet horsepower (hp) when they lease or return rental vehicles (rental vehicles are not included in the total fleet horsepower for reduced hp credit calculations).

For example, a fleet has 6,000 hp worth of off-road diesel vehicles and a 200 hp rental vehicle on March 1, 2006. The fleet sells off 1,000 hp of vehicles and rents another 500 hp vehicle. On March 1, 2009, the fleet has 5,000 hp, plus an additional 700 hp in rental vehicles. The fleet would receive 500 hp [(6,000 hp – 5,000 hp) x 0.5] for Early Reduced Fleet credit. For more information on early credits, please see our Early Credit FAQ at <http://www.arb.ca.gov/msprog/ordiesel/faq/earlycreditfaq.pdf>.

Q – Will I earn BACT credit for repowering or installing Verified Diesel Emission Control Strategies (VDECS) on rental vehicles?

A – Yes, but only if the rental vehicle is reported as part of your off-road fleet at the time of the repower or retrofit. In that case, the fleet that purchases and installs the newer engine or VDECS will earn BACT credit.

For example, if a rental company repowers an older vehicle with a Tier 4 engine, the rental company will earn BACT credit for the repower. The fleets that rent the vehicle in the future (if added to their reported fleet as part of a long-term rental agreement) will benefit from the lower emissions due to the Tier 4 engine.

As another example, a renting fleet installs a VDECS while the vehicle is reported as part of their off-road fleet. The renting fleet earns BACT credit for installing the VDECS, but the vehicle owner (i.e., the rental company) benefits from the reduced emissions due to the VDECS factor once the vehicle is returned.

Q – Because I am renting a vehicle, does that mean ARB considers it under my “control” and I have to include it when determining my fleet size?

A – No; because you are just renting the vehicle, you do not need to include it for fleet size purposes, unless responsibility for compliance with the off-road regulation has been assigned to you. For example, Fleet A has a total of 2,000 hp in backhoes and rents two 300 horsepower excavators. Although Fleet A uses vehicles with a total 2,600 horsepower, only 2,000 hp (i.e., the vehicles

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Fleet A owns) will be counted towards their fleet total, leaving them as a small fleet.

The rented vehicle will only need to be included with your fleet if it is a long-term lease (1 year or more) in place before June 15, 2008 or where compliance responsibility for the vehicle is assigned to you, the lessee, in the rental/lease agreement.

Q – Can rental vehicles be designated as agricultural, emergency, or snow removal vehicles in order to be exempt from the performance requirements of the regulation?

A – Rental vehicles may be designated as dedicated snow removal vehicles, but they must have permanently affixed snow removal equipment such as snow blowers or augers. Rental vehicles may not be designated as 51%-99% agricultural use; however, if the rental vehicles are used exclusively for agricultural purposes, they are exempt from all aspects of the off-road regulation (i.e., the reporting, labeling, and performance requirements). Rental vehicles also may not be designated as emergency use only, since the owner (the rental company) has no control over how the vehicle is actually used during the time it is rented to an operator.

Q – Can rental vehicles be designated as low-use?

A – Rental vehicles may be designated as year-by-year low-use but may not be designated as permanent low-use, since neither the lessor nor the lessee can guarantee that the vehicle will not be used over 200 hours per year in the future.

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