

Software Upgrade for 1993 through 1998 Model Year Heavy-Duty Diesel Engines Subject to Requirements Under Specified Federal Consent Decrees.

Section 1000 Applicability

- (a) This regulation applies to:
- (1) Manufacturers of Affected Engines, and
 - (2) Owners, Lessees, and Operators of heavy-duty vehicles with Affected Engines which are operating and/or registered for operation on roadways in [state].

Section 2000 Definitions

- (a) The following definitions apply:
- (1) “Affected Engine” means each engine identified by a Manufacturer in its Low NOx Rebuild Plan. A Low NOx Rebuild Engine, as that terminology is used in the Consent Decrees, is an Affected Engine.
 - (2) “Consent Decrees” means the consent decrees pertaining to manufacturers of motor vehicle diesel engines, referenced in the Federal Register/Vol. 63, No. 212, for Tuesday, November 3, 1998, pp. 59330 through 59334.
 - (3) “Fleet” means two (2) or more heavy-duty vehicles.
 - (4) “Heavy-duty vehicle” means any motor vehicle rated at more than 8,500 pounds gross vehicle weight rating (GVWR) or that has a vehicle curb weight of more than 6,000 pounds or that has a basic vehicle frontal area in excess of 45 square feet.
 - (5) “Inspection site” means an area used for conducting the inspection. It may include a random roadside location, a weigh station, a fleet facility, or other location.
 - (6) “Inspector” means a [state agency] employee with the duty of enforcing [applicable state code].
 - (7) “Low NOx Rebuild Kit” means a Manufacturer’s software and/or hardware upgrade required under the Consent Decrees, to be installed on the engine control module of an Affected Engine. Such kits are identified by each Manufacturer in its respective Low NOx Rebuild Plan.
 - (8) “Low NOx Rebuild Label” means the label stipulated in the Consent Decrees, which meets all of the following specifications:
 - (A) It contains an identifiable characteristic allowing the [state agency] to determine whether an Affected Engine has had the appropriate Low NOx Rebuild Kit installed; and
 - (B) It contains a statement with appropriate blank spaces for the individual performing the installation to indicate when and by whom the Low NOx Rebuild Kit was installed on the engine; and
 - (C) It is readily visible upon opening the engine compartment; and
 - (D) It is fabricated of a material suitable for the location in which it is installed; and
 - (E) It is not readily removable intact.
 - (9) “Lessee” means a party that has possessory interest in a heavy-duty vehicle under a lease agreement.
 - (10) “Low NOx Rebuild Plan” means the plan developed by each Manufacturer and approved by the United States under the Consent Decrees to implement a rebuild program for the Affected Engines.

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- (11) “Manufacturer” means an engine manufacturer that was required to develop and implement a Low NOx Rebuild Plan.
- (12) “Operator” means a person who drives or is in actual physical control of a heavy-duty vehicle.
- (13) “Owner” means either:
 - (A) the person registered as the owner of a vehicle by the **[state motor vehicle registration agency]**, or its equivalent in another state, province, or country; or
 - (B) a person shown by the registered owner to be legally responsible for the vehicle’s maintenance. The person identified as the owner on the registration document carried on the vehicle shall be deemed the owner unless that person demonstrates that another person is the owner of the vehicle.
- (14) “Post-repair inspection” means a repeat inspection, for the purpose of demonstrating compliance with the standards in Section 3000, following initial non-compliance.
- (15) “Repair facility” means any place where heavy-duty vehicles are repaired, rebuilt, reconditioned, or in any way maintained for the public at a charge, and fleet maintenance facilities.
- (16) “Scan tool evaluation” means an inspector’s use of an electronic device capable of determining if a Low NOx Rebuild Kit is installed.
- (17) “Tamper” means to disconnect, detach, deactivate, alter, or modify from the design of the original equipment manufacturer, a Low NOx Rebuild Kit or Label, except temporarily for the purpose of diagnosis, maintenance, repair or replacement with an identical kit or label.

Section 3000 Standards

- (a) On or after [180 days] following the effective date of this regulation, all heavy-duty vehicles, propelled by Affected Engines and operating on roadways within the State of **[state]** must have Low NOx Rebuild Kits installed and readily observable Low NOx Rebuild Labels permanently affixed to their respective engines. Any person who operates or permits the operation of a heavy-duty vehicle, which is subject to this requirement but for which a Low NOx Rebuild Kit has not been installed or a Low NOx Rebuild Label has not been affixed as required, shall be deemed to be in violation of this subsection.
- (b) Each Manufacturer shall provide at no cost, the appropriate Low NOx Rebuild Kit specified for the Affected Engine within 30 days of any request from their authorized dealers, distributors, repair facilities, and rebuild facilities, and within 30 days of any request from an owner, lessee, operator, non-affiliated repair facility or non-affiliated rebuild facility:
- (c) Each Manufacturer shall reimburse its authorized dealers, distributors, repair facilities, and rebuild facilities for their costs to install Low NOx Rebuild Kits on Affected Engines, at the reimbursement cost level required under the Consent Decrees. Any Manufacturer may choose to reimburse at a rate above the reimbursement cost level paid under the Consent Decrees.
- (d) Except as provided in subsection (h) of Section 3000, no person may install on an Affected Engine, any engine software containing electronic control strategies, other than a Low NOx Rebuild Kit.
- (e) Any person installing a Low NOx Rebuild Kit must permanently affix a Low NOx Rebuild Label at time of installation.
- (f) No person shall tamper with an installed Low NOx Rebuild Kit or a Low NOx Rebuild Label.

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(g) Compliance with the requirement to install a Low NOx Rebuild Kit may be determined from the results of a scan tool evaluation.

(h) A person may install other engine control software, supplied by the Manufacturer and consistent with the provision in the applicable Consent Decree, provided that the software either includes the applicable Low NOx Rebuild Kit or the software enhancements are unrelated to reducing NOx emissions.

Section 4000 Responsibilities of Owners, Lessees, and Operators - Inspection

(a) The owner, the lessee, or the operator of a heavy-duty vehicle, upon request of the inspector, shall make the vehicle available for inspection for the purpose of determining applicability to and compliance with this regulation. Such inspection may include a scan tool evaluation.

Section 5000 Demonstration of Correction and Post-Repair Inspection

(a) The owner or the lessee of the heavy-duty vehicle subject to the requirements of this regulation may be required to demonstrate correction of any non-compliance with subsections (a), (d), and/or (f) of Section 3000, identified by the inspector. Requirements may include submitting to the [state agency] the following documentation by a date specified by the inspector:

(1) Where repairs are made at a repair facility, a repair receipt or a completed work order which contains the following information:

(A) Name, address, and phone number of the facility;

(B) Name of mechanic;

(C) Date of the repair;

(D) Description of repair performed, including itemized list of any component(s) installed, including description of part, part number, and cost;

(2) Where the owner or lessee makes his or her own repairs outside of a repair facility,

(A) Date of the repair;

(B) Description of repair performed, including itemized list of any component(s) installed, including description of part, part number, and cost;

(3) A written statement by the owner or lessee, under penalty of perjury, that the Low NOx Rebuild Kit and the Low NOx Rebuild Label are now installed.

(b) The owner or lessee of the heavy-duty vehicle shall submit to a post-repair inspection and a scan tool evaluation whenever requested to do so by the inspector.

Section 6000 Record Keeping and Reporting Requirements

(a) The owner or lessee of a heavy-duty vehicle subject to the requirements of this regulation shall retain the repair receipt or completed work order as proof of installation of a Low NOx Rebuild Kit and record and retain the following information:

(1) Name, address, and phone number of the facility performing the installation;

(2) Name of the person performing the installation;

(3) Date of the installation;

(4) Description of Affected Engine, including engine model and engine family number, and Low NOx Rebuild Kit installed.

(b) The owner or lessee of a heavy-duty vehicle subject to the requirements of this regulation shall permit review of the records specified in subsection (a) of Section 6000 upon request of the inspector.

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(c) Each Manufacturer shall maintain lists of the names and addresses of authorized dealers, distributors, repair facilities, and rebuild facilities, and owners, lessees, operators, non-affiliated repair facilities and non-affiliated rebuild facilities who were provided Low NOx Rebuild Kits, including the number of kits provided. The records described in this paragraph shall be made available to the [state agency] upon request.

Section 7000 Severability

(a) If any provision of this regulation or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the regulation that can be given effect without the invalid provision or application, and to this end the provisions of this regulation are severable.

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