

DIESEL EMISSIONS REDUCTION ACT (DERA)

Are you in compliance?

The NYS Legislature decided not to extend the deadline for enforcement with the **Diesel Emissions Reduction Act** ("DERA"). As a result, operators of "heavy duty vehicles" ("HDV") that are operated "by or on behalf of" New York State must comply with DERA by **December 31, 2019**.

What is DERA

DEC's regulations state that a Heavy Duty Vehicle is in compliance with DERA if the HDV has "an engine certified to the applicable 2007 EPA standard for particulate matter (0.01 g/bhp-hr) as set forth in [40 CFR §] 86.007-11 ... or to the applicable 2007 GARB standard for particulate matter." 6 NYCRR 248-3.1 (a).

The law only applies to **prime contractor's** Heavy Duty Vehicles (HDV + 8,500 lbs) working "on behalf of" the state. Based on the 2011 Appellate Court Decision, the phrase "on behalf of" is legislatively used to denote a direct representative or agency relationship.

It **does not apply** to subcontractors, sub-sub-contractors or materials suppliers but **does include** rentals by the Prime Contractor.

BART Applicability and Compliance

Heavy duty diesel vehicles ("HDVs") are those powered by a diesel engine and have a gross vehicle weight of greater than 8,500 lbs. HDVs include both on-road and non-road vehicles. This law does not cover every single HDV.

What Equipment/Vehicles must comply, which are Exempt, and which aren't subject?

DEC and AGC have compiled a spreadsheet of vehicles and equipment so you can see what your next steps are. You can find the list here:

<https://www.agcnys.org/wp-content/uploads/DERA-Part-248-Subject-List-11042019.pdf>

Whats next: DERA provides four compliance options:

Option 1: Retire the applicable HDV or replace it with HDV with an engine certified to 2007 EPA standards or newer.

Option 2: Retrofit the applicable HDV with an EPA or a California Air Resources Board ("CARB") verified retrofit technology device subject to a BART evaluation (248-3.1(f) (2))

Option 3: Obtain a DEC-approved vehicle/engine-specific technology waiver (§ 248-4.1. (b)). This process provides DEC with an extremely detailed (fully tested) explanation of why your piece of equipment can't be retrofit. The form can be found here:

http://www.dec.ny.gov/docs/air_pdf/248bartwaiv.pdf

Option 4: Obtain a DEC-approved vehicle/engine-specific useful life waiver (§ 248-4.1. (c)) Must be completed by December 31, 2019. If granted by DEC, you may continue to use the equipment up until December 31, 2020. Upon expiration of a useful life waiver after January 1, 2020, a BART applicable HDV may no longer be used in New York State.

http://www.dec.ny.gov/docs/air_pdf/248uselifevaiv.pdf

REMINDER: For Option 3 and 4, a vehicle/engine technology or useful life waiver must be submitted to, and approved by DEC, no later than December 31, 2019. A DEC approved useful life waiver will expire one year from its issuance, but no later than December 31, 2020.

Reporting Requirements (Prime Contractors)

In order to determine DERA compliance, prime contractors are required to inventory their HDVs, using "a department prescribed format," and designate which of the three options (upgraded engine, retrofitted engine, or waiver) will be followed. When selecting a DERA technology, the contractor must "fully document all steps" in the process, make the documentation available to DEC upon request, and retain the records for five years or as long as the selected option is in use, whichever is longer. See waivers below.

1. Develop a HDV inventory, § 248-3.1(f);

Annual Reporting of your fleet is required if you are a prime contractor that did work "on behalf of" the state. Prime Contractors working for Regulated **Entities only need to report those vehicles used under contract during the reporting period** (even those exempt from BART requirements) on both the Annual Report and Vehicle Inventory forms.

These forms are not intended to be cumulative lists of a Regulated Entity's or a Prime Contractor's fleet over time. These forms should only reflect vehicles used during the subject reporting period. Note: a Prime Contractor may report a vehicle one year, but not the following year if it wasn't used under contract.

Annual Report: <ftp://ftp.dec.state.ny.us/dar/248annrptfrm.xlsx>

Vehicle Inventory Form: <ftp://ftp.dec.state.ny.us/dar/248inventory.xlsx>

2. Maintain documentation associated with BART evaluations, § 248-3.1(g);

3. Submit a technology waiver, § 248-4.1(b), or a useful life waiver to DEC, § 248-4.1(c); and

4. Maintain records where BART applicable vehicles are primarily located/garaged, § 248-7.1(a).

DEC regulation, under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles, can be found at: <https://www.dec.ny.gov/regs/2492.html>
DEC will be revising those regulations to reflect the current compliance dates.

Any questions,

Sarah Hill, Vice President, Transportation, shill@agcnys.org

Brendan Manning, Vice President, Education & Environment, bmanning@agcnys.org