

**Department of Environmental Protection  
Notice of Opportunity to Comment on  
Promulgation of  
Chapter 15 of Title 15 of the Rules of the City of New York  
Rules Concerning the Use of Ultra-Low Sulfur Fuel and Emissions Control Technology on City  
Motor Vehicles**

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Department of Environmental Protection by section 1043 of the New York City Charter and section 24-163.4 of the Administrative Code of the City of New York that the Department of Environmental Protection is promulgating rules concerning the use of ultra low sulfur diesel fuel in city motor vehicles and emissions control technology on motor vehicles with a gross vehicle weight rating of more than 8,500 pounds that are owned or operated by city agencies.**

**PLEASE BE ADVISED THAT WRITTEN COMMENTS regarding the proposed Rule may be sent on or before June 5<sup>th</sup>, 2006 to the New York City Department of Environmental Protection, Office of Legal and Legislative Affairs, 59-17 Junction Boulevard, 19<sup>th</sup> Floor, Flushing, New York 11373 Attention: Judah Prero, Esq.**

**PLEASE BE FURTHER ADVISED THAT ORAL COMMENTS regarding the proposed Rule may be delivered at a public hearing to be held on June 5<sup>th</sup>, 2006 at 59-17 Junction Boulevard, 6<sup>th</sup> Floor, Flushing, New York 11373 from 10am to 12pm. If you have any questions about the location of the hearing, please contact Belinda Pantina at (718) 595-6555.**

**Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are asked to contact Belinda Pantina at the phone number above by two weeks prior to the hearing.**

**PLEASE BE FURTHER ADVISED THAT COPIES OF ALL WRITTEN COMMENTS and a summary of the oral comments delivered at the public hearing will be available for inspection within a reasonable time after receipt between the hours of 9 am and 5:00 pm at the Department of Environmental Protection, Office of Legal Affairs, 59-17 Junction Boulevard, 19<sup>th</sup> floor, Flushing, New York 11373.**

**The proposed Rule will be listed in the Department's FY'06 Agenda.**

**Statement of Basis and Purpose**

**On May 11, 2005, Mayor Michael Bloomberg signed Local Law 39 for the year 2005. The law amended the Administrative Code of the City of New York in relation to the use of ultra low sulfur diesel fuel ("ULSDF") and best available retrofit technology ("BART") by city motor vehicles. The law requires that diesel fuel-powered motor vehicles owned or operated by city agencies be powered by ULSDF. The law further requires that a percentage, increasing yearly to 100 percent, of diesel fuel-powered motor vehicles with a weight of more than 8,500 pounds that are owned or operated by city agencies utilize BART or be equipped with an engine certified to the 2007 EPA standard for reducing the emission of pollutants. The law provides that the Commissioner shall make determinations, and shall publish a list of such determinations, as to the BART for reducing the emission of pollutants to be used for each type of diesel fuel-powered motor vehicle affected by the law.**

**This rulemaking sets forth the initial determinations of the Commissioner as to what constitutes BART for the purposes of compliance with section 24-163.4 of the Administrative Code.**

**The Rules are authorized by section 1043 of the Charter of the City of New York and section 24-163.4 of the Administrative Code of the City of New York.**

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Chapter 15 of Title 15 of the Rules of the City of New York is enacted to read as follows:

Chapter 15

Rules Concerning the Use of Ultra Low Sulfur Diesel Fuel and Emission Control Technology on City Motor Vehicles

Subchapter

A General Provisions

B Use of Best Available Retrofit Technology and Ultra Low Sulfur Diesel Fuel

Subchapter A

General Provisions

§ 15-01 Definitions.

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“Best available retrofit technology” shall mean a technology, verified by the United States environmental protection agency or the California air resources board, for reducing the emission of pollutants that achieves reductions in particulate matter emissions at the highest classification level for diesel emission control strategies, as set forth in §15-04 of subchapter B of this chapter, that is applicable to the particular engine and application. Such technology shall also, at a reasonable cost, achieve the greatest reduction in emissions of nitrogen oxides at such particulate matter reduction level and shall in no event result in a net increase in the emissions of either particulate matter or nitrogen oxides.

“City agency” shall mean a city, county, borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

“Code” shall mean the Administrative Code of the City of New York.

“Commissioner” shall mean the Commissioner of the New York City Department of Environmental Protection or her designee.

“Department” shall mean the Department of Environmental Protection.

“Gross vehicle weight rating” shall mean the value specified by the manufacturer of a motor vehicle model as the maximum design loaded weight of a single vehicle of that model.

“Motor vehicle” shall mean a vehicle operated or driven upon a public highway that is propelled by any power other than muscular power, except electrically-driven mobility assistance devices operated or driven by a person with a disability, provided, however,

that this term shall not include vehicles that are specially equipped for emergency response by the department, office of emergency management, sheriff's office of the department of finance, police department or fire department.

"Person" shall mean any natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.

"Reasonable cost" shall mean that such technology does not cost greater than thirty percent more than other technology applicable to the particular engine and application that falls within the same classification level for diesel emission control strategies, as set forth in §15-04 of subchapter B of this chapter, when considering the cost of the strategies, themselves, and the cost of installation.

"Ultra low sulfur diesel fuel" shall mean diesel fuel that has a sulfur content of no more than fifteen parts per million.

## **Subchapter B**

### **Use of Best Available Retrofit Technology and Ultra Low Sulfur Diesel Fuel**

§ 15-02 Best Available Retrofit Technology Determination

§ 15-03 Motor Vehicles That Are Not Subject to BART

§ 15-04 Classification Levels

§ 15-05 Selection Process

§ 15-06 Best Available Retrofit Technology Selection Applicability

§ 15-07 Use of Ultra Low Sulfur Diesel Fuel

§ 15-02 Best Available Retrofit Technology Determination. Pursuant to section 24-163.4 of the Code, any diesel fuel-powered motor vehicle having a gross vehicle weight rating of more than 8,500 pounds that is owned or operated by a City agency shall utilize the Best Available Retrofit Technology ("BART"), as defined in § 15-01 of subchapter A of this chapter. In making their selections, agencies are directed to consult the EPA and CARB verified lists at <http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm> and <http://www.arb.ca.gov/diesel/verdev/background.htm>.

City agencies shall select BART for their diesel fuel-powered motor vehicles in accordance with §15-05 of this subchapter. City agencies shall notify the Department of their selections, and the Department shall make a determination as to whether the BART selected may be utilized for the vehicle, engine and application for which it was selected. The Department shall notify the selecting agency of its determination.

§ 15-03 Motor Vehicles That Are Not Subject to BART. Any diesel fuel-powered motor vehicle having a gross vehicle weight rating of more than 8,500 pounds that is owned or operated by a City agency and that is equipped with an engine certified to the applicable

2007 United States Environmental Protection Agency standard for particulate matter as set forth in section 86.007-11 of title 40 of the code of federal regulations or to any subsequent United States environmental protection agency standard for such pollutant that is at least as stringent, shall not be required to utilize the BART as defined in §15-01 of subchapter A of this chapter.

#### § 15-04 Classification Levels.

##### Level IV

Any Diesel Particulate Filter (DPF) or other technology verified for a specific application from either the CARB or EPA verified lists that reduces diesel particulate matter emissions by 85 percent or greater, or reduces engine emissions to less than or equal to 0.01 grams diesel particulate matter per brake horsepower-hour.

##### Level III

Any DPF or Diesel Oxidation Catalyst (DOC) or Catalyzed Wire Mesh Filter (CWMF) or other technology or combination of technologies verified for a specific application from either the CARB or EPA verified lists that reduces diesel particulate matter emissions by between 50 and 84 percent.

##### Level II

Any DOC or other technology verified for a specific application from either the CARB or EPA verified lists that reduces diesel particulate matter emissions by between 25 and 49 percent.

##### Level I

Any DOC or emulsified diesel fuel or other technology verified for a specific application from either the CARB or EPA verified lists that reduces diesel particulate matter emissions by between 20 and 24 percent.

#### § 15-05 Selection Process.

(a) For each type of motor vehicle subject to the BART requirement, the City agency operating such vehicle must identify, in list form, all types of pollution control technology devices verified for such motor vehicle at classification Level IV.

(b) All types of pollution control technology devices identified by the City agency as classification Level IV devices that are not technologically feasible for use with respect to the particular vehicle, engine or application are to be eliminated from such list. To eliminate all types of pollution control technology devices identified by the agency at classification Level IV, or a specific type of pollution control technology, or a particular pollution control technology device, the agency must demonstrate to the satisfaction of the Commissioner that operational constraints or physical, chemical or engineering principles preclude the successful and effective use of the motor vehicle when used with such types of technology devices, or type of technology, or particular pollution control technology device.

(c) If, after the elimination process, no pollution control technology devices remain in classification Level IV from which the City agency can select a BART, the same identification and elimination process must be done for classification Level III. If after the elimination process, no pollution control technology devices remain in classification Level III from which the City agency can select a BART, the same identification and elimination process must be done for classification Level II. If after the elimination process, no pollution control technology devices remain in classification Level II from which the City agency can select a BART, the same identification and elimination process must be done for classification Level I.

(d) Once a level is selected as provided for in subdivisions (a), (b), and (c) of this section, an economic impact analysis is to be performed on the remaining technologies where the technology reduces both PM and nitrogen oxide (NOx). The agency shall select the technology achieving, at a reasonable cost, the greatest reduction in NOx emissions.

(e) The Commissioner may determine, upon application by a City agency, that a technology, whether or not it has been verified by the United States environmental protection agency or the California air resources board, may be appropriate to test, on an experimental basis, on a particular type of diesel fuel-powered motor vehicle owned or operated by a City agency. The Commissioner may authorize such technology to be installed on up to five percent or twenty-five of such type of motor vehicle, whichever is less.

#### § 15-06 Best Available Retrofit Technology Selection Applicability.

No City agency shall be required to replace a selected BART or an experimental technology within three years of having first utilized such technology. Furthermore, no City agency shall be required to replace Level IV technology until it has reached the end of its useful life.

#### § 15-07 Use of Ultra Low Sulfur Diesel Fuel.

All motor vehicles owned or operated by a City agency must be powered by ultra low sulfur diesel fuel unless the Commissioner has issued a written determination pursuant to subdivision (e) of section 24-163.4 of the Code, or a waiver pursuant to subdivision (f) of section 24-163.4 of the Code.