

Department of Environmental Protection  
Notice of Opportunity to Comment on  
Promulgation of  
Chapter 26 of Title 15 of the Rules of the City of New York  
Rules Concerning the Use of Ultra-Low Sulfur Diesel Fuel and Emissions Control Technology on  
Vehicles that Transport Children to and from School

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Department of Environmental Protection by section 1043 and subdivision (c) of section 1403 of the New York City Charter and section 24-163.7 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 and emissions control technology on vehicles that transport children to and from school. PLEASE BE ADVISED THAT this Rule was published as a proposed rule in the City Record on November 30<sup>th</sup>, 2006 and a hearing was held on the first draft Rule on December 28<sup>th</sup>.

Statement of Basis and Purpose

On May 11, 2005, Mayor Michael Bloomberg signed Local Law 42 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 the best available retrofit technology (“BART”) by vehicles that transport children to and from school. The law requires that by September 1, 2006 all diesel fuel-powered school buses shall be powered by ULSDF. 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 school bus 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 24-163.7 of the Administrative Code.

The Rules are authorized by section 1043 of the Charter of the City of New York and section 24-163.7 of the Administrative Code of the City of New York.

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Chapter 26 of Title 15 of the Rules of the City of New York is enacted to read as follows:

**Chapter 26**  
**Rules Concerning the Use of Ultra-Low Sulfur Diesel Fuel and Emissions Control**  
**Technology on Vehicles that Transport Children to and from School**

**Subchapter**

**A General Provisions**

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

**Subchapter A**

**General Provisions**

**§ 26-01 Definitions.**

§ 26-01 Definitions.

“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 §26-04 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.

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

“Department of education” shall mean the New York city department of education, formerly known as the New York city board of education, and any successor agency or entity thereto, the expenses of which are paid in whole or in part from the city treasury.

“Person” shall mean any natural person, partnership, firm, company, association, joint stock association, corporation or other legal entity.

“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 §26-04 of subchapter B of this chapter, when considering the cost of the strategies, themselves, and the cost of installation.

“School bus” means any vehicle operated pursuant to a school bus contract, designed to transport ten or more children at one time, of the designation “Type C bus” or “Type D bus” as set forth in 17 NYCRR §§ 720.1 (Z) and (AA), and used to transport children to or from any school located in the city of New York, and excluding any vehicle utilized primarily to transport children with special educational needs who do not travel to and from school in vehicles used to transport general education students.

“School bus contract” shall mean any agreement between any person and the department of education to transport children on a school bus.

“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**

§ 26-02 Best Available Retrofit Technology Determination

§ 26-03 Motor Vehicles That Are Not Subject to BART

§ 26-04 Classification Levels

§ 26-05 Selection Process

§ 26-06 Best Available Retrofit Technology Selection Applicability  
§ 26-07 Use of Ultra Low Sulfur Diesel Fuel

§ 26-02 Best Available Retrofit Technology Determination. Pursuant to section 24-163.7 of the Code, any diesel fuel-powered school bus used to transport children to and from school located in the City of New York shall utilize the Best Available Retrofit Technology (“BART”), as defined in § 26-01 of subchapter A of this chapter. In making their selections, persons fulfilling school bus contracts 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>.

The persons fulfilling school bus contracts shall select BART for their diesel fuel-powered school buses in accordance with §26-05 of this subchapter. Such persons 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 these persons of its determination.

§ 26-03 School Buses That Are Not Subject to BART.

- (a) Any diesel fuel-powered school bus 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 §26-01 of subchapter A of this chapter.
- (b) Any best available retrofit technology, or substantially similar technology, purchased or installed in whole or in part with funds provided by the state of New York or the federal government pursuant to a specific diesel emissions reduction program in effect upon the date of enactment of this section, shall constitute the best available retrofit technology for a period of not less than three years from the date on which such equipment was installed.

§ 26-04 Classification Levels.

Level IV

A Closed Crankcase Filtration System in combination with any Diesel Particulate Filter (DPF) or other technology verified for a specific application from either the CARB or EPA verified lists that reduces 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

A Closed Crankcase Filtration System in combination with any DPF or Flow Through Filter 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

A Closed Crankcase Filtration System in combination with any DOC or Flow Through Filter 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

A Closed Crankcase Filtration System in combination with any DOC or emulsified diesel fuel or Flow Through Filter 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.

§ 26-05 Selection Process.

(a) For each type of school bus subject to the BART requirement, the person fulfilling a school bus contract must identify, in list form, all types of pollution control technology devices verified for such type of school bus at classification Level IV.

(b) All types of pollution control technology devices identified by such person 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. The engine model year should be considered for BART selection among different DPFs as an active filter is necessary for pre-1994 engine model years. To eliminate all types of pollution control technology devices identified by such person at classification Level IV, or a specific type of pollution control technology, or a particular pollution control technology device, such person 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 school bus 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 such person 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 such person 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 such person 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). Such person shall select the technology achieving, at a reasonable cost, the greatest reduction in NOx emissions. If the NOx emission does not meet the reasonable cost test, the technology that achieves the greatest PM reduction from the other remaining technologies must be selected.

§ 26-06 Best Available Retrofit Technology Selection Applicability.

No person fulfilling a school bus contract shall be required to replace a selected BART within three years of having first utilized such technology. Furthermore, no person fulfilling a school bus contract shall be required to replace Level IV technology until it has reached the end of its useful life.

§ 26-07 Use of Ultra Low Sulfur Diesel Fuel.

All diesel fuel-powered school buses used to transport children to or from any school located in the City of New York must be powered by ultra low sulfur diesel fuel unless the Commissioner has issued a waiver pursuant to subdivision (g) of section 24-163.7 of the Code.

**Subchapter C**  
**Waiver Procedures**

§ 26-08 Waiver for the Use of BART Based on Written Finding of Unavailability by Department of Education

(a) If the BART required for a school bus is unavailable, a person fulfilling a school bus contract may apply for a waiver for the use of BART. Such application must be based on a Written Finding of Unavailability by the Department of Education indicating that the BART for the subject school bus is unavailable for purchase. Such application shall also contain the following:

(1) The name of the person fulfilling the school bus contract who is applying for approval of the Written Finding of Unavailability;

(2) The name and identification number of the subject contract, if applicable;

(3) Identification of the school bus that is the subject of the Written Finding of Unavailability;

(4) Identification of the required BART;

(5) An explanation as to why the required BART is unavailable. Such explanation must include all documentation generated in the BART selection process described in this chapter;

(6) Identification of a technology for reducing the emission of pollutants, if any, that is available and appropriate for such vehicle, which may include a technology that does not appear on the EPA or CARB verified lists, and that, if available and appropriate, will be used instead of the BART.

(7) The name and contact number of the applicant.

(b) Applications should be sent to:  
Director of the Division of Air and Noise Programs, Enforcement and Policy  
Bureau of Environmental Compliance  
New York City Department of Environmental Protection  
59-17 Junction Blvd.  
Flushing, NY 11373

(c) The Commissioner will make a determination whether to approve the Written Finding of Unavailability no later than thirty days after receipt of the application.

(d) Waivers are effective for three years. Any application for renewal shall be submitted no later than thirty days prior to the expiration date of the waiver.

(e) Contractors shall maintain records that include the installation date of the BART as well as the engine model year and engine manufacturer.