

**Department of Environmental Protection  
Chapter 25 of Title 15 of the Rules of the City of New York  
Promulgation of Rule Concerning the Use of Emissions Control Technology on  
Sight-Seeing Buses**

**PURSUANT TO THE AUTHORITY VESTED IN THE Department of Environmental Protection by section 1043 of the New York City Charter and section 24-163.6 of the Administrative Code of the City of New York, the Department of Environmental Protection promulgates and amends the rules Concerning the Use of Emissions Control Technology on Sight-Seeing Buses.**

**These amendments were proposed and published August 18<sup>th</sup>, 2006 in The City Record. The required public hearing was held on September 27<sup>th</sup>, 2006.**

**Material being deleted is shown below in [brackets] and material being added is underlined.**

**Statement of Basis and Purpose**

**On May 11, 2005, Mayor Michael Bloomberg signed Local Law 41 for the year 2005. The law amended the Administrative Code of the City of New York in relation to the use of best available retrofit technology (“BART”) by sight-seeing buses. The law requires that beginning January 1, 2007, any diesel fuel-powered sight-seeing bus that is licensed by the Department of Consumer Affairs (DCA) and is equipped with an engine that is over three years old shall utilize BART for reducing the emission of pollutants. A sight-seeing bus, as defined by the law, is a vehicle that carries eight or more passengers and operates for hire from a fixed point in the City to a place of interest or amusement. 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 sight-seeing bus affected by the law.**

**This rulemaking sets forth the initial determinations of the Commissioner as to what constitutes BART for purposes of compliance with section 24-163.6 of the Administrative Code.**

**The Rules are authorized by section 1043 of the Charter of the City of New York and section 24-163.6 of the Administrative Code of the City of New York.**

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**Chapter 25 of Title 15 of the Rules of the City of New York (“RCNY”) is promulgated to read as follows:**

Chapter 25

Rules Concerning the Use of Emissions Control Technology on Sight-Seeing Buses

Subchapter

A General Provisions

B Use of Best Available Retrofit Technology

C Waiver Procedure

Subchapter A

General Provisions

§ 25-01 Definitions.

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“Best available retrofit technology” (BART) 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 §25-04 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.

“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 §25-04 of subchapter B of this chapter, when considering the cost of the strategies, themselves, and the cost of installation.

“Sight-seeing bus” shall mean a motor vehicle designed to comfortably seat and carry eight or more passengers operating for hire from a fixed point in the city of New York to a place or places of interest or amusements, and shall also include a vehicle, designed as aforesaid which by oral or written contract is let and hired or otherwise engaged for its exclusive use for a specific or special trip or excursion from a starting point within the city of New York.

Subchapter B

## Use of Best Available Retrofit Technology

### § 25-02 Best Available Retrofit Technology Determination.

### § 25-03 Motor Vehicles That Are Not Subject to BART.

### § 25-04 Classification Levels.

### § 25-05 Selection Process.

### § 25-06 Best Available Retrofit Technology Selection Applicability.

§ 25-02 Best Available Retrofit Technology Determination. Pursuant to section 24-163.6 of the Code, any diesel fuel-powered sight-seeing bus licensed by the department of consumer affairs and equipped with an engine that is over three years old shall utilize the Best Available Retrofit Technology, as defined in § 25-01 of subchapter A of this chapter. In making their selections, owners or operators of such buses 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>.

§ 25-03 Motor Vehicles That Are Not Subject to BART. Any diesel fuel-powered sight-seeing 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 §25-01 of subchapter A of this chapter.

### § 25-04 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.

§ 25-05 Selection Process.

(a) For each type of diesel fuel-powered sight-seeing bus subject to the BART requirement, the owner or operator of such sight-seeing bus must identify, in list form, all types of pollution control technology devices verified for such sight-seeing bus at classification Level IV.

(b) All types of pollution control technology devices identified by the owner or operator of such sight-seeing bus 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 owner or operator of such sight-seeing bus at classification Level IV, or a specific type of pollution control technology, or a particular pollution control technology device, the owner or operator 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 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 the owner or operator 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 owner or operator 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 owner or operator 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 particulate matter and nitrogen oxide. The owner or operator shall select the technology that achieves, at a reasonable cost, the greatest reduction in nitrogen oxide emissions. If there is no such technology that achieves, at a reasonable cost, a reduction in nitrogen oxide emissions, the technology that achieves the greatest particulate matter reduction must be selected.

§ 25-06 Best Available Retrofit Technology Selection Applicability.

No owner or operator of a sight-seeing bus subject to this chapter shall be required to replace a selected BART or other authorized technology within three years of having first utilized such technology. Furthermore, no owner or operator of such bus shall be required to replace Level IV technology until it has reached the end of its useful life.

**Subchapter C**  
**Waiver Procedure**

**§25-07 Application for Waiver and Approval of a Written Finding of Unavailability.**

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(a) An application for a waiver for the use of the required BART shall contain the following information:

(1) Identification of the required BART;

(2) An explanation as to why the applicable BART is unavailable. Such explanation must include all documentation generated in the BART selection process described in section 25-05 of this chapter;

(3) 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.

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

(b) The application shall be submitted 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 Department shall submit such application to the Department of Consumer Affairs with a request for a Written Finding of Unavailability from the Commissioner of Consumer Affairs.

(d) The Department of Consumer Affairs will make a written finding regarding such request within thirty days of receipt of the Department of Environmental Protection's request for a Written Finding of Unavailability.

(e) The Department's decision whether to grant the waiver for the use of BART shall be subject to a Written Finding of Unavailability by the Department of Consumer Affairs.

(f) 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.