

Subpart 248-1 Definitions

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-1.1 Definitions

§248-1.1 Definitions

(a) For purposes of this Part, the general definitions of Part 200 of this Title apply.

(b) For the purposes of this Part, the following definitions also apply:

(1) *Affected engine* means each engine identified by a consent decree engine manufacturer in its low NO_x rebuild plan. A low NO_x rebuild engine, as that terminology is used in the consent decrees, is an *affected engine*.

(2) *Alternative fuel* means natural gas, propane, ethanol, methanol, gasoline (when used in hybrid electric vehicles only), hydrogen, electricity, fuel cells, or advanced technologies that do not rely solely on diesel fuel or a diesel/non-diesel fuel mixture.

(3) *Approved bi-fuel vehicle* means any heavy duty vehicle that has been retrofitted with an EPA or CARB approved after-market conversion kit that will allow the engine to operate on a combination of ultra low sulfur diesel fuel and compressed natural gas.

(4) *Authorized emergency vehicle* means those vehicles as defined in section 101 of the Vehicle and Traffic Law.

(5) *BART regulated entity* means State agency or public authority, either State or regional, with more than half of its governing body appointed by the governor.

(6) *Best available retrofit technology* or *BART* means technology, verified by the EPA or CARB for reducing the emissions of pollutants that achieves reductions in particulate matter emissions at the highest classification level for diesel emission control strategies 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.

(7) *CARB* means the California State Air Resources Board as defined in *California's Health and Safety Code*, section 39003 (see Table 1, section 200.9 of this Title).

(8) *Classification level for diesel emission control strategies* means those PM reduction classification levels and corresponding PM percent reductions as noted below in Table 1 of this paragraph.

Table 1. Verification Classifications for Diesel Emission Control Strategies

Pollutant Reduction	Classification
PM < 25 percent	Not verified
> or =25 percent	Level 1
> or =50 percent	Level 2
> or =85 percent	Level 3
or < or =0.01g/bhp-hr	
NO _x < 15 percent	Not verified

> or =15 percent	Verified in 5 percent increments
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(9) *Consent decree engine manufacturer* means a manufacturer of motor vehicle diesel engines pertaining to consent orders, referenced in the *Federal Register*/vol. 63, no. 212, November 3, 1998, pp.59330 through 59334 (see Table 1, section 200.9 of this Title).

(10) *Contractor* means any person or entity that contracts directly or indirectly with a regulated entity to provide labor, services, materials and/or equipment on behalf of the regulated entity. *Contractor* includes but is not limited to prime contractor, subcontractor, and any contractor(s) hired by such subcontractor.

(11) *Covered vehicle* means a heavy duty vehicle owned, operated by or on behalf of, or leased by a regulated entity subject to the requirements of this section.

(12) *Diesel engine* means a compression ignition type of internal combustion engine which operates on or is capable of operating on diesel fuel, non-diesel fuel, or diesel/non-diesel mixture.

(13) *Gross vehicle weight rating* or *GVWR* means the value specified by the vehicle manufacturer as the maximum loaded weight of a single or combination vehicle.

(14) *Heavy Duty Vehicle* or *HDV* means any on and off-road vehicle powered by a diesel engine and having a gross vehicle weight of greater than 8,500 pounds, except: vehicles used exclusively as snowplows under contract with a regulated entity; authorized emergency vehicles; trucks owned by a person engaged in production by means of

(a) the planting, cultivation and harvesting of agricultural, vegetable and food products of the soil, including horticultural specialties such as nursery stock, ornamental shrubs, ornamental trees and flowers,

(b) the raising, feeding and care of livestock, bees and poultry or

(c) dairy farming where such agricultural truck is only used for the transportation of such person's own agricultural or dairy commodities or supplies or for personal passenger use, or in conjunction with lumbering operations connected with but only incidental to the operation of a farm; road rollers, tractor cranes, truck cranes, power shovels, road building machines, snow plows, road sweepers, sand spreaders, well drillers, well servicing rigs, feed processing machines, mobile car crushers (whether self-propelled or a combination used exclusively as one unit), earth movers, which shall mean motor-driven vehicles in excess of eight feet in width equipped with pneumatic tires designed and constructed for moving or transporting earth and rock in connection with excavation and grading work, and truck with small wheels used in a factory, warehouse or railroad station, spreaders and sprayers (generally meaning an agricultural vehicle used to spread or spray agricultural chemicals, agricultural line and/or agricultural fertilizers), fire vehicles and tractor-trailer combinations designed and used as a unit exclusively for the same purposes as the above named vehicles; motor vehicles, other than motor vehicles manufactured and equipped primarily for the transportation of passengers, trailers and semitrailers, to be operated by any person, upon a public highway for the purpose of traveling by the most direct route, but in no event further than 25 miles one-way from a point on the farms and designated by the vehicle owner and set forth in an attachment to the vehicle registration,

(a) between fields, buildings, and facilities managed or operated as part of a single farm enterprise in connection with the production, harvesting, processing or marketing on that farm of crops, livestock, or livestock products produced on that farm or

(b) for the purpose of transporting materials from a farm to the nearest available municipal sanitary landfill, or for the purpose of transporting the motor vehicles, trailer or semitrailer to a motor vehicles repair shop licensed pursuant to chapter 71 of the consolidated laws for the repair or adjustment of equipment provided that, in addition to the route restrictions set for in this subdivision, no such transport shall be authorized if such vehicle has an out-of-service defect relating to load securement, brake systems, steering components and/or coupling devices, or after it has been placed out-of-service or on any limited access highway, and during the period of one hour before sunset to one hour after sunrise except for vehicles owned by farmers with an average gross sales value of less than one thousand dollars per year of crops, livestock and livestock provisions; and farm type tractors and all terrain type vehicles used exclusively for agriculture or mowing purposes, or for snow plowing, other than for hire, farm equipment, including self-propelled machines used exclusively in growing, harvesting or handling farm produce, and self-propelled caterpillar or crawler-type equipment while being operated on the contract site, and timber harvesting equipment such as harvesters, wood chippers, forwarders, log skidders, and other processing equipment used exclusively off highway for timber harvesting and logging purposes.

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.

(15) *Low NO_x rebuild kit* means a consent decree engine manufacturer's software and/or hardware upgrade kit required under a consent decree, to be installed on the engine control module of an affected engine. Such kits are identified by each consent decree engine manufacturer in its respective low NO_x rebuild plan

(16) *Low NO_x rebuild label* means the label stipulated in the consent decrees, which meets all of the following specifications:

- (i) it contains an identifiable characteristic allowing the State agency to determine whether an affected engine has had the appropriate low NO_x rebuild kit installed;
- (ii) it contains a statement with appropriate blank spaces for the individual performing the installation to indicate when and by whom the low NO_x rebuild kit was installed on the engine;
- (iii) it is readily visible upon opening the engine compartment;
- (iv) it is fabricated of a material suitable for the location in which it is installed and remains legible throughout the engine life; and
- (v) it is not readily removable intact.

(17) *Low NO_x rebuild plan* means the plan developed by each consent decree engine manufacturer and approved by the United States under the consent decrees to implement a rebuild program for the affected engines.

(18) *Model year* means the engine manufacturer's annual production period, as defined in 40 CFR part 85, subpart X. (see Table 1, section 200.9 of this Title).

(19) *Off road vehicle* means motor vehicle, other than an on road vehicle, powered by a diesel engine and having a gross vehicle weight of greater than 8,500 pounds or having an engine of 50 horsepower and greater.

(20) *On behalf of* means to provide, by a contractor, labor, services, materials and/or equipment to a regulated entity which are integral to the performance of regulated entity work by a regulated entity.

(21) *On road vehicle* means a motor vehicle powered by a diesel engine that has a GVWR exceeding 8,500 pounds and is designed primarily for transporting persons or properties on a street or a highway.

(22) *PM* means particulate matter.

(23) *Prime contractor* means any person or entity which contracts directly with a regulated entity and who is responsible for the completion of the contract with the regulated entity.

(24) *Reasonable cost* means that such technology does not cost greater than 30 percent more than other technology applicable to the particular engine and application that falls within the same classification level for diesel emission control strategies when considering the cost of the strategies themselves and the cost of installation.

(25) *Regulated entity* means BART regulated entity and ULSD regulated entity.

(26) *Regulated entity work* means work or services performed or provided by the regulated entity.

(27) *State and regional public authority* means

(i) a public authority created pursuant to the Public Authorities Law or any other law of the State of New York, with at least one member of the governing board who is either appointed by the governor or who serves as a member by virtue of their service as an officer of a state department, division, agency, board, bureau, or combination thereof, or

(ii) a public authority created pursuant to the Public Authorities Law or any other law of the State of New York, with jurisdiction within at least two entire contiguous counties, and a majority of Board appointments made by the governor, or

(iii) a subsidiary or affiliate of such public authority.

(28) *Subcontractor* means any person or entity that performs for and takes from the prime contractor a specific part of the labor or material requirements of the prime contract; which definition shall include, without limitation, any contractor(s) hired or retained by said subcontractor while performing under the prime contract.

(29) *Ultra low sulfur diesel fuel* or *ULSD* means diesel fuel having sulfur content of 0.0015 percent (15 ppm) of sulfur or less.

(30) *ULSD regulated entity* means State agency or public authority, either State or regional.

Subpart 248-2 Applicability

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-2.1 Applicability

§248-2.1 Applicability

(a) *General*. This Part applies to all heavy duty vehicles except for:

- (1) locomotives;
- (2) alternative fuel vehicles;
- (3) any HDV subject to a lease or contract entered into or last renewed prior to February 12, 2007; and
- (4) any on road vehicle with engine model years prior to 1960.

Subpart 248-3 Compliance Requirements

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-3.1 Compliance Requirements

§248-3.1 Compliance Requirements

- (a) Vehicles with an engine certified to the applicable 2007 EPA standard for particulate matter (0.01 g/bhp-hr) as set forth in section 86.007-11 of title 40 of the Code of Federal Regulations or to the applicable 2007 CARB standard for particulate matter shall be deemed to be in compliance with this Part. (see Table 1, Section 200.9 of this Title)
- (b) Heavy duty vehicles retrofitted with a EPA or CARB verified or an approved diesel retrofit technology device prior to February 12, 2007 shall be deemed to be in compliance with this Part provided the device is maintained throughout the HDV's useful life.
- (c) Approved bi-fuel vehicles shall be deemed to be in compliance with this Part.
- (d) All covered vehicles owned by, operated by, or leased by a regulated entity or contractor shall be powered by ULSD fuel. The regulated entity or contractor may apply for a waiver from this requirement per the waiver application process specified in section 248-4.1(a) of this Part if the commissioner makes a written finding that a sufficient quantity of ULSD is not available to meet the requirements of this Part.
- (e) All diesel powered heavy duty vehicles owned by, operated by, or leased by each BART regulated entity or which are owned by, operated by, or leased by a contractor and used to provide labor, services, materials and/or equipment on behalf of a BART regulated entity to perform regulated entity work shall utilize the best available retrofit technology according to the following schedule:
- (1) at least 33 percent of all such vehicles shall have BART by December 31, 2008;
 - (2) at least 66 percent of all such vehicles shall have BART by December 31, 2009; and
 - (3) all such vehicles shall have BART by December 31, 2010.
- (f) In order to comply with the requirements of subdivision (e) of this section, the BART regulated entity or contractor shall first perform a HDV inventory according to a department prescribed format. The BART regulated entity or contractor shall then select one of the following two technology options for each of its inventoried HDVs:
- (1) Option 1 - replacement or retirement:
 - (i) replacement/re-power with an engine certified to the applicable 2007 EPA standard for particulate matter (0.01 g/bhp-hr) as set forth in section 86.007-11 of title 40 of the *Code of Federal Regulations* (see Table 1, section 200.9 of this Title) or to any subsequent USEPA standard for such pollutant that is at least as stringent; or
 - (ii) replacement with an alternative fuel engine or vehicle which does not operate on diesel fuel; model year 2004 - 2006 alternative fuel engines must be certified to the optional, reduced emission standards as specified in title 13, *California Code of Regulations*, section 1956.8(a)(2)(A) (see Table 1, section 200.9 of this Title); or
 - (iii) retirement of the vehicle or removal of the vehicle's engine.
 - (2) Option 2 - BART evaluation and selection process:

(i) BART shall be selected from the diesel retrofit technologies (products) verified by either the EPA or CARB.

(ii) The specific procedures for evaluating and selecting BART for each applicable HDV are as follows:

(a) The BART regulated entity or contractor shall review the EPA and CARB list of BART classification level 3 products to determine if any of the classification level 3 products are applicable and available for the inventoried specific HDV engine and application. In no case shall a product(s) be selected which results in a net increase in the emissions of either PM or NO_x.

(b) If more than one classification level 3 product is applicable and available and the product(s) provides an additional NO_x reduction benefit, a cost analysis shall be performed in accordance with clause 248-3.1(f)(2)(ii)(c) of this subparagraph.

(c) If the cost of the product(s) that provides the greatest NO_x reduction is less than or equal to 30 percent more than that of the other applicable and available classification level 3 products, then the product(s) with the greatest NO_x reduction shall be selected. For the purpose of the cost analysis, criteria that shall be considered are the cost of the products themselves and the cost of installation.

(d) If more than one classification level 3 product is applicable and available and none of which contain an additional NO_x reduction benefit, then any of those applicable and available classification level 3 products may be selected.

(e) If no classification level 3 product is determined applicable and available for use on a specific HDV engine and application, then the BART regulated entity or contractor shall continue the evaluation and selection process for classification level 2 products as indicated in clause 248-3.1(f)(2)(ii)(f) of this subparagraph.

(f) The same evaluation and selection process as noted in clauses (a) through (d) of this subparagraph performed for classification level 3 products shall be performed for classification level 2 products.

(g) If no classification level 2 product is determined applicable and available for use on a specific HDV engine and application, then the BART regulated entity or contractor shall continue the evaluation and selection process for classification level 1 products as indicated in clause (h) of this subparagraph.

(h) The same evaluation and selection process as noted in clauses (a) through (d) of this subparagraph, performed for classification level 3 products shall be performed for classification level 1 products.

(i) If no classification level 1 product is determined applicable and available for use on a specific HDV engine and application, then the BART regulated entity or contractor shall apply for a waiver for the specific HDV according to the procedures specified in section 248-4.1(b) of this Part.

(g) The BART regulated entity and contractor:

(1) shall fully document all steps in the option 1 or 2 selection process as noted in subdivision (f) of this section;

(2) make available or provide all documentation to the department upon its request; and

(3) shall retain all documentation generated in the option 1 or 2 selection process for five years or as long as the selected option is in use, whichever is longer.

(h) A contractor's failure to fully document the option 1 or 2 selection process or to provide such documentation shall be considered a violation of subdivision (f) of this section and is subject to applicable penalties.

(i) All contracts to provide labor, services, materials and/or equipment on behalf of a regulated entity to enable it to perform regulated entity work shall require the contractor to comply with the requirements of this Part.

(j) If an option 1 technology is selected and installed, then the selected technology shall remain in use for the remainder of the vehicle's or engine's useful life, or, in the case of a contractor for the duration of the regulated entity work. If the selected engine or vehicle experiences a failure, then the BART regulated entity or contractor shall select and install for replacement:

(1) an option 1 technology ; or

(2) an option 2 technology using the evaluation and selection process in accordance with paragraph (f)(2) of this section.

(k) If an option 2 technology is selected and installed, then the selected BART product shall remain in use until the end of the vehicle's or engine's useful life, or, in the case of a contractor for the duration of the regulated entity work at a minimum. If the selected and installed BART product experiences a failure, then the BART regulated entity or contractor shall select and install:

(1) the same BART product; or

(2) a BART product using the evaluation and selection process in accordance with paragraph (f)(2) of this section; or

(3) an option 1 technology.

(l) For HDVs that meet the applicability requirements of this Part and are subject to the consent decree, those HDVs must:

(1) have the approved low NO_x rebuild kits installed. Low NO_x rebuild kits shall be installed on the vehicle's engine prior to the installation of any classification level 1, 2 or 3 BART device; and

(2) have readily observable low NO_x rebuild labels permanently affixed to their respective engines.

Subpart 248-4 Waiver Provisions

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-4.1 Waiver Provisions

§248-4.1 Waiver Provisions

(a) *Application for waiver of ULSD requirements*

(1) Regulated entities and contractors may apply for a waiver from the ULSD requirements of this Part. All waiver applications submitted to the department shall be provided in a format acceptable to the department. The name and contact phone number of the waiver applicant shall be provided on the waiver application. Upon application, the commissioner may issue a waiver from the ULSD requirements of section 248-3.1(d) of this Part to a regulated entity or contractor for diesel fuel which contains greater than 15 ppm sulfur upon a showing that ULSD is not readily available to meet the requirements of section 248-3.1(d) of this Part provided that the regulated entity or contractor shall to the extent practicable use whatever quantity of ULSD is available. Upon application, the commissioner, after consultation with the president of the New York State Energy Research and Development Authority, may grant a waiver from the requirements of section 248-3.1(d) of this Part if the applicant for such waiver can demonstrate to the commissioner that quantities of ULSD sufficient to meet the applicant's demand are not available in time to meet the requirements of section 248-3.1(d) of this Part. Such waiver may be issued for up to one year, at the discretion of the commissioner, and may be renewed upon application. Such waiver determination shall be made on a case by case basis upon written application to the department by the State agency commissioner or other responsible person of the regulated entity or contractor. The commissioner may impose an interim standard for sulfur in diesel fuel permitted to be used as a condition of a waiver issued pursuant to this subdivision.

(b) *Application for waiver of BART requirements*

(1) Regulated entities and contractors may apply for a waiver from the BART requirements of this Part. All waiver applications submitted to the department shall be provided in a format acceptable to the department. Such application shall be submitted by the State agency commissioner or other responsible person of the regulated entity or contractor. If, through the BART evaluation and selection process noted in section 248-3.1(f)(2) of this Part above, it is determined by the BART regulated entity or contractor that none of the PM reduction classification level technologies are applicable or available for a specific covered vehicle, such BART regulated entity or contractor may submit an application for a waiver for the commissioner's approval. Any application for a waiver of BART requirements shall contain the following information:

- (i) the name and address of the BART regulated entity or contractor applying for approval of the waiver including the name and phone number of the responsible party;
- (ii) the name and identification number of the subject contract, if applicable;
- (iii) identification of the specific heavy duty covered vehicle or engine that is the subject of the waiver application;
- (iv) the name of the engine manufacturer, engine model year, engine family, and engine series;
- (v) VIN, if applicable;
- (vi) identification of the required BART; and
- (vii) an explanation as to why the BART is not available or not applicable. Such explanation shall include all documentation generated in the BART evaluation and selection process described in section 248-3.1(f)(2) of this Part.

(c) Applications shall be sent to:

Director, Bureau of Mobile Sources & Technology Development, Division of Air Resources, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3255.

(d) The commissioner will make a determination whether to approve the waiver of BART or ULSD requirements no later than 90 days after receipt of the application.

(e) Waivers shall expire one year after issuance, unless the BART or ULSD regulated entity or contractor submits a renewal application and the commissioner approves such application, in accordance with the provisions set forth in this subdivision. Any such application for renewal shall be submitted no later than 30 days prior to the expiration date of the approval.

Subpart 248-5 Vehicle And Equipment Labeling Requirements

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-5.1 Vehicle and equipment labeling requirements

§248-5.1 Vehicle and equipment labeling requirements

(a) For each covered vehicle that has BART installed or that received a BART waiver, a label shall be affixed to the vehicle in plain view in the form of a legible and durable label. Each label shall contain the following information:

(1) for those vehicles that have BART installed:

(i) name of the BART regulated entity or contractor whose vehicle received BART;

(ii) vehicle identification number (if appropriate) and engine serial number;

(iii) specific BART product name installed on the vehicle;

(iv) date of installation of the BART product;

(v) PM reduction classification level number;

(vi) vehicle or engine model year;

(vii) name of the engine manufacturer, family and series;

(viii) engine horsepower; and

(ix) if CARB verified technology, the CARB designated diesel emission control strategy family name;

(2) for those vehicles that have received a BART waiver:

(i) name of the BART regulated entity or contractor receiving the waiver;

(ii) date waiver issued;

(iii) vehicle identification number (if appropriate) and engine serial number;

(iv) vehicle or engine model year; and

(v) name of the engine manufacturer;

(3) the label shall be maintained in a manner that retains its legibility for the entire life of the vehicle.

(b) For each vehicle that has BART installed, a label shall be placed on/near the fuel fill line of such vehicle stating "use ULSD fuel only" unless the selected BART does not require the use of ULSD.

Subpart 248-6 Reporting Requirements

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-6.1 Reporting Requirements

§248-6.1 Reporting Requirements

(a) On or before November 1, 2008 and every year thereafter, regulated entities subject to the requirements of this Part shall report to the department on the use of ULSD and BART as described in subdivision (b) of this section for all vehicles, including covered vehicles operated on behalf of regulated entities. Contractors shall report required information as described in subdivision (b) of this section to the regulated entity on a schedule to be determined by the regulated entity.

(b) *Regulated entity reporting.*

(1) Regulated entities shall report to the department on an annual basis. The regulated entity shall perform a HDV inventory to be submitted with the annual report. An inventory format will be prescribed by the department. The inventory shall be performed within 30 days after the effective date of this Part and updated in order to determine compliance with the BART requirements of section 248-3.1(e) of this Part. Based on the information contained in the inventory, the regulated entity shall submit the first annual report to the department by November 1, 2008. Thereafter, and based on updated inventory information, annual reports shall be submitted to the department by November 1st of each year. The annual report shall distinguish between the regulated entity vehicles and the contractor vehicles. The information contained in the annual report submitted by the regulated entity shall include, but not be limited to:

(i) contact information:

(a) for the regulated entity, include the name of the regulated entity, contact person and work phone number;

(b) for the contractor, include the name of the contractor, contact person and work phone number;

(ii) for the regulated entity vehicles and certain contractor vehicles. For vehicles owned or operated by contractors, the following only applies to covered vehicles that perform work on the contract site:

(a) the number of diesel fuel-powered motor vehicles owned or operated;

(b) the number of such motor vehicles that were powered by ULSD;

(c) the total number of on road diesel fuel-powered motor vehicles owned or operated having a GVWR of more than 8,500 pounds;

(d) the total number of off road vehicles owned or operated;

(e) the number of such on road and off road vehicles that utilized BART, including a breakdown by BART installation date, vehicle model, VIN (if applicable), engine year and the type and classification level of technology used for each vehicle including the CARB designated diesel emission control strategy family name, if applicable;

(f) the number of such motor vehicles that have been replaced/repowered with an engine certified to the applicable 2007 USEPA standard for particulate matter as set forth in section 86.007-11 of title 40 of the *Code of Federal Regulations* (see Table 1, section 200.9 of this Title) or to any subsequent USEPA standard for particulate matter that is at least as stringent;

(g) the number of such vehicles that have been replaced with alternative fuel vehicles;

(h) the number of inventoried HDVs retired;

(i) identification of all ULSD waivers, findings, and renewals of such findings, which, for each waiver, shall include , but not be limited to, the quantity of diesel fuel needed to power diesel fuel-powered motor vehicles owned or operated by such regulated entity; and specific information concerning the availability of ULSD;

(j) the identification of BART waivers issued by the department to the regulated entity and contractor;

(k) the quantity of ULSD used;

(l) a statement of compliance indicating the percent of inventoried HDVs with option 1 or option 2 technologies installed by the indicated compliance dates so as to determine compliance with section 248-3.1(e) of this Part requirements; and

(m) any other such information or report format that the department deems necessary.

Subpart 248-7 Recordkeeping Requirements

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-7.1 Recordkeeping requirements

§248-7.1 Recordkeeping requirements

(a) BART regulated entities and contractors subject to the requirements of this Part shall maintain the following records in hard-copy format or as electronic records where the vehicle is primarily located/garaged. The BART regulated entity or contractor shall provide the following records where applicable for each inventoried HDV upon request by the department or an authorized representative for all HDVs subject to compliance with this Part:

(1) vehicle information:

(i) VIN;

(ii) license plate number;

(iii) vehicle description;

(iv) odometer reading or total engine hours;

(v) date of odometer reading or total engine hours; and

(vi) GVWR;

(2) chassis information:

(i) chassis make;

(ii) chassis model; and

(iii) chassis model year;

(3) engine information:

(i) engine serial number;

(ii) engine make;

(iii) engine model;

(iv) engine model year;

(v) engine displacement;

(vi) rated Hp;

(vii) engine class;

(viii) number of cylinders; and

(ix) turbocharged or naturally aspirated;

(4) type of aftermarket retrofit or OEM after-treatment device, if applicable:

- (i) specific retrofit product name;
 - (ii) classification level number 1, 2 or 3;
 - (iii) date of product installation;
 - (iv) CARB designated diesel emission control strategy family name, if applicable; and
 - (v) installer name or vendor name;
 - (5) OEM air pollution control device, if applicable:
 - (i) EGR equipped; and
 - (ii) other;
 - (6) estimated annual mileage for on-road vehicles or usage hours for off-road vehicles;
 - (7) emissions opacity results and date of test, if applicable;
 - (8) replacement/repower, if applicable:
 - (i) replacement /repower with an engine certified to the applicable 2007 USEPA standard for particulate matter (0.01 g/bhp-hr); or
 - (ii) replacement with an alternative fuel engine or vehicle;
 - (9) vehicle/engine retired date;
 - (10) BART waiver and date issued, if applicable;
 - (11) fuel characteristic type including biodiesel, on road specification diesel, non road diesel, other; and
 - (12) the quantity of ULSD used.
- (b) The department may issue further guidance on the prescribed record keeping format and record keeping items to be kept by the BART regulated entities.

Subpart 248-8 Contractor Compliance Requirements

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

[Filed 6/30/09, Effective 30 days after filing.]

[This is page 1 of 1 of this Subpart. A complete list of Subparts in this regulation appears in the Chapter 3 contents page. A list of sections in this Subpart appears below.]

For administrative information about this posting, contact: Division of Air Resources. The Bureau of Mobile Sources at (518) 402-8292 is the contact for technical questions pertaining to this rule.

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248-8.1 Contractor compliance requirements

§248-8.1 Contractor compliance requirements

(a) Contractors shall comply with the applicable ULSD and BART requirements of this Part.

Subpart 248-9 Right of Entry

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-9.1 Right of entry

§248-9.1 Right of entry

For the purpose of inspecting vehicle and equipment and related records to determine compliance with this Part, the department or an authorized representative has the right to enter any facility (with any necessary safety clearances for off road sites) where vehicles and equipment are located or related records are kept.

Subpart 248-10 Non-Compliance

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-10.1 Non-compliance

§248-10.1 Non-compliance

Any violations of this Part will subject a regulated entity or contractor to all applicable penalties.

Subpart 248-11 Severability

(Statutory authority: Environmental Conservation Law §§1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103, and 71-2105)

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248-11.1 Severability

§248-11.1 Severability

Each provision of this Part shall be deemed severable, and in the event that any provision of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

Part 249: Best Available Retrofit Technology (BART)

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, 71-2105)

[Filed 4/6/10. Effective 30 days after filing.]

For administrative information about this posting, contact: Division of Air Resources. The Bureau of Air Quality Planning at (518) 402-8396 is the contact for technical questions pertaining to this rule.

Contents:

Sec.

- 249.1 Purpose and applicability
- 249.2 Definitions
- 249.3 Requirements for sources subject to case-by-case BART determinations
- 249.4 Emissions tests and monitoring

§249.1 Purpose and applicability

(a) This Part restricts the emissions of visibility-impairing pollutants by requiring the installation of Best Available Retrofit Technology (BART) on a BART-eligible stationary source to reduce regional haze and restore natural visibility conditions to Federal Class I Areas.

(b) Except as provided under subdivision (c) of this section, this Part applies to any stationary source that has been determined to be BART-eligible and whose emissions require control pursuant to section 169A of the Act. BART-eligible refers to any stationary source that:

- (1) is in one of 26 specific source categories identified in section 231-2.2(c) (1) through (26) of this Title;
- (2) was not in operation prior to August 7, 1962 and was in existence on August 7, 1977, or underwent reconstruction between August 7, 1962 and August 7, 1977; and,
- (3) has a potential to emit (PTE) 250 tons per year (tpy) or more of any visibility-impairing pollutant.

(c) Exempted from the provisions of this Part is any BART-eligible source that:

- (1) is subject to a permit condition that restricts the source's PTE to less than 250 tpy for each visibility-impairing pollutant;
- (2) is subject to a permit condition that requires the source to permanently shut down by January 1, 2014; or,
- (3) has shown through modeling or other means acceptable to the department that it does not or will not emit any combination of visibility-impairing pollutants that results in a visibility impairment equal to or greater than 0.1 deciviews in any Federal Class I Area.

§249.2 Definitions

For the purpose of this regulation, the following definitions apply:

(a) *Best Available Retrofit Technology or BART.* An emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each visibility-impairing pollutant which is emitted by an existing stationary facility. BART for any individual source is determined by undertaking the case-by-case analysis required under section 249.3 of this Part.

(b) *Deciview.* A measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):

$$HI = 10 \ln (b/10)$$

Where b = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

(c) *Federal Class I Area.* A national park which exceeds 6,000 acres, national wilderness area which exceeds 5,000 acres,

national memorial park which exceeds 5,000 acres, or any international park, which was in existence as of August 7, 1977.

(d) *In existence*. As used in section 249.1(b)(2) of this Part, the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has:

(1) begun, or caused to begin, a continuous program of physical on-site construction of the facility; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time.

(e) *Light extinction*. The process of light being absorbed or scattered as it passes through a medium, such as the atmosphere.

(f) *Natural visibility conditions*. Includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

(g) *Reconstruction*. Where the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely new source. Any final decision as to whether reconstruction has occurred must be made in accordance with the provisions of 40 CFR 60.15 (f)(1) through (3).

(h) *Regional haze*. Visibility impairment that is caused by the emission of visibility-impairing air pollutants from numerous sources located over a wide geographic area.

(i) *Visibility-impairing pollutant*. Sulfur dioxide (SO₂), nitrogen oxides (NO_x), and particulate matter less than or equal to 10 microns in diameter (PM₁₀).

(j) *Visibility impairment*. Any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.

§249.3 Requirements for sources subject to case-by-case BART determinations

(a) The owner or operator of a source that is determined to be BART-eligible and whose emissions of visibility-impairing pollutants result in a visibility impairment equal to or greater than 0.1 deciviews in any Federal Class I Area must conduct an analysis to determine the appropriate emission limitation necessary to meet BART requirements. The analysis must consider, with respect to each visibility-impairing pollutant emitted by the source, the following factors:

(1) the costs of compliance;

(2) the energy and non-air quality environmental impacts of compliance;

(3) any existing pollution control technology in use at the source;

(4) the remaining useful life of the source; and,

(5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(b) The analysis must evaluate retrofit control options for each visibility-impairing pollutant unless facility-wide emissions for the relevant visibility-impairing pollutant are at or below the *de minimis* level. The facility-wide *de minimis* emissions levels are 40 tpy of SO₂ or NO_x, and 15 tpy of PM₁₀.

(c) Any required BART analysis must be submitted to the department by October 1, 2010.

(d) Control equipment or other emission reduction methods approved by the department as BART must be installed and operating no later than January 1, 2014.

(e) Before commencing any required construction or process changes, the owner or operator must submit an application for a permit or permit modification as required under Part 201 of this Title.

(f) Each BART determination established by the department will be submitted to the United States Environmental Protection Agency for approval as a revision to the State Implementation Plan.

§249.4 Emissions tests and monitoring

(a) The owner or operator of the stationary source to which BART requirements apply must perform an emissions test according to a protocol approved by the department. This protocol must be submitted within six months of the commencement of operation of the BART controls. The protocol must include a schedule (using the date of department approval of the protocol as the starting event) for the performance of the required emissions test and submission of the emissions test report. The emissions test must demonstrate that the necessary emission reductions of visibility-impairing pollutants and other requirements

under this Part are being met. Testing methods for particulate matter must quantify the emissions of PM_{10} and particulate matter less than or equal to 2.5 microns in diameter ($PM_{2.5}$). Both filterable and condensable particulate matter must be included.

(b) The owner or operator of the stationary source subject to BART requirements must provide, along with the analysis required under section 249.3 of this Part, a proposal for an appropriate emissions monitoring technology that will be implemented at the source.