§ 19-0323. Use of ultra low sulfur diesel fuel and best available technology by the state.

1. As used in this section, the terms:

a. "Ultra low sulfur diesel fuel" means diesel fuel having sulfur content of 0.0015 per cent of sulfur or less.

b. "Heavy duty vehicle" or "vehicle" means any on and off-road vehicle powered by diesel fuel and having a gross vehicle weight of greater than 8,500 pounds, except that those vehicles defined in section 101 of the vehicle and traffic law, paragraph 2 of schedule E and paragraph (a) of schedule F of subdivision 7 of section 401 of such law, and vehicles specified in subdivision 13 of section 401 of such law, and farm type tractors and all terrain type vehicles used exclusively for agricultural 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, shall not be deemed heavy duty vehicles for purposes of this section. 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.

c. "Best available retrofit technology" means technology, verified by the United States environmental protection agency for reducing the emission 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.

d. "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, as set forth in paragraph c of this subdivision, when considering the cost of the strategies, themselves, and the cost of installation.

2. Any diesel powered heavy duty vehicle that is owned by, operated by or on behalf of, or leased by a state agency and state and regional public authority shall be powered by ultra low sulfur diesel fuel.

3. Any diesel powered heavy duty vehicle that is owned by, operated by or on behalf of, or leased by a state agency and state and regional public authority with more than half of its governing body appointed by the governor shall utilize the best available retrofit technology for reducing the emission of pollutants. The commissioner shall promulgate regulations for the implementation of this subdivision specifying that all vehicles covered by this subdivision shall have best available retrofit technology on or before December 31, 2019.

This subdivision shall not apply to any vehicle subject to a lease or public works contract entered into or renewed prior to the effective date of this section.

4. In addition to other provisions for regulations in this section, the commissioner shall promulgate regulations as necessary and appropriate to carry out the provisions of this act including but not limited to provision for waivers upon written finding by the commissioner that (a) best available retrofit technology for reducing the emissions of pollutants as required by subdivision 3 of this section is not available for a particular vehicle or class of vehicles and (b) that ultra low sulfur diesel fuel is not available.

5. In addition to any waiver which may be issued pursuant to subdivision four of this section, the department shall issue a waiver to

a state agency, a state or regional public authority, or a person operating any diesel-powered heavy duty vehicle on behalf of a state agency, state or regional public authority, upon a request in a form acceptable to the department for a waiver from the provisions of subdivision three of this section for a vehicle engine provided that such vehicle engine will cease to be used in the state on or before December thirty-first, two thousand twenty. Any waiver issued pursuant to this subdivision shall expire when a state agency, a state or regional public authority, or a person operating any diesel-powered heavy duty vehicle on behalf of a state agency, state or regional public authority ceases to use the engine in the state but not later than December thirty-first, two thousand twenty.

6. This section shall not apply where federal law or funding precludes the state from imposing the requirements of this section.

7. On or before January 1, 2008 and every year thereafter, the commissioner shall report to the governor and legislature on the use of ultra low sulfur diesel fuel. On or before January 1, 2020 and every year thereafter, the commissioner shall include in the report to the governor and legislature the use of the best available retrofit technology as required under this section. The information contained in this report shall include, but not be limited to, for each state agency and public authority covered by this section: (a) the total number of diesel fuel-powered motor vehicles owned or operated by such agency and authority; (b) the number of such motor vehicles that were powered by ultra low sulfur diesel fuel; (c) the total number of diesel fuel-powered motor vehicles owned or operated by such agency and authority having a gross vehicle weight rating of more than 8,500 pounds; (d) the number of such motor vehicles that utilized the best available retrofit technology, including a breakdown by motor vehicle model, engine year and the type of technology used for each vehicle; (e) the number of such motor vehicles that are 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 particulate

matter that is at least as stringent; and (f) all 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 agency and authority; specific information concerning the availability of ultra low sulfur diesel fuel.

8. The department shall, to the extent practicable, coordinate with regions which have proposed or adopted heavy duty emission inspection programs to promote regional consistency in such programs.