

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**Public Notice
Proposed Rulemaking Governing
Diesel School Bus Retrofit Grant Rules**

Notice is hereby given that the Director of Environmental Protection, under the authority of Section 3704.144 of the Ohio Revised Code and in accordance with Chapter 119, proposes to amend the following rules of the Ohio Administrative Code:

<u>Rule #</u>	<u>Title:</u>	<u>Type of filing:</u>
3745-49-50	Definitions.	New and Rescission
3745-49-51	Permitted uses, eligibility, and prioritization.	Amendment
3745-49-52	Grant administration.	Amendment

These rules address the permitted uses, eligibility, prioritization, and administration of the Clean Diesel Retrofit grants.

The purpose of this rule making is to propose new, amended, rescinded rules in Ohio Administrative Code (OAC) Chapter 3745-49, to the Joint Committee on Agency Rule Review (JCARR) to satisfy the requirements of Section 119.032 of the Ohio Revised Code (five-year review). Specific changes to the rules include:

- County Boards of Developmental Disabilities have been added to these rules as eligible recipient for diesel retrofit grants due to a statutory change in section 3704.144 of the Revised Code.
- A definition for “approved idle reduction technology” has been added to these rules as a technology eligible to receive grant money for.
- The language regarding “offsetting the additional cost of using ultra low sulphur diesel fuel if ultra low diesel fuel is not reasonably available in a particular geographic region” has been removed since this is the only diesel fuel that is available.
- The language for which years of school buses are eligible has been changed from “1994 or newer” to “1996 to 2006.”
- Many small changes to due to the standards of the “Rule Drafting Manual” published by the Legislative Service Commission, grammatical errors, or punctuation errors.
- One change was made to correctly incorporate an external standard into these rules.

The public comment period will run until close of business on Monday, October 17, 2011. A public hearing on this proposed rule making will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code. This hearing will be held Monday, October 17, 2011 at 10:30 AM in Conference Room A at Ohio EPA, Lazarus Government Center, 50 W. Town Street, Suite 700, Columbus, Ohio.

To facilitate the scheduling of oral presentations, persons intending to give testimony at the hearing should notify the Ohio EPA Public Interest Center, P.O. Box 1049, Columbus, Ohio 43216-1049, (614) 644-2160. Prior registration will ensure that registrants are heard ahead of those individuals who register at the hearing. Oral testimony may be limited to five minutes, depending on the number of persons testifying. All interested persons are entitled to attend or be represented and to present oral and/or written comments concerning the proposed rule making.

Written testimony should be sent to the attention of Mandi Payton in the Director’s Office, P.O. Box 1049, Columbus Ohio 43216-1049. Written comments may also be submitted to the Hearing Officer at the public hearing. Written testimony will receive the same consideration as oral testimony. All testimony received at the hearing or by close of

business on Monday, October 17, 2011 will be considered by Ohio EPA prior to final action on this rulemaking proposal. Written comments submitted after this date may be considered as time and circumstances permit.

These rules are available on the Web page for electronic downloading. The URL is:
http://epa.ohio.gov/Rules_and_Laws.aspx.

For questions about diesel bus retrofitting, particle standards, or program rules, contact John Paulian at john.paulian@epa.ohio.gov, or 614-644-4832. For questions about the grant program, please contact Carolyn Watkins at carolyn.watkins@epa.ohio.gov, or 614-644-3768. For questions about the rules process, please contact Mandi Payton at amanda.payton@epa.ohio.gov, or 614-644-2782.

TO BE RESCINDED

3745-49-50

Definitions.

- (A) "Approved control equipment" means diesel retrofit products that have been approved for use by US EPA's engine retrofit program or that have been deemed to be acceptable by the director.
- (B) "Director" means the director of the Ohio environmental protection agency.
- (C) "National ambient air quality standards for fine particulates" means health based standards that were promulgated by the United States environmental protection agency on July 18, 1997 (62 CFR 38652, 40 CFR Part 50.7) as the National Ambient Air Quality Standards ("NAAQS") for atmospheric concentrations of fine particulates (i.e., particulates in the atmosphere with a nominal aerodynamic diameter of 2.5 micrometers or less, also known as "PM 2.5").
- (D) "Ohio EPA" means the Ohio environmental protection agency or its director, as the context or other law or regulations may require.
- (E) "School district" means a city, local or exempted school district as defined in Chapter 3311. of the Revised Code.
- (F) "US EPA" means the United States environmental protection agency.

Effective:

R.C. 119.032 review dates: 09/13/2011

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3704.144
Rule Amplifies: 3704.144
Prior Effective Dates: 02/01/2006

3745-49-50

Definitions.

The following definitions apply to this rule and rules 3745-49-51 and 3745-49-52 of the Administrative Code:

(A) "Approved control equipment" means diesel retrofit technologies that USEPA or the California air resources board have approved for use in engine retrofit programs or that have been deemed to be acceptable by the director.

(B) "Approved idle reduction technology" means applicable idle reduction technologies or devices that have been approved for use by USEPA or have been deemed acceptable by the director.

(C) "County boards of developmental disabilities" means an entity regulated under Chapter 5126. of the Revised Code.

(D) "Director" means the director of the Ohio environmental protection agency.

(E) "National ambient air quality standards" or "NAAQS" means health based standards established by USEPA in 40 CFR Part 50 as published in the July 1, 2010 edition of the Code of Federal Regulations.

[Comment: Information and copies of the Code of Federal Regulations (CFR) may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the CFR is also available in electronic format at www.access.gpo.gov/nara/cfr/. The CFR compilations are also available for inspection and copying at most public libraries and "The State Library of Ohio."]

(F) "Ohio EPA" means the Ohio environmental protection agency or the director, as the context or other law or regulations may require.

(G) "School district" means a city, local or exempted school district as defined in Chapter 3311. of the Revised Code.

(H) "USEPA" means the United States environmental protection agency.

Replaces: 3745-49-50

Effective:

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3745-49-51

Permitted uses, eligibility, and prioritization.

(A) With monies credited to the "Clean Diesel School Bus Fund" pursuant to 3704.144 of the Revised Code, the director may:

- (1) Make grants to Ohio school districts and county boards of developmental disabilities for the purpose of adding approved control equipment or approved idle reduction technology on diesel school buses;
- (2) Make grants to Ohio school districts and county boards of developmental disabilities for maintaining approved control equipment or idle reduction technology on diesel school buses ~~and to offset the additional cost of using ultra low sulphur diesel fuel if ultra low diesel fuel is not reasonably available in a particular geographic region;~~ and
- (3) Pay costs incurred by the Ohio EPA related to administering the grant program.

(B) Eligible school buses.

- (1) To be eligible for funding under section 3704.114 of the Revised Code, the bus to be retrofitted ~~must~~ shall:
 - (a) Have a diesel engine;
 - (b) Have a gross vehicle rating of ~~19,500~~ nineteen thousand five hundred pounds or more;
 - (c) Be a model year ~~1994 or newer~~ 1996 to 2006;
 - (d) Be driven not less than five thousand miles per year; and
 - (e) Employ only approved control equipment.
- (2) Buses privately owned but used exclusively to transport Ohio school children pursuant to an agreement with an Ohio school district or county board of developmental disabilities are eligible for retrofitting so long as the bus remains in service with an Ohio school district or county board of developmental disabilities for the useful life of the approved control equipment. Under such circumstances, the grant applicant shall be the school district or county board of developmental disabilities.

(C) Prioritization.

- (1) In awarding grants the director shall give higher priority to school districts or county boards of developmental disabilities that serve counties designated by ~~US EPA~~ USEPA as nonattainment areas for the “~~NAAQS~~” NAAQS for fine particulates. The director may give higher priority for school districts or county boards of developmental disabilities that serve counties that are designated by ~~US EPA~~ USEPA as a nonattainment area for other “~~NAAQS~~”NAAQS.
- (2) In awarding grants, the director may give higher priority to those school districts or county boards of developmental disabilities that employ additional environmental measures, such as anti-idling programs, to reduce air pollution from their school bus fleets.

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3745-49-52

Grant administration.

(A) Grant applications and awards.

- (1) Applicants shall prepare and submit grant applications on forms approved by the director. The application shall be signed by a school district official or county board of developmental disabilities official with the authority to enter into contracts on behalf of the school district or county board of developmental disabilities.
- (2) Grant applications shall be accepted and reviewed collectively in discrete granting rounds. The frequency or number of granting cycles shall be subject to the discretion of the director.

(B) The director shall establish minimum and maximum awards for each round of grant funding.

(C) Grant requirements.

- (1) Grants awarded to school districts or county boards of developmental disabilities shall require the installation of the approved control equipment or approved idle reduction technology as expeditiously as practicable.
- (2) Grants awarded to school districts or county boards of developmental disabilities shall require the implementation of an adequate program for routine maintenance and repair of the approved control equipment or approved idle reduction technology.
- (3) Grants awarded to school districts or county boards of developmental disabilities shall include provisions for periodic reporting and verification that the approved control equipment or approved idle control technology was installed expeditiously in accordance with the grant agreement.
- (4) The director may hold in reserve a percentage of the grant until such time as the grant recipient demonstrates substantial progress in retrofitting buses under the terms of the grant agreement.
- (5) The director shall not make future grant awards to a school district or county board of developmental disabilities if ~~he~~ the director determines that the school district or county board of developmental disabilities materially failed to comply with the terms of a prior grant award under this section and has failed to correct said deficiencies to the satisfaction of the director.

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Response to Comments

Rule Package: Diesel School Bus Retrofit Grant Rules

Agency Contact for this Package

Division Contacts:

For questions about diesel bus retrofitting, particle standards, or program rules, contact John Paulian at john.paulian@epa.ohio.gov, or 614-644-4832. For questions about the grant program, please contact Carolyn Watkins at carolyn.watkins@epa.ohio.gov, or 614-644-3768. For questions about the rules process, please contact Mandi Payton at amanda.payton@epa.ohio.gov, or 614-644-2782.

Ohio EPA held a interested party period from December 13, 2010 to January 13, 2011. This document summarizes the comments and questions received at during the interested party comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format.

Ohio EPA received 125 form letters from interested parties which originated from the Ohio Environmental Council. Ohio EPA thanks the interested parties for their support of our Diesel School Bus Retrofit Grant rule amendments and for the praise given for this program.

General/Overall Concerns

- Comment 1:** The program should remain focused on the on the purchase and installation of retrofits with a small portion of the grant application allowed for anti-idling equipment and cleaning equipment.
- Response 1:** The federal grants will not fund the purchase of anti-idling equipment, however the State funds have that ability and Ohio EPA is now funding this equipment.
- Comment 2:** The OEC encourages the state to develop a plan to retrofit or replace the legacy school bus diesel fleet in Ohio.
- Response 2:** Ohio EPA has found that buses with model years prior to 1996 usually cannot meet the criteria to stay in operation for four years after the retrofits have been installed with emission controls. At this time, 1996 is the cutoff date for these installations. The grant program does not have the monies available to fund total replacement costs of these older buses.
- Comment 3:** The OEC urges the Governor and Ohio EPA Director to send a letter to every public school district in the state to encourage them to take advantage of this program.

- Response 3:** This program began in 2006 and the Agency has funded over 2305 buses from 127 school districts. The program gives priority to the counties in Ohio that are currently in non-attainment status for air quality. Once those districts get funding, it is opened to the remaining counties. The Agency is limited by the grant amount available and every year, all monies are spent. Notice of these rules was sent to the Ohio Department of Education, Ohio Department of Developmental Disabilities, and the Ohio School Board Association. All schools should be aware and have been encouraged to take part in this program.
- Comment 4:** Ohio EPA should identify how many more legacy diesel school buses are being used on a regular basis and set a date to have made one-on-one contact with those fleets to give them the opportunity to apply for the program.
- Response 4:** As stated in Comment 2, this grant program does not have the funding available to purchase total replacements of these older buses. Other grants may be available to assist in funding this type of project.
- Comment 5:** Once all efforts have been made to retrofit existing legacy diesel school buses, the funding mechanism should be shifted to the Diesel Emission Reduction Grant program (which Ohio EPA should implement).
- Response 5:** With the new State budget, Ohio EPA has responsibility for the Diesel Emission Reduction Grant Program. This program is in the process of being set up in the Agency. Information on this program will be on the Environmental Education Web Site in the near future.

End of Response to Comments