

**CHAPTER 27**

**AIR POLLUTION CONTROL**

**Authority**

N.J.S.A. 13:1B-3(e), 13:1D-9, 13:1D-134 et seq. and 26:2C-1 et seq., in particular 26:2C-9.2.

**Chapter Expiration Date**

Chapter 27, Air Pollution Control, is exempt from Executive Order No. 66(1978).

**Chapter Historical Note**

Chapter 27, Air Pollution Control, was adopted and became effective prior to September 1, 1969.

Subchapter 30, Open Market Emissions Trading, was adopted as R.1996 d.303, effective July 1, 1996 (operative August 2, 1996). See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).

Subchapter 30, Open Market Emissions Trading, was repealed by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004). See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).

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**APPENDIX. CHEMICALS DEFINING SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**7:27-1.1 Scope**

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Bureau of Air Pollution Control and shall govern the emitting of and such activities as result in the introducing of contaminants into the ambient atmosphere.

**7:27-1.2 Construction**

(a) These rules shall be construed so as to permit the Department, the Bureau of Air Pollution Control and its various agencies to discharge its statutory functions.

(b) The Commissioner and the Director of the Division of Environmental Quality may amend, expand or repeal these rules after public hearing. Such actions shall be filed with the Secretary of State as required by law.

#### 7:27-1.3 Practice where rules do not govern

The Commissioner, the Director of the Division of Environmental Quality or any agency chief shall exercise his discretion in respect of any other matters not governed by these rules.

#### 7:27-1.4 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

“Air pollution” means the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards.

“Assertedly confidential information” means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.

“ASTM” means the American Society for Testing and Materials.

“British thermal unit” or “BTU” means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

“Carbon monoxide” or “CO” means a gas comprised of molecules consisting of one carbon atom and one oxygen atom.

“CFR” means the Code of Federal Regulations.

“Claimant” means any person who submits a confidentiality claim under this subchapter.

“Class confidentiality determination” means a confidentiality determination made by the Department under N.J.A.C. 7:27-1.17, for a class of information.

“Commissioner” means the State Commissioner of Environmental Protection who is the chief administrative officer of the State Department of Environmental Protection.

i. Receives gasoline, diesel fuel, or kerosene from a delivery vessel and puts it into a stationary storage tank;

ii. Transfers gasoline from a storage tank into a gasoline vapor laden fuel tank;

iii. Has Stage 1 vapor recovery equipment which complies with N.J.A.C. 7:27-16.3 on all gasoline tanks at the station; and

iv. Has Stage 2 vapor recovery equipment which complies with N.J.A.C. 7:27-16 on all gasoline pumps at the station;

2. One or more pieces of woodworking equipment, located at the same facility, where all air contaminant emissions from the equipment are captured and vented to a particulate control apparatus with a minimum removal efficiency of 99 percent;

3. A single boiler with a maximum rated heat input of less than 10 million BTUs per hour, combusting natural gas, number 2 commercial fuel oil, propane, diesel or kerosene (and no other fuels);

4. A single emergency generator which operates no more than 500 hours per year, and which has a maximum rated heat input that is less than or equal to 15 million BTU per hour (generating approximately 1.5 megawatts of electricity) when the generator combusts diesel fuel, number 2 fuel oil or kerosene, or 40 million BTU per hour (generating approximately 4.0 megawatts of electricity) when the generator combusts natural gas or propane;

5. A bulk solid materials receiving and storage system, which uses pneumatic or mechanical conveying, where all particulate air contaminant emissions are captured and vented to a particulate control apparatus with a minimum removal efficiency of 99 percent;

6. One or more pieces of enclosed abrasive blasting equipment, located at the same facility, where all particulate air contaminant emissions from the equipment are captured and vented to a particulate control apparatus with a minimum removal efficiency of 99 percent;

7. A stationary storage tank which:

i. Does not have a floating roof;

ii. Has a maximum capacity of 300,000 gallons; and

iii. Is used for storing VOC's with a vapor pressure within the applicable limit below:

(1) If the tank has a maximum capacity of 20,000 gallons or less, vapor pressure shall be less than 11.1 psia (pounds per square inch absolute) at 70 degrees Fahrenheit;

(2) If the tank has a maximum capacity of more than 20,000 gallons but less than or equal to 40,000 gallons, vapor pressure shall be less than 4.0 psia at 70 degrees Fahrenheit; or

(3) If the tank has a maximum capacity of more than 40,000 gallons but less than or equal to 300,000 gallons, less than .75 psia at 70 degrees Fahrenheit;

8. A soil vapor extraction system or a groundwater air stripping system used for the remediation of a gasoline-contaminated vehicle fueling station at one of the following types of locations:

i. A current or former gasoline retail station;

ii. A municipal, county or State garage;

iii. A police or fire department;

iv. A commercial or industrial site; or

v. A property adjacent to an approved remediation site, provided the remediation activities are relevant to the adjacent property and are conducted concurrently with the remediation activities of the approved site;

9. A single or multiple external combustion unit with a maximum rated heat input of less than 10 million BTUs per hour, firing natural gas, propane, kerosene, diesel oil, or number 2 fuel oil (no other fuels); and

10. One or more of any combination of non-HAP VOCs solvent degreasers of the following types:

i. Cold cleaning machines that use a VOC solvent with a vapor pressure of less than 0.02 Psi (1 mm Hg) at 20 degrees centigrade (68 degrees Fahrenheit);

ii. Heated cleaning machines that use a VOC solvent with a vapor pressure of less than 0.02 Psi (1 mm Hg) at 20 degrees centigrade (68 degrees Fahrenheit);

iii. Batch vapor cleaning machines;

iv. In-line (conveyorized) vapor cleaning machines; or

11. A single or multiple boiler(s) and other indirect fired external combustion equipment with a maximum heat input capacity of greater than or equal to 10 million BTU per hour and less than 50 million BTU per hour, firing natural gas, propane, kerosene, diesel oil or no. 2 fuel oil exclusively, or firing natural gas or propane with limited back-up of kerosene, diesel oil, or no. 2 fuel oil;

12. Equipment located at a dry cleaning facility that uses 150 gallons or less of perchloroethylene (PERC) per 12-month period if the equipment is:

i. A dry-to-dry machine(s) equipped with a refrigerated condenser as the primary control and also equipped with a carbon adsorber on the cylinder outlet designed to reduce the PERC concentration below 300 ppm;

ii. A non-HAP VOC dry-to-dry machine(s) where the facility uses less than 1,000 gallons of non-HAP VOC solvent per 12-month period; or

iii. One or more boilers or heaters that meets the definition of a significant source, with a combined maximum heat input of less than or equal to 3 million Btu/hour burning natural gas, propane, No. 2 fuel oil, diesel, kerosene, or any combination of these fuels;

13. Solvent degreasers using only Methylene Chloride or 1,1,1 Trichloroethane of the following types:

- i. Batch vapor cleaning machines; or
- ii. In-line vapor cleaning machines;

14. Equipment located at a dry cleaning facility if the equipment is:

- i. Non-HAP VOC Dry-to-Dry Machines where the facility uses less than 1,000 gallons of Non-HAP VOC solvent per 12-month period; or
- ii. Dry Cleaning Machines that use Carbon Dioxide (CO<sub>2</sub>);

15. One or more tanks and/or pumps used for storing and/or pumping gasoline, diesel fuel, or kerosene, located at a single gasoline dispensing facility (retail or non-retail), if the facility:

- i. Receives gasoline, diesel fuel, or kerosene from a delivery vessel and puts it into a stationary storage tank;
- ii. Transfers gasoline from a storage tank into a gasoline vapor laden fuel tank;
- iii. Has Stage 1 vapor recovery equipment which complies with N.J.A.C. 7:27-16.3 on all gasoline tanks at the station; and
- iv. Is not required to under N.J.A.C. 7:27-16.3 to have Stage 2 vapor recovery equipment which complies with N.J.A.C. 7:27-16 on all gasoline pumps at the station; or

16. Equipment located at a plating or electroplating facility which is not subject to MACT.

(d) For each general permit, the Department shall provide a registration form, the general permit itself, and a document entitled "General Procedures for General Permits."

(e) The registration form shall include instructions for completing the form. The registration form shall require information identifying the registrant, identifying the source(s) which shall be covered by the registration, showing that the source meets the criteria for the general permit, and showing that the source will be operated in accordance with the general permit. In many cases, the registration form shall require the registrant to choose from among different options tailored to the source's size, operating characteristics, fuel used, and other parameters. Once the source is described or an option selected on the registration form, the registrant shall continue to operate the source within the parameters of the description and/or the selected option. The registration form shall require the registrant to certify the truth and accuracy of

the information on the form. The certification shall meet the requirements of N.J.A.C. 7:27-1.39.

(f) The general permit shall include all of the conditions and requirements which must be met in order to act under the authority of the general permit, including:

1. A description of the class of significant sources which qualify for the general permit, including an explanation of how many of each type of source may be covered by one general permit registration;
2. All requirements which apply to the source and which are satisfied by the general permit;
3. Any monitoring, recordkeeping or reporting requirements;
4. If applicable, standards the source must meet to comply with N.J.A.C. 7:27-8.12, State of the art; and
5. Citations to the laws or rules which form the basis for the requirements listed in (f)2 through 4 above.

(g) The "General Procedures for General Permits" shall apply to all general permits, and shall include instructions for the use general permits, a list of available general permits, and citations to regulatory provisions that apply to the use of general permits.

(h) Some general permits apply to only one source, while others may apply to a class of sources located at the same facility. Each general permit shall specify whether it applies to a group or to a single source. If a general permit applies to only one source, and if several sources at one facility qualify for that general permit, a separate registration, including a fee, shall be submitted for each source.

(i) The authority to act under a general permit begins upon the registrant's receipt of proof of the Department's receipt of the properly completed registration form (including the registration fee specified at N.J.A.C. 7:27-8.6). This proof can be a certified mail receipt, or a copy of the Department's written acknowledgment, issued under (k) below. A registrant may continue to act under the general permit for five years after the date of the proof of receipt, unless:

1. A shorter term is specified in the general permit or the General Procedures for General Permits; or
2. The Department amends the general permit based on a change to a law or regulation in accordance with (n) below.

(j) The registrant is fully responsible for ensuring that the requirements of the general permit, the General Procedures for General Permits, and this section are complied with. If an owner or operator has registered a source under a general permit and the registration is incorrect or deficient, the owner or operator may be liable for penalties for acting without a permit or certificate. Examples of ways a registration might be incorrect or deficient include: if the registered source does

not qualify for the general permit; if the registration was improperly completed; or if the registration did not include a key element such as required information or the correct fee.

(k) The Department shall send an acknowledgment when a registration, including the appropriate fee, is received. However, the acknowledgment only indicates that the Department received the registration, and does not mean that the Department has reviewed or approved the registration. Therefore, if the registration is incorrect or deficient, the Department's acknowledgment does not in any way relieve the owner or operator from liability for penalties for any unauthorized activities.

(l) A registrant shall operate within the conditions of the general permit. If the registration form allows the registrant to choose a particular option tailored to the source, the registrant shall operate the source within the parameters set forth in that option. Failure to operate within the parameters of the chosen option and within the general permit conditions shall constitute violation of a permit. If a registrant wants to make a change to a source which has been registered under a general permit, a new general permit registration is required, unless the changed source would remain within the class of sources which qualify for the general permit, and the source would continue to be operated in accordance with the parameters set forth in the option chosen in the registration.

(m) To issue a general permit, or to amend an existing one, the Department shall draft a new or amended registration form and general permit, and shall publish a notice in the New Jersey Register that these documents are available for review and comment. When the comment period closes, the Department shall incorporate any changes the Department deems appropriate. The Department shall then announce the final general permit, and add it to the list of sources in (c) above, through a notice of administrative change published in the New Jersey Register.

(n) If the Department changes an existing general permit, it shall notify each person who has registered under the general permit. The registrant shall comply with any applicable new requirements as follows:

1. If the change to the general permit is required by a statute or regulation, a registrant shall comply by the date required for compliance in the statute or regulation. If the registrant cannot comply by that date, the registrant must stop operating the source or obtain by that date a source-specific permit and certificate which authorizes continued operation; and
2. If the change to the general permit is not required by a statute or regulation, a registrant shall comply by the date which is 90 days after the date that the notice was received from the Department or the date when the registration, whichever is later. Thereafter, the registrant shall comply with the changed general permit.

(o) A person who wishes to register a source under a general permit may obtain the registration form, the general permit, and the General Procedures for General Permits, at the address in N.J.A.C. 7:27-8.4(b).

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

Former N.J.A.C. 7:27-8.8, Conditions of approval, recodified to N.J.A.C. 7:27-8.13.

Public Notice: Draft General Permits comment opportunity.

See: 32 N.J.R. 605(a).

Administrative change.

See: 32 N.J.R. 2081(b).

Added (c)8.

Public Notice: Draft General Permits comment opportunity.

See: 33 N.J.R. 590(a).

Administrative change.

See: 33 N.J.R. 1377(a).

Public Notice: Air Quality Permit clarification of terminology.

See: 33 N.J.R. 3221(a).

Amended by R.2002 d.53, effective February 4, 2002 (operative March 12, 2002).

See: 33 N.J.R. 3290(a), 34 N.J.R. 756(a).

In (c), substituted "propane, diesel or kerosene" for "or both fuels" in 3, and inserted "number 2 fuel oil or kerosene," following "diesel fuel" and added "or propane" in 4.

Administrative change.

See: 34 N.J.R. 2804(a).

Public Notice: Draft General Permits comment opportunity.

See: 35 N.J.R. 3415(b).

Public Notice: General Permit (GP-010) for Degreasing Operations Using Non-HAP Volatile Organic Compounds (VOCs).

See: 35 N.J.R. 3966(b).

Public Notice: Draft General Permits comment opportunity.

See: 35 N.J.R. 5308(c).

Administrative change.

See: 36 N.J.R. 183(a), 184(a), 1790(d), 3076(a).

Public Notice: Draft General Permits comment opportunity.

See: 36 N.J.R. 3303(b), 3303(c), 3304(a).

Administrative change.

See: 36 N.J.R. 4511(a), 4512(a), 4513(a).

Public Notice: Small Emitter General Air Permit (SEGAP)(GP-016).

See: 36 N.J.R. 4544(a).

Public Notice: Draft General Permit (GP-015) for Non-MACT Plating Operations.

See: 37 N.J.R. 142(a).

Administrative change.

See: 37 N.J.R. 4436(a).

### 7:27-8.9 Environmental improvement pilot tests

(a) A person may seek approval for a preconstruction permit and certificate for an environmental improvement pilot test, as defined at N.J.A.C. 7:27-8.1, of air pollution control equipment or other environmental clean-up equipment under this section.

(b) An applicant for an environmental improvement pilot test shall ensure that the equipment shall comply with all applicable requirements, and that the activities shall not cause impacts outside the property boundary.

(c) An applicant for an environmental improvement pilot test approval shall submit the application on a form obtained from the Department at the address in N.J.A.C. 7:27-8.4(b). The application shall meet the requirements of N.J.A.C. 7:27-8.4, and shall include information regarding the planned sampling, analysis, equipment or processes, potential envi-

ronmental impacts, the length of time requested for the test, projected emission rates, and any other information necessary for the Department to ensure that the proposed activities fit within the definition of an environmental improvement pilot test at N.J.A.C. 7:27-8.1.

(d) The Department shall take final action on the application within 30 days of its receipt of a complete application.

(e) The Department shall determine the term of a permit and certificate for an environmental improvement pilot test approval on a case-by-case basis, but in no case shall the approval last longer than 90 days from the start of the actions covered by the environmental improvement pilot test approval. The approval may be renewed by application to the Department. The Department shall renew the environmental improvement pilot test approval only if the applicant demonstrates that continued testing of the equipment or process is needed, and that the proposed activities remain within the definition of an environmental improvement pilot test at N.J.A.C. 7:27-8.1.

(f) The fee for an environmental improvement pilot test is set forth at N.J.A.C. 7:27-8.6.

(g) The holder of an environmental improvement pilot test approval shall keep records of product run time, emission testing performed, and other data relevant to the emission of air contaminants. These records shall be kept for a minimum of five years, and any relevant data obtained must be submitted with any future application covering the source.

(h) Upon completion of the environmental improvement pilot test, the equipment involved shall cease operating, or shall return to operating under the conditions of the existing permit, if any. An environmental improvement pilot test approval does not constitute Departmental acceptance of equipment or a process for future production purposes.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

Former N.J.A.C. 7:27-8.9, Reporting requirements, recodified to N.J.A.C. 7:27-8.15.

#### 7:27-8.10 Public comment

(a) The Department shall seek comments from the general public prior to making any final decision on those applications for which such comment is required by State or Federal statutes. Such applications include, but are not limited to, those applications which:

1. Are subject to the PSD requirements published at 40 CFR 52;
2. Must be submitted to the EPA for approval as revisions to any state implementation plan; or
3. Are subject to emissions offset requirements under N.J.A.C. 7:27-18.

(b) The Commissioner of the Department may seek comments from the public whenever the Commissioner finds a significant degree of public interest in an application, or whenever the Commissioner determines such comments might clarify one or more issues involved in the decision on the application. In determining whether to seek or accept public comment, the Commissioner shall consider factors relevant to the subject application and the applicable requirements. These factors may include, but are not limited to, the following:

1. The extent of any emissions increase;
2. The impact of any emissions increase on ambient air quality, human health and welfare, and the environment;
3. The applicant's record of compliance with air pollution control requirements;
4. Any other air pollution control aspects of the application or facility which might make the application of particular interest to the public.

(c) The Department shall notify those who submitted a written request for public comment of the Commissioner's decision regarding their request. The Commissioner's notification shall be in writing, and if the decision is a denial, the notification shall include a discussion of the factors in (b) above, as well as a description of all other factors which formed the basis for the decision.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).

See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).

Old section recodified to 8.6.

Amended by R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).

See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a), 26 N.J.R. 793(a), 26 N.J.R. 3943(b).

Recodified from N.J.A.C. 7:27-8.5 and amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

Rewrote the section. Former N.J.A.C. 7:27-8.10, Revocation, recodified to N.J.A.C. 7:27-8.16.

#### 7:27-8.11 Standards for issuing a permit

(a) To obtain approval of a permit and certificate, a permit revision, or a compliance plan change, an applicant shall document that:

1. Each significant source included on the application meets all of the following standards which apply:
  - i. RACT requirements under N.J.A.C. 7:27-16 or 19;
  - ii. NSPS requirements;
  - iii. PSD requirements under 40 CFR 52.21; and
  - iv. All other applicable State or Federal air pollution control standards, codes, rules, or regulations; and

2. Each significant source incorporates advances in the art of air pollution control (also called "state of the art" or "SOTA"), developed for the kind and amount of air contaminant emitted by the equipment and control apparatus, if:

- i. The source meets the criteria at N.J.A.C. 7:27-8.12(a); and
- ii. The applicant proposes to construct, install, reconstruct, or modify the source.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

Former N.J.A.C. 7:27-8.11, Service fees, recodified to N.J.A.C. 7:27-8.6.

### 7:27-8.12 State of the art

(a) If an application proposes construction, installation, reconstruction, or modification of equipment and control apparatus which is a significant source meeting the following criteria, the applicant shall document state of the art (SOTA) for the source:

1. The equipment and control apparatus has a potential to emit any HAP at a rate equal to or greater than the SOTA Threshold in Appendix 1, Table B below; or
2. The equipment and control apparatus has a potential to emit any other air contaminant or category of air contaminant, except carbon dioxide (CO<sub>2</sub>), at a rate equal to or greater than the SOTA threshold in Appendix 1, Table A incorporated herein by reference.

(b) For equipment and control apparatus with the potential to emit an air contaminant that meets the SOTA criteria in (a) above, documentation of SOTA is only required for the air contaminant(s) that meets those criteria. Documentation of SOTA is not required for an air contaminant if the equipment's potential to emit that air contaminant does not meet the criteria in (a) above.

(c) Documentation of SOTA is not required for equipment and control apparatus that has, for every air contaminant, a potential to emit that is less than the levels indicated in (a) above.

(d) For purposes of determining whether a source meets the threshold levels in (a) above, the potential to emit an air contaminant shall be calculated separately for each piece of equipment. If the equipment is served by control apparatus, the equipment's potential to emit shall include fugitive emissions released from the equipment (but shall not include fugitive emissions released from the general infrastructure of the facility), and shall be calculated after controls, so that the effects of the control apparatus are included in the calculation of the equipment's potential to emit. This is consistent with the definition of "potential to emit" at N.J.A.C. 7:27-8.1. For example:

1. If two or more separate pieces of equipment are to be vented through the same control apparatus, the relative contribution made by each piece of equipment to the emissions from the control apparatus shall be calculated. Using these relative contributions, the applicant shall calculate each piece of equipment's potential to emit; and

2. If one piece of equipment is to be vented through two or more control apparatus, the applicant shall calculate the piece of equipment's potential to emit using the emissions from all of the control apparatus.

(e) An applicant shall document SOTA by complying with all of the following that apply:

1. For an air contaminant subject to LAER (Lowest Achievable Emission Rate) requirements pursuant to N.J.A.C. 7:27-18, compliance with LAER requirements for that air contaminant represents SOTA. LAER is a case by case determination;

2. For an air contaminant subject to BACT (Best Available Control Technology) requirements pursuant to 40 CFR 52.21, compliance with BACT requirements represents SOTA. BACT is a case-by-case determination;

3. For an air contaminant that is a HAP, emitted by equipment for which MACT (Maximum Achievable Control Technology) requirements have been promulgated in 40 CFR Part 63, compliance with MACT requirements represents SOTA;

4. For an air contaminant emitted by equipment for which New Source Performance Standards (NSPS) have been promulgated on or after August 2, 1995, compliance with the NSPS represents SOTA;

5. For an air contaminant not subject to (e)1 through 4 above, SOTA shall be documented through one of the following options. The applicant may choose which option to pursue:

i. An applicant shall document compliance with a SOTA Manual (available from the Department at the address in N.J.A.C. 7:27-8.4(b)) that applies to the source;

ii. If the source is eligible for a general permit under N.J.A.C. 7:27-8.8, an applicant shall register for the general permit in accordance with N.J.A.C. 7:27-8.8; or

iii. An applicant shall document compliance with a case by case SOTA standard determined through the process detailed in (f) below.

(f) A case by case SOTA standard shall be determined by the Department based on a demonstration by the applicant, using a "top down" approach. To perform a "top down" SOTA demonstration, the applicant shall:

1. Identify and evaluate a list of air pollution control technologies or measures that may be applied to the source. This list shall not be limited to measures that have been applied to other existing sources in this same source

category. The list shall include measures applied to sources in similar source categories, as well as innovative control technologies, modification of the process or process equipment, other pollution prevention measures, and combinations of the above measures; and

2. Arrange the measures on the list in descending order of air pollution control effectiveness. The first-listed or "top" measure shall constitute SOTA for the source unless the applicant provides one of the following:

i. A demonstration that the top measure should be eliminated from consideration because it is technically infeasible, based on physical, chemical, or engineering principles, and/or technical difficulties that would prevent the successful application of the measure;

ii. A demonstration that the top measure should be eliminated from consideration based on its environmental impacts. The justification shall show that the adverse environmental effects of the top measure (for example, effects on water or land, HAP emissions, or increased environmental hazards), when compared with its air contaminant emission reduction benefits, would make use of the top measure unreasonable;

iii. A demonstration that the top measure should be eliminated from consideration based on its economic impacts. The justification shall show that the total and incremental costs of the top measure are greater than the total and incremental costs of the proposed measure(s); and that the extra costs, when compared with the air contaminant emission reduction benefits resulting from the top measure, would make use of the top measure unreasonable. All costs shall be calculated using the techniques in the latest edition of EPA's control cost manual; or

iv. A demonstration that the top measure should be eliminated from consideration based on its energy impacts. The justification shall show that the top measure uses fuels that are not reliably available; or that the energy consumed by the top measure is greater than the proposed measure(s), and that the extra energy used, when compared with the air contaminant emission reduction benefits resulting from the top measure, would make use of the top measure unreasonable; and

3. If the top measure is eliminated from consideration under any of the provisions at (f)2i through iv above, the applicant shall evaluate each successive measure on the list, using the procedures described in (f)2 above, until a measure is reached that is not eliminated. Upon the Department's approval of the SOTA demonstration, this measure shall constitute the case by case SOTA for the source.

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

Former N.J.A.C. 7:27-8.12, Request for an adjudicatory hearing, recodified to N.J.A.C. 7:27-1.32.

Public Notice: Revised SOTA technical manual 13.

See: 35 N.J.R. 1961(b).

Public Notice: Opportunity to Comment on Draft SOTA Technical Manual for Boilers and Process Heaters.

See: 35 N.J.R. 4789(b).

Public Notice: Opportunity to Comment on Draft State-of-the-Art (SOTA) Manual for Stationary Combustion Turbines.

See: 36 N.J.R. 584(b).

Public Notice: Revised State-of-the-Art (SOTA) Technical Manual for Boilers and Process Heaters.

See: 36 N.J.R. 1833(a).

Amended by R.2005 d.392, effective November 21, 2005.

See: 36 N.J.R. 4607(a), 37 N.J.R. 16(b), 4415(a).

Added ", except carbon dioxide (CO<sub>2</sub>)," to (a)2.

### 7:27-8.13 Conditions of approval

(a) The Department may establish conditions of approval of any preconstruction permit or certificate application.

(b) The Department may change the conditions of approval of a certificate:

1. At the time of renewal of a temporary operating certificate;

2. At the time of approval or renewal of a five-year operating certificate; or

3. At any time during the period a certificate is in effect, if the Department determines that such change is necessary to protect human health or welfare or the environment.

(c) Upon request of the Department, a permittee shall submit to the Department information relevant to the operation of equipment and control apparatus including, but not limited to:

1. A diagram of the facility indicating the location of any equipment and control apparatus, its applicable preconstruction permit and certificate number, any stack designation assigned by the Department, and any stack designation assigned by the person;

2. Records documenting any use of any equipment, control apparatus, or other source operation including, but not limited to, rate of production and hours of operation; and

3. Records documenting any construction or installation of any equipment or control apparatus, including the dates of such construction or installation.

(d) The Department may include, as a condition of approval, a compliance plan. The compliance plan shall include monitoring, recordkeeping, and reporting requirements. Such requirements may include:

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

## Case Notes

DEP complied with all Federal and State statutory and regulatory provisions in issuance of permit. In the Matter of NJPDES Permit No. N.J. 0055247, et al., 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

**7:27-22.14 General operating permits**

(a) The Department may promulgate a rule to issue one or more general operating permits, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-2 et seq. The Department may also publish a technical manual for each general permit, pursuant to N.J.S.A. 13:1D-111. The technical manual shall contain the information required under N.J.S.A. 13:1D-111, including, but not limited to, information that details and clarifies the Department's interpretation of standards or other requirements that are not defined by regulation. However, if the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., establishes an alternative procedure for issuing general permits without rulemaking under the Administrative Procedure Act, the Department will issue general permits in accordance with that procedure. Otherwise, in issuing a general permit, the Department shall comply with:

1. The Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.;
2. The public comment procedures set forth at N.J.A.C. 7:27-22.11;
3. EPA comment procedures set forth at N.J.A.C. 7:27-22.12;
4. Any other procedural requirements related to the issuance of an operating permit; and
5. N.J.S.A. 13:1D-111.

(b) In accordance with the procedures set forth in this section, an owner or operator may apply to the Department for authorization under a general operating permit to operate any source operation, group of source operations, or facility which meets the applicability criteria set forth in a general operating permit issued by the Department. A separate application for a preconstruction permit is not required. Approval of the general operating permit shall also constitute preconstruction permit approval. If the general operating permit applies to the entire facility, the general operating permit may serve as the operating permit for the facility. If the general operating permit applies to a part of the facility, the general operating permit may serve as a component of the operating permit for the facility.

(c) In an application for authorization to operate under a general operating permit, the owner or operator shall demonstrate how the facility or portion thereof:

1. Meets the applicability criteria set forth in the general operating permit; and
2. Will comply with all of the conditions of the general operating permit.

(d) The Department shall grant a facility's request to operate under a general operating permit without repeating the public and EPA comment procedures specified in (a) above if the general operating permit includes applicable requirements for all relevant source operations at the facility.

(e) A permittee shall operate a facility, or any portion thereof, for which authorization to operate under a general operating permit has been obtained from the Department, according to the terms and conditions of the general operating permit.

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).

See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

Public Notice: General operating permit 001—drycleaning operation.

See: 35 N.J.R. 3721(a).

Public Notice: Small Emitter General Permit (SEGAP)(GOP-002)

36 N.J.R. 4543(b).

**7:27-22.15 Temporary facility operating permits**

(a) The Department may issue an operating permit to an owner or operator of a temporary facility which authorizes operation in more than one location during the term of the operating permit, provided that all locations at which the facility may be operated are listed in the operating permit.

(b) An operating permit issued for a temporary facility shall require the permittee to:

1. Comply with all applicable requirements at all locations at which the temporary facility is operated;
2. Comply with all other applicable provisions of this chapter; and
3. Provide written notice, received at least 10 days in advance of each change in location, to:
  - i. The mayor of the municipality, or if there is no mayor, the governing body of the municipality to which the facility will be moved;
  - ii. The board of chosen freeholders or other governing body of the county to which the facility will be moved;
  - iii. The local health agency, certified pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. (CEHA), and its implementing regulations, N.J.A.C. 7:1H, in the county to which the facility will be moved; and
  - iv. The Department at the address given at N.J.A.C. 7:27-22.3(t) and the address given below:

NJDEP

Air and Environmental Quality Enforcement

401 E. State Street

CN 422

Trenton, NJ 08625-0422

(c) The notice required pursuant to (b)3 above shall include:

1. The location being vacated;
2. The location to which the facility will be moved;
3. The name, address, and telephone number of the permittee;
4. The Department assigned permit number, which identifies the operating permit; and
5. As to the local officials identified in (b) above, a copy of the operating permit.

(d) An operating permit issued for a temporary facility shall not relieve any person from the obligation to comply with any provision of this chapter, to obtain any other necessary authorization from other governmental agencies, or to comply with all other applicable Federal, State, and local laws, rules or regulations.

(e) In accordance with N.J.A.C. 7:27-22.29(g), a facility subject to EPA's acid deposition control program pursuant to Title IV of the CAA, 42 U.S.C. § 7651 et seq., shall not be eligible for a temporary facility operating permit.

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).  
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

#### 7:27-22.16 Operating permit contents

(a) The Department will include in each operating permit, drafted for, or issued to, a facility, emission limitations and standards, including any operational requirement necessary to assure compliance with all applicable requirements which apply to a source operation or a group of source operations or to the facility as a whole at the time of permit issuance.

(b) For each significant source operation at the facility, or, if applicable, for each group of source operations or for the entire facility, the operating permit shall:

1. Specify each applicable requirement and each associated permit condition, including any emission limitations and standards and any operational requirements;
2. Cite to the specific legal authority, including any State or Federal rule or regulation or any permit, which establishes the applicable requirement and any associated permit conditions;
3. Identify any difference in form between the permit condition and the applicable requirement upon which the permit condition is based;
4. Specify the compliance assurance method (including a reference, if applicable, to where the method is published) required to be used to determine compliance with the permit condition; and

5. Specifically designate as not being Federally enforceable any permit condition based on an applicable state requirement.

(c) If any other applicable Federal requirement is more stringent than an applicable requirement of EPA's acid deposition control regulations, both requirements shall be set forth in the operating permit pursuant to (b) above and both shall be enforceable by the Department and EPA.

(d) An operating permit may contain an alternative emission limit pursuant to N.J.A.C. 7:27-22.3(m), if:

1. The applicant has proposed the alternative emission limit in the application for the operating permit;
2. The applicant has proposed procedures that ensure that the alternative emissions limit is quantifiable, accountable, enforceable, and based on replicable procedures;
3. The Department has determined, based on an equivalency demonstration provided by the applicant, that the alternative emissions limit proposed by the applicant is equivalent to, or more stringent than, that contained in an applicable requirement; and
4. The Department determines that the alternative emission limit is consistent with the SIP.

(e) The Department shall incorporate into each operating permit the provisions of any effective preconstruction permit and operating certificate issued for the facility, or any part thereof, if the preconstruction permit or operating certificate was:

1. Issued prior to the date the applicant submitted the application for the operating permit to the Department, and included by the applicant in the application; or
2. Issued subsequent to the date the application was submitted to the Department and prior to the date the Department issues the draft operating permit.

(f) Each operating permit shall contain a severability clause which ensures the continued validity of all other permit conditions in the event of a challenge to any part of the operating permit.

(g) Each operating permit shall include, but not be limited to, the following statements:

1. The permittee shall comply with all conditions of the operating permit including the approved compliance plan. Any noncompliance with a permit condition constitutes a violation of the New Jersey Air Pollution Control Act N.J.S.A. 26:2C-1 et seq., or the CAA, 42 U.S.C. § 7401 et seq., or both, and is grounds for enforcement action; for termination, revocation and reissuance, or for modification of the operating permit; or for denial of an application for a renewal of the operating permit;

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to

halt or reduce the permitted activity in order to maintain compliance with the conditions of its operating permit;

4. Upon the request of the Department, submit to the Department all or any part of the information contained in the records kept pursuant to (h)1 above.

(i) The Department shall deny an application for an exemption if:

1. The Department determines that such storage, transfer, or use of gasoline may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the person has exclusive use or occupancy;

2. The applicant fails to demonstrate, to the satisfaction of the Department, that the proposed storage, transfer, and use of non-conforming gasoline are essential to the intended research, development, or trial use set forth in the application.

(j) The Department may deny an application for an exemption if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(k) The Department may revoke any approval of any exemption granted pursuant to this section if the Department determines that the person to whom the Department has issued the exemption has:

1. Stored, transferred, or used non-conforming gasoline for any purpose other than that described in the application for an exemption and approved by the Department;

2. Failed to allow lawful entry by authorized representatives of the Department to the facility for which the exemption is issued;

3. Failed to pay any penalty assessed pursuant to a final order issued by the Department; or

4. Failed to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-25.8 within 60 days after receipt of a fee invoice.

(l) If the Department seeks to revoke an exemption during the term of that exemption, the Department shall provide the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Rule, R.1991 d.462, effective September 3, 1991.  
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).  
Administrative change to (b).  
See: 25 N.J.R. 309(a).

Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).

See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

#### 7:27-25.8 Owner and operator responsibility

The owner and operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the owner and operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and criminal penalties pursuant to N.J.S.A. 26:2C-19(f)1 and 2. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil and criminal penalties.

New Rule, R.1992 d.382, effective October 5, 1992.

See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).

Recodified from 7:27-25.11 by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).

See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).

Recodified from N.J.A.C. 7:27-25.10 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

Former N.J.A.C. 7:27-25.8, Labeling, repealed.

#### 7:27-25.9 Service fees

(a) Any person who applies for an exemption pursuant to N.J.A.C. 7:27-25.7 shall submit with the application, as an integral part thereof, a non-refundable service fee of \$500.00.

(b) Any person to whom the Department has issued an exemption pursuant to N.J.A.C. 7:27-25.7 shall remit to the Department within 60 days after receipt of an invoice, an annual compliance inspection fee of \$500.00 for each year that the exemption remains in effect.

New Rule, R.1991 d.462, effective September 3, 1991.

See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).

Recodified from N.J.A.C. 7:27-25.8 and amended by R.1992 d.382, effective October 5, 1992.

See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).

New subsections (c) and (d) added.

Recodified from 7:27-25.12 by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).

See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).

Amended by R.1994 d.483, effective September 19, 1994 (operative October 24, 1994).

See: 26 N.J.R. 1048(a), 26 N.J.R. 3835(a).

Emergency Amendment, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).

See: 27 N.J.R. 4004(a).

Public Notice: Emergency amendment by R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.

See: 27 N.J.R. 4116(a).

Recodified from N.J.A.C. 7:27-25.11 and amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

Deleted former (c) and (d). Former N.J.A.C. 7:27-25.9, Variance for shortage of supply, repealed.

#### 7:27-25.10 (Reserved)

Recodified to N.J.A.C. 7:27-25.8 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

Section was "Owner and operator responsibility".

#### 7:27-25.11 (Reserved)

Recodified to N.J.A.C. 7:27-25:9 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

Section was "Service fees".

### SUBCHAPTER 26. NATIONAL LOW EMISSION VEHICLE (NLEV) AND HEAVY-DUTY DIESEL NEW ENGINE REQUIREMENTS PROGRAM

#### Authority

N.J.S.A. 13:1B-3(e), 13:10-9 and 26:2C-1 et seq., specifically 26:2C-8.

#### Source and Effective Date

R.1995 d.661, effective December 18, 1995 (operative January 21, 1996).

See: 27 N.J.R. 1910(a), 27 N.J.R. 5016(a).

#### 7:27-26.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems and crankcase ventilating systems.

"Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; a profit-seeking enterprise or concern.

"California Air Resources Board" or "CARB" means the agency established and empowered to regulate sources of air pollution in the state of California, including motor vehicles, pursuant to California Health & Safety Code Sections 39500 et seq.

"California standards" means those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States Environmental Protection Agency pursuant to the authority of 42 U.S.C.A. § 7543 and which other states are permitted to adopt pursuant to 42 U.S.C.A. § 7507.

"CCR" shall mean the California Code of Regulations (Barclays, 1991).

"Certificate of conformity" means that document issued by the Executive Officer of the California Air Resources Board, or the United States Environmental Protection Agency.

"Certification application" means the application and associated information that a motor vehicle manufacturer, a motor vehicle engine manufacturer or an air contaminant emission control system manufacturer submits to the California Air Resources Board in the process of applying for certification of a motor vehicle, motor vehicle engine, engine family or air contaminant emission control system.

"Certified" means, in respect to a motor vehicle, motor vehicle engine or engine family, or air contaminant emission control system, having been found by the California Air Resources Board to have satisfied the criteria adopted by the California Air Resources Board for the control of specified air contaminants from motor vehicles.

"Clean Air Act § 177 Program" means a program, adopted by the State pursuant to section 177 of the Clean Air Act, 42 U.S.C. §§ 7401 et seq., establishing and enforcing standards for any model year relating to the control of emissions from new motor vehicles or new motor vehicle engines.

"Dealer" includes every person actively engaged in the business of buying, transferring, leasing, selling or exchanging motor vehicles and who has an established place of business.

"Department" means the New Jersey Department of Environmental Protection.

"Diesel" means powered by an engine where the primary means of controlling power output is by limiting the amount of fuel that is injected into the combustion chambers of the engine.

"Diesel engine" means a compression ignition type of internal combustion engine.

"Dual fueled" means a motor vehicle that is engineered and designed to be capable of operating on a petroleum fuel and on another fuel which is stored separately on-board the vehicle.

"Durability vehicle basis" means the number of miles during which the test vehicle used by a motor vehicle manufacturer to certify to the prescribed exhaust emission standards must maintain those specified standards.

"Emission standards" means specified limitations on the discharge of air contaminants into the atmosphere.

“Engine family” means the basic classification unit comprised of the engine and drive-train configuration selected by a manufacturer and used for the purpose of certification testing.

“Established place of business” means a place actually occupied either continuously or at regular periods for business use.

“Evaporative emissions” means vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.

“Field fixes” mean modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer’s authorized service representative, and that are implemented to correct design defects that may result in excess emissions from the motor vehicle.

“Fleet average” means a motor vehicle manufacturer’s average vehicle emissions of all non-methane organic gases from all vehicles subject to this subchapter which are produced and delivered for sale in the State of New Jersey in any model year, beginning with model year 1996, based on the calculation in N.J.A.C. 7.27-26.5(a).

“Fuel flexible” means a methanol-fueled motor vehicle that is engineered and designed to be operated using any gasoline-methanol fuel mixture or blend.

“Fuel system” means the combination of fuel tank(s), fuel lines and carburetor, or fuel injector, and includes all vents and fuel evaporative emission control systems or devices.

“G/mi” means grams per mile.

“Gross vehicle weight rating” or “GVWR” means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

“Heavy-duty diesel engine” means a diesel engine that is used to propel a heavy-duty motor vehicle.

“Heavy-duty engine” means an engine which is used to propel a heavy-duty vehicle.

“Heavy-duty motor vehicle” means a motor vehicle with a GVWR of 14,001 pounds or more.

“Heavy-duty vehicle” means any motor vehicle having a manufacturer’s gross vehicle weight rating greater than 6,000 pounds, except passenger cars.

“HEV contribution factor” means the NMOG emission contribution of HEVs to the fleet average NMOG value.

“Highway” means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular

travel, and also includes any limited-access highway designated as a “freeway” or “parkway” by authority of law, and any semi-public or private way to which the provisions of Subtitle 1 of Title 39 of the Revised Statutes, N.J.S.A. 39:1-1 et seq., have been made applicable pursuant to the provisions of N.J.S.A. 39:5A-1.

“Hybrid electric vehicle” or “HEV” means a motor vehicle which allows power to be delivered to the driver wheels solely by a battery-powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery, or any vehicle which allows power to be delivered to the driver wheels by either a combustion engine and/or by a powered electric motor.

“Intermediate compliance standards” means in-use compliance standards that are effective prior to the effective date of the final in-use compliance standards.

“Intermediate volume manufacturer” means any vehicle manufacturer with sales between 3,001 and 35,000 new light-duty and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1993; provided that, for manufacturers certifying for the first time in California, model year sales shall be based on projected California sales.

“In-use compliance” means the adherence of a motor vehicle to specified exhaust emission standards while the motor vehicle is used and properly maintained within the guidelines of the motor vehicle manufacturer.

“Light-duty truck” means any motor vehicle, rated at 6,000 pounds gross vehicle weight or less and a loaded vehicle weight of 5,750 pounds or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

“Light-duty vehicle” means light-duty trucks and passenger cars.

“Loaded vehicle weight” or “LVW” means vehicle curb weight plus 300 pounds.

“Low emission vehicle” or “LEV” means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

“Manufacturer’s sales fleet” means all passenger cars and light-duty trucks a manufacturer sells or offers for sale in New Jersey.

“Medium-duty vehicle” means any pre-1995 model year heavy-duty vehicle having a manufacturer’s gross vehicle weight rating of 8,500 pounds or less, any 1992 and subsequent model year heavy-duty low emission vehicle or ultra-low emission vehicle having a manufacturer’s gross vehicle

weight rating of 14,000 pounds or less, or any 1995 and subsequent model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less.

"Mg/mi" means milligrams per mile.

"Model-year" or "MY" means the manufacturers' annual production period as set forth in 40 C.F.R. Part 85, Subpart X.

"Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, excepting such devices as run only upon rails or tracks and motorized bicycles.

"Motor vehicle engine" means an engine that is used to propel a motor vehicle.

"New motor vehicle" or "new vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to the ultimate purchaser.

"New motor vehicle dealer" means the agent, distributor or authorized dealer of the manufacturer of a new motor vehicle who has an established place of business.

"New motor vehicle engine" means a new engine in a motor vehicle.

"NLEV Program" or "National Low Emission Vehicle Program" means a Federally enforceable, voluntary nationwide clean car program designed to reduce smog and other pollution from new motor vehicles and that would achieve emission reductions from new motor vehicles in the Ozone Transport Region equivalent to or greater than would be achieved by the OTC-LEV Program.

"Non-methane organic gas" or "NMOG" means the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

"Off-highway" means any place other than a highway.

"Offset vehicle" means a Federally-certified light-duty vehicle that has been certified by the California Air Resources Board as meeting the standards and procedures set forth in the "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991.

"Organic material hydrocarbon equivalent" or "OMHCE" means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, methanol and formaldehyde as contained in an exhaust gas sample, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrocarbon-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot-soak emissions, the hydrocarbon-to-carbon ratios of the equivalent hydrocarbons are 2.33:1, respectively.

"OTC-LEV program" means the program established in this subchapter at N.J.A.C. 7:27-26.1 through 7, 26.15 and 26.16, which regulates certain motor vehicles, certain motor vehicle engines or engine families, and/or certain air contaminant emission control systems.

"OTC-LEV program control system" means an air contaminant emission control system designed for use and/or used to enable an OTC-LEV program engine or a OTC-LEV program vehicle to meet the emission standards of the OTC-LEV program.

"OTC-LEV program engine" means an engine subject to the requirements of the OTC-LEV program.

"OTC-LEV program vehicle" means a motor vehicle subject to the requirements of the OTC-LEV program.

"Ozone Transport Commission—Low Emission Vehicle Program" or "OTC-LEV Program" means a LEV program as set forth in 40 CFR 51.120(c).

"Ozone Transport Region or OTR" means the ozone transport region established pursuant to 42 U.S.C. § 7511c(a), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Pennsylvania, Vermont, the Consolidated Metropolitan Statistical Area that includes northern portions of Virginia and the District of Columbia.

"Passenger car" or "PC" means any motor vehicle designed primarily for transportation of persons and having a design capacity of 12 or fewer persons.

"Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any Board, commission, employee, agent, officer or political subdivision of a state, an interstate body or the United States.

"Reactivity adjustment factor" means a fraction applied to the NMOG emissions from a vehicle powered by a fuel other than conventional gasoline for the purpose of determining a gasoline-equivalent NMOG level. The reactivity adjustment factor means the ozone-forming potential of clean fuel vehicle exhaust divided by the ozone-forming potential of gasoline vehicle exhaust.

"Rental agency" means a business engaged in renting motor vehicles for temporary use.

"Running changes" means modifications to motor vehicle engines or air contaminant emission control systems specified by the vehicle manufacturer that are to be effected by the manufacturer during vehicle production, and which are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate or subsequent purchaser.

"Small volume manufacturer" means any vehicle manufacturer with sales less than or equal to 3,000 new light-duty vehicles and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1991; provided that, for manufacturers certifying for the first time in California, model-year sales shall be based on projected California sales.

"Standard vehicle" or "SV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"State" means the State of New Jersey, unless otherwise specified.

"Transitional low emission vehicle" or "TLEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Type A HEV" means an HEV which achieves a minimum range of 60 miles over the All Electric Range Test as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light Duty Trucks and Medium Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title 13, California Code of Regulations.

"Type B HEV" means an HEV which achieves a range of 40 to 59 miles over the All Electric Range Test as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light Duty Trucks and Medium Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title 13, California Code of Regulations.

"Type C HEV" means an HEV which achieves a range of 0 to 39 miles over the All Electric Range Test as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light Duty Trucks and Medium Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title 13, California Code of Regulations.

"Ultra low emission vehicle" or "ULEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

"Ultra-small volume manufacturer" means any manufacturer with cumulative California sales of new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles,

and heavy-duty engines, that total no more than 300 per model year based on the average number of vehicles and engines sold by the manufacturer in the previous three consecutive model years.

"Urban bus" means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of 15 or more passengers and intended primarily for intra-city operation, that is, within the confines of a city or greater metropolitan area. Operation of such vehicles is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, such vehicles would normally have equipment installed for the collection of fares. Such vehicles are also typically characterized by the absence of equipment and facilities for long distance travel, for example, restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

"Useful life" means a period of use denoted by the emission standards to which a given vehicle is certifying. For those light-duty vehicles certified to optional 100,000 mile standards and those 1996 and subsequent model year vehicles certified to 100,000 emission standards, and for those transitional low-emission, low-emission, and ultra-low emission vehicles and hybrid electric vehicles (HEVs) certified to 100,000 emission standards, the useful life shall mean 10 years or 100,000 miles, whichever first occurs. For light-duty vehicles certified only to 50,000 mile standards useful life shall mean five years or 50,000 miles, whichever first occurs.

"Vehicle curb weight" means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the weight of optional equipment computed in accordance with 40 C.F.R. 86.082-24. Incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

"Zero emission vehicle" or "ZEV" means any vehicle which is certified by the Executive Officer of the California Air Resources Board to produce zero emissions of any criteria pollutants under any and all possible operational modes and conditions. Incorporation of a fuel-fired heater shall not preclude a vehicle from being certified as a ZEV provided the fuel-fired heater cannot be operated at ambient temperatures above 40 degrees Fahrenheit and the heater is demonstrated to have zero evaporative emissions under any and all possible operational modes and conditions.

Amended by R.1999 d.78, effective March 1, 1999 (operative April 4, 1999).  
See: 30 N.J.R. 4204(a), 31 N.J.R. 648(a).

Inserted "Clean Air Act § 177 Program" and "NLEV Program" or "National Low Emission Vehicle Program"; and deleted "49-State Low Emission Vehicle (49SLEV) Program".  
Amended by R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).  
See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).  
Rewrote the section.

### 7:27-26.2 Applicability

(a) N.J.A.C. 7:26.1 through 7, 26.11, 26.15 and 26.16 shall apply to all 1999 model year and subsequent model year motor vehicles which are passenger cars and light-duty trucks, motor vehicle engines in such motor vehicles, and air contaminant emission control systems for such motor vehicles and motor vehicle engines, otherwise referred to in this subchapter as "OTC-LEV program vehicles, engines and control systems."

(b) Notwithstanding (a) above, for the duration of the State's participation in NLEV, manufacturers may comply with NLEV or equally stringent mandatory Federal standards in lieu of compliance with any program, including the provisions of this subchapter and including any mandates for sales of ZEVs, adopted by the State pursuant to the authority provided in § 177 of the Clean Air Act (CAA), 42 U.S.C. §§ 7401 et seq., applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, § 1900, incorporated herein by reference.

1. The State's participation in NLEV extends until the commencement of model year 2006, except as provided in 40 C.F.R. § 86.1707. If, no later than December 15, 2000, the EPA does not adopt standards at least as stringent as the NLEV standards provided in 40 C.F.R. Part 86, subpart R, that apply to new motor vehicles in model year 2004, 2005 or 2006, the State's participation in NLEV extends only until the commencement of model year 2004, except as provided in 40 C.F.R. § 86.1707.

2. If a covered manufacturer, as defined at 40 C.F.R. § 86.1702, opts out of the NLEV program pursuant to the EPA NLEV regulations at 40 C.F.R. § 86.1707, the transition from NLEV requirements to any State Clean Air Act § 177 Program applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, § 1900, incorporated herein by reference, will proceed in accordance with the EPA NLEV regulations at 40 C.F.R. § 86.1707.

3. Additional, nonregulatory language required by EPA at 40 C.F.R. § 86.1705-99(g)(4) and (5) as part of the State's opt into the NLEV Program appears in the Appendix to this subchapter.

(c) Upon termination of the State's participation in the NLEV Program, the provisions of N.J.A.C. 7:27-26.1 through 7, 26.11, 26.15 and 26.16 shall apply to OTC-LEV program vehicles, engines, and control systems. Notice of such termination shall be published in the New Jersey Register.

(d) Notwithstanding (a) above, the provisions of N.J.A.C. 7:27-26.1 through 7, 26.11, 26.15 and 26.16 shall not apply to OTC-LEV program vehicles, engines, and control systems unless the combined number of registrations of new motor vehicles in those states and the District of Columbia, excluding New Jersey, within the OTR that have enacted legislation or adopted rules and regulations establishing and implementing a low emission vehicle program for a motor vehicle model year not later than 1999, is equal to or greater than 40 percent of the total number of registrations of new motor vehicles in all of the states and the District of Columbia within the OTR.

(e) N.J.A.C. 7:27-26.1, 26.8 through 26.11, 26.15 and 26.16 shall apply to all new heavy-duty motor vehicles which are equipped with 2005 and subsequent model year heavy-duty diesel engines.

Amended by R.1999 d.78, effective March 1, 1999 (operative April 4, 1999).

See: 30 N.J.R. 4204(a), 31 N.J.R. 648(a).

Rewrote (b) and (c).

Amended by R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).

Rewrote (a), (c) and (d); added (e).

### 7:27-26.3 Prohibitions (OTC-LEV Program)

(a) No person who is a resident of or who operates an established place of business within this State shall sell, register, import, deliver, purchase, lease, give, acquire, receive or otherwise transfer a 1999 model year or subsequent model-year new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine, for use, registration or resale within this State, unless such new motor vehicle or new motor vehicle engine has been certified in accordance with this subchapter. No person shall attempt or assist in any such action.

(b) No person who is a resident of or who operates an established place of business within this State shall offer for rent a 1999 model year or subsequent model year motor vehicle for use within this State unless such motor vehicle has been certified in accordance with this subchapter.

1. If a vehicle which is delivered to a New Jersey rental car agency from a non-New Jersey origination point is not rented to a final destination outside of New Jersey within 30 days from such delivery to the New Jersey rental car agency, it shall remain idle until it is next rented with a final destination outside of New Jersey.

(c) The prohibitions contained in (a) and (b) above shall not apply to the following passenger cars or light-duty trucks:

1. A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged, or became inoperative, beyond reasonable repair or was stolen while out of this State; provided that such replacement vehicle is acquired out of State at the time the previously owned vehicle was either damaged or became inoperative or was stolen;
2. A vehicle transferred by inheritance;
3. A vehicle transferred by court decree;
4. A vehicle transferred after the date on which this subchapter becomes applicable under N.J.A.C. 7:27-26.2, if the vehicle was registered in this State before such date;
5. A vehicle having a certificate of conformity issued pursuant to the Federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this State;
6. A vehicle which is an offset vehicle;
7. A vehicle transferred by a dealer to another dealer;
8. A vehicle transferred for the purpose of being wrecked or dismantled;
9. A vehicle transferred for use exclusively off-highway; or
10. A vehicle transferred for registration out of State.

(d) To register any vehicle exempted under (c) above, the person seeking registration must provide satisfactory evidence, as determined by the New Jersey Division of Motor Vehicles, demonstrating that the exemption is applicable.

(e) For the purposes of this subchapter, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser, and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

Amended by R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).  
See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).

**7:27-26.4 Emission certification standards (OTC-LEV Program)**

(a) Except as otherwise provided in N.J.A.C. 7:27-26.3(c), all 1999 model year and subsequent model year motor vehicles subject to this subchapter must be certified as not exceeding the following emission standards for standard vehicles, low emission vehicles, transitional low emission vehicles, ultra-low emission vehicles, zero emission vehicles or hybrid electric vehicles. Vehicles must be certified as meeting the applicable emission certification standards for one of such categories of vehicles.

(b) The exhaust emission certification standards for 1999 model year and subsequent model year passenger cars and light duty trucks which are certified as standard vehicles are as follows:

1. The exhaust emission certification standards for non-methane hydrocarbons, carbon monoxide and oxides of nitrogen are set forth in Table 1.

Table 1

**1999 MODEL YEAR AND SUBSEQUENT MODEL YEAR PASSENGER CAR AND LIGHT-DUTY TRUCK STANDARD VEHICLE EXHAUST EMISSION CERTIFICATION STANDARDS**

Vehicle Type <sup>(1)</sup>	Loaded Vehicle Weight (lbs)	Durability Vehicle Basis (mi)	Non-Methane Hydrocarbons (g/mi) <sup>(2)</sup>	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC	All	50,000	0.25	3.4	0.4
PC	All	100,000	0.31	4.2	0.6
Diesel PC (Option 2)	All	100,000	0.31	4.2	1.0
LDT	0-3,750	50,000	0.25	3.4	0.4
LDT	0-3,750	100,000	0.31	4.2	0.6
Diesel LDT (Option 2)	0-3,750	100,000	0.31	4.2	1.0
LDT	3,751-5,750	50,000	0.32	4.4	0.7
LDT	3,751-5,750	100,000	0.40	5.5	0.97
Diesel LDT (Option 1)	3,751-5,750	100,000	0.40	5.5	1.5

(1) "PC" means passenger cars, "LDT" means light-duty trucks.

(2) For methanol- or ethanol-fueled vehicles certifying to these standards, including fuel-flexible vehicles when certifying on methanol or ethanol, "Non-Methane Hydrocarbons" shall mean "Organic Material Non-Methane Hydrocarbon Equivalent" (or "OMNMHCE").

2. Methanol-fueled passenger cars, and methanol-fueled light-duty trucks up to 3,750 pounds loaded vehicle weight, certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 15 mg/mi., determined on a 50,000 mile durability vehicle basis. Methanol-fueled light-duty trucks from 3,751 to 5,750 pounds loaded vehicle weight certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 18 mg/mi., determined on a 50,000 mile durability vehicle basis.

3. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR Part 600 Subpart B) shall be not greater than 1.33 times the applicable passenger car standards and 2.00 times the applicable light-duty truck standards shown in Table 1. Both the projected emissions and the HWFET standard shall be rounded in accordance with American Society for Testing Materials (ASTM) E29-67 to the nearest 0.1 g/mi before being compared.

4. Diesel passenger cars and light-duty trucks certifying to these standards are subject to a particulate exhaust emission standard of 0.08 g/mi, determined on a 50,000 mile durability vehicle basis.

5. For all vehicles, except those certifying to optional diesel standards, in-use compliance with the exhaust emission standards shall be limited to vehicles with less than 75,000 miles.

6. For the 1995 and 1996 model years, all manufacturers, except those certifying to optional diesel standards, are permitted alternative in-use compliance. Alternative in-use compliance is permitted for 60 percent of a manufacturer's vehicles in the 1995 model year and 20 percent of a manufacturer's vehicles in the 1996 model year. For the 1995 and 1996 model years, small volume manufacturers only are permitted alternative in-use compliance for 100 percent of the fleet. The percentages shall be applied to the manufacturers' total projected sales of California-certified passenger cars and light-duty trucks for the model-year. "Alternative in-use compliance" shall consist of the following:

i. For all passenger cars and those light-duty trucks from zero to 3,750 pounds, loaded vehicle weight, except those diesel vehicles certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.32 g/mi non-methane hydrocarbon and 5.2 g/mi carbon monoxide for 50,000 miles.

ii. For light-duty trucks from 3,751 to 5,750 pounds, loaded vehicle weight, except those diesel light-duty trucks certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.41 g/mi non-methane hydrocarbon and 6.7 g/mi carbon monoxide for 50,000 miles.

iii. In-use compliance standards shall be waived beyond 50,000 miles.

7. All passenger cars and light-duty trucks, except those diesel vehicles certifying to optional standards, are subject to non-methane hydrocarbon, carbon monoxide and oxides of nitrogen standards determined on a 50,000 mile durability basis and non-methane hydrocarbon and carbon monoxide standards determined on an 100,000 mile durability basis.

8. 100,000 mile NO<sub>x</sub> standards are applicable for 1996 and subsequent model-year vehicles.

9. Each manufacturer shall also comply with the requirements specified in California Code of Regulations, Title-13, Section 1960.1(g)(2).

(c) The exhaust emission certification standards and test procedures for non-methane organic gases (NMOG), oxides of nitrogen (NO<sub>x</sub>), carbon monoxide (CO) and particulates for 1999 model year and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles are as follows:

1. The exhaust emission certification standards for NMOG, CO and NO<sub>x</sub> are set forth in Table 2.

Table 2

EXHAUST EMISSION CERTIFICATION STANDARDS FOR TRANSITIONAL LOW EMISSION VEHICLES,  
LOW EMISSION VEHICLES AND ULTRA-LOW EMISSION VEHICLES IN PASSENGER CAR  
AND LIGHT-DUTY TRUCK VEHICLE CLASSES<sup>(3)</sup>

Vehicle Type <sup>(1)</sup>	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category <sup>(2)</sup>	Non-Methane Organic Gases (g/mi)	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC and LDT	All 0-3,750	50,000	TLEV	0.125 (0.188)	3.4 (3.4)	0.4 (0.4)
			LEV	0.075 (0.100)	3.4 (3.4)	0.2 (0.3)
			ULEV	0.040 (0.058)	1.7 (2.6)	0.2 (0.3)
LTD	3,751-5,751	100,000	TLEV	0.156	4.2	0.6
			LEV	0.090	4.2	0.3
			ULEV	0.055	2.1	0.3
		50,000	TLEV	0.160 (0.238)	4.4 (4.4)	0.7 (0.7)
			LEV	0.100 (0.128)	4.4 (4.4)	0.4 (0.5)

Vehicle Type <sup>(1)</sup>	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category <sup>(2)</sup>	Non-Methane Organic Gases (g/mi)	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
		100,000	ULEV	0.050 (0.075)	2.2 (3.3)	0.4 (0.5)
			TLEV	0.200	5.5	0.9
			LEV	0.130	5.5	0.5
			ULEV	0.070	2.8	0.5

(1) "PC" means passenger cars, "LDT" means light-duty trucks.

(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.

(3) The standards in parentheses are intermediate in-use compliance standards for 50,000 miles, applicable under (c)5 below.

2. To demonstrate compliance with an NMOG standard, NMOG emissions shall be measured in accordance with the "California Non-Methane Organic Gas Test Procedures" as adopted July 12, 1991 and last amended September 22, 1993. For TLEVs, LEVs and ULEVs certified to operate exclusively on any fuel other than conventional gasoline, and for fuel-flexible and dual-fuel TLEVs, LEVs and ULEVs when certifying on a fuel other than gasoline, manufacturers shall multiply NMOG exhaust certification levels by the applicable reactivity adjustment factor set forth in section 13 of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles:" as incorporated by reference in section 1960.1(k), Title 13, California Code of Regulations or established by the Executive Officer of the CARB pursuant to Appendix VIII of the foregoing test procedures. In addition, natural gas vehicles certifying to TLEV, LEV or ULEV standards shall calculate a reactivity-adjusted methane exhaust emission value by multiplying the methane exhaust certification level by the applicable methane reactivity adjustment factor set forth in section 13 of the above-referenced test procedures. The product of the NMOG exhaust certification levels and the reactivity adjustment factor shall be compared to the exhaust NMOG mass emission standards established for the particular vehicles emission category to determine compliance. For natural gas vehicles, the reactivity-adjusted NMOG value shall be added to the reactivity-adjusted methane value and then compared to the exhaust NMOG mass emission standards established for the particular vehicle emission category to determine compliance.

3. Fuel-flexible and dual-fuel PCs and LDTs from zero to 5,750 pounds LVW shall be certified to exhaust mass emission standards for NMOG established for the operation of the vehicle on any available fuel other than gasoline, and gasoline.

i. For TLEVs, LEVs, and ULEVs, when certifying for operation on a fuel other than gasoline, manufacturers shall multiply exhaust NMOG certification levels by the applicable reactivity adjustment factor. In addition to multiplying the exhaust NMOG certification levels the applicable reactivity adjustment factor, natural gas vehicles shall multiply the exhaust methane certification level by the applicable methane reactivity adjustment factor and add that value to the reactivity-

adjusted NMOG value. The exhaust NMOG certification levels for fuel-flexible or dual-fuel vehicles when certifying on gasoline shall not be multiplied by a reactivity adjustment factor.

ii. For PCs and LDTs from zero to 3,750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on conventional gasoline shall be:

(1) For TLEVs, 0.25 g/mi and 0.31 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs, 0.125 g/mi and 0.156 g/mi for 50,000 and 100,000 miles, respectively.

(3) For ULEVs, 0.075 g/mi and 0.090 g/mi for 50,000 and 100,000 miles, respectively.

iii. For LDTs from 3,751 to 5,750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on gasoline shall be:

(1) For TLEVs, 0.32 g/mi and 0.40 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs 0.160 g/mi and 0.200 g/mi for 50,000 and 100,000 miles, respectively; and

(3) For ULEVs, 0.100 g/mi and 0.130 g/mi for 50,000 and 100,000 miles, respectively.

4. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR 600 Subpart B) shall be not greater than 1.33 times the applicable light-duty vehicle standards shown in Table 2. Both the projected emissions and the HWFET standard shall be rounded in accordance with ASTM E29-67 to the nearest 0.1 g/mi before being compared.

5. For PCs and LDTs from zero to 5,750 pounds LVW, including fuel-flexible and dual-fuel vehicles when operating on any available fuel other than gasoline, intermediate in-use compliance standards shall apply to TLEVs through the 1995 model year, and LEVs and ULEVs through the 1998 model-year. In-use compliance with standards beyond 50,000 miles shall be waived through the 1995 model year for TLEVs, and through the 1998 model year for LEVs and ULEVs.

i. For TLEVs, LEVs, and ULEVs designed to operate on any fuel other than conventional gasoline, including fuel-flexible and dual-fuel vehicles when operating on any fuel other than gasoline, exhaust NMOG mass emissions results shall be multiplied by the applicable reactivity adjustment factor to determine compliance with intermediate in-use compliance standards for NMOG. In addition to multiplying the exhaust NMOG emission results by the applicable reactivity adjustment factor, natural gas vehicles shall multiply the exhaust methane emission results by the applicable methane reactivity adjustment factor and add that value to the reactivity-adjusted NMOG value. Exhaust NMOG mass emissions from fuel-flexible or dual-fuel vehicles when operating on gasoline shall not be multiplied by a reactivity adjustment factor.

ii. For fuel-flexible and dual-fuel PCs and LDTs from zero to 3,750 pounds LVW, intermediate in-use compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on gasoline, shall be 0.32 g/mi, 0.188 g/mi, and 0.100 g/mi for TLEVs, LEVs, and ULEVs, respectively.

iii. For fuel-flexible and dual-fuel LDTs from 3,751 to 5,750 pounds LVW, intermediate in-use compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on gasoline, shall be 0.41 g/mi, 0.238 g/mi, and 0.128 g/mi for TLEVs, LEVs and ULEVs, respectively.

6. Manufacturers of diesel vehicles must also certify to particulate standards for 100,000 miles. For all PCs and LDTs from zero to 5,750 pounds loaded vehicle weight, the particulate standard is 0.08 g/mi, 0.08 g/mi and 0.04 g/mi for TLEVs, LEVs and ULEVs, respectively.

7. Manufacturers shall demonstrate compliance with the above standards for NMOG, CO, and NO<sub>x</sub> at 50 degrees Fahrenheit according to the procedure specified in Section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium Duty Vehicles" as adopted May 20, 1987 and last amended September 22, 1993. Hybrid electric, natural gas, and diesel-fueled vehicles shall be exempt from 50 degrees Fahrenheit test requirements.

8. In-use compliance testing shall be limited to vehicles with fewer than 75,000 miles.

9. Deterioration factors for hybrid electric vehicles shall be based on the emissions and mileage accumulation of the auxiliary power unit. For certification purposes only, Type A hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors), and demonstrating compliance with 100,000 mile emission standards shall not be required. For certification purposes only, Type B hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 75,000 mile deterioration factors). For certification purposes only, Type C hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 100,000 mile deterioration factors).

(d) Formaldehyde exhaust emission standards apply to vehicles designed to operate on any available fuel, including fuel-flexible and dual-fuel vehicles. The exhaust emission certification standards for formaldehyde, for 1999 model year and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles, are as follows:

1. The exhaust emission certification standards for formaldehyde are set forth in Table 3.

Table 3

FORMALDEHYDE EXHAUST EMISSION CERTIFICATION STANDARDS  
FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES,  
AND ULTRA-LOW EMISSION VEHICLES IN THE LIGHT-DUTY VEHICLES WEIGHT CLASS

Vehicle Type <sup>(1)</sup>	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category <sup>(2)</sup>	Formaldehyde (mg/mi) <sup>(3) (4)</sup>
PC and LDT	All 0-3,751	50,000	TLEV	15 (23)
			LEV	15 (15)
			ULEV	8 (12)
		100,000	TLEV	18
			LEV	18
			ULEV	11
LTD		50,000	TLEV	18 (27)

Vehicle Type <sup>(1)</sup>	Loaded Vehicle Weight (lbs.) 3,751-5,751	Durability Vehicle Basis (mi) 100,000	Vehicle Emission Category <sup>(2)</sup>	Formaldehyde (mg/mi) <sup>(3) (4)</sup>
			LEV	18 (18)
			ULEV	9 (14)
			TLEV	23
			LEV	23
			ULEV	13

- (1) "PC" means passenger cars, "LDT" means light-duty trucks.
- (2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.
- (3) The standards in parentheses are intermediate compliance standards for 50,000 miles applicable under (d)2 below.
- (4) Formaldehyde exhaust emission standards apply to vehicles certified to operate on any available fuel, including fuel-flexible and dual-fuel vehicles.

2. For PCs and LDTs from zero to 5,750 pounds LVW, including fuel-flexible and dual-fuel vehicles, intermediate in-use compliance standards shall apply to LEVs and ULEVs through the 1998 model-year. In-use compliance with standards beyond 50,000 miles shall be waived through 1998 for LEVs and ULEVs.

3. Manufacturers shall demonstrate compliance with the above standards for formaldehyde at 50 degrees Fahrenheit according to the procedures specified in section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light Duty Trucks and Medium Duty Vehicles" as incorporated by reference in section 1960.1(k), Title-13, California Code of Regulations. Hybrid electric, natural gas, and diesel-fueled vehicles shall be exempt from 50 degrees Fahrenheit test requirements.

4. In-use compliance testing shall be limited to passenger cars and light-duty trucks with fewer than 75,000 miles.

(e) The evaporative emissions certification standards for all 1999 model year and subsequent model-year gasoline-fueled, liquefied petroleum gas-fueled and methanol-fueled motor vehicles, except petroleum-fueled diesel vehicles, are as follows:

1. Evaporative emissions for 1979 and subsequent model gasoline-fueled, 1983 and subsequent model liquefied petroleum gas-fueled, and 1993 and subsequent model alcohol-fueled motor vehicles and hybrid electric vehicles subject to exhaust emission standards under this article, except petroleum-fueled diesel vehicles, compressed natural gas-fueled vehicles, hybrid electric vehicles that have sealed fuel systems which can be demonstrated to have no evaporative emissions, and motorcycles, shall not exceed the following standards.

i. For the vehicles identified below, tested in accordance with the test procedure which includes the running loss test, the hot soak test, and the 72 hour diurnal test, the evaporative emission standards are:

Table 4

Vehicle Type	Model Year	Hydrocarbons or OMHCE <sup>(1)</sup>	
		Three-Day Hot Soak Useful Life <sup>(2)</sup>	Diurnal + Running Loss (grams/mile) Useful Life <sup>(2)</sup>
PC	1995 and subsequent	2.0	0.05
LDT	subsequent	2.0	0.05
HEPC	1993 and subsequent	2.0	0.05
HELDT	subsequent	2.0	0.05

PC=Passenger Cars  
 LDT=Light-Duty Trucks  
 HEPC=Hybrid Electric Passenger Cars  
 HELDT=Hybrid Electric Light-Duty Trucks

(1) The applicable evaporative emission standards for alcohol-fueled vehicles are expressed as organic material hydrocarbon equivalent (OMHCE).

(2) For purposes of this paragraph, "useful life" shall have the same meaning as provided in section 2112, Title-13, California Code of Regulations. Approval of vehicles which are not exhaust emission tested using a chassis dynamometer pursuant to section 1960.1, Title-13, California Code of Regulations shall be based on an engineering evaluation of the system and data submitted by the applicant.

2. Evaporative emission standards shall be tested in accordance with the "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles", adopted April 16, 1975, as last amended December 15, 1994.

3. Beginning with the 1999 model year, all motor vehicles subject to the running loss and useful life standards, including those produced by small volume manufacturers, shall be certified to the specified standards.

Amended by R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).  
 See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).

**7:27-26.5 Fleet average (OTC-LEV Program)**

(a) The fleet average non-methane organic gas exhaust emissions from passenger cars and light-duty trucks produced and delivered for sale in New Jersey by a manufacturer each model year shall not exceed the values set forth in Table 5.

Table 5

FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION  
REQUIREMENTS FOR LIGHT-DUTY VEHICLE WEIGHT CLASSES(5)

Vehicle Type	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Model Year (g/mi)	Fleet Average Non-Methane Organic Gases (1, 2, 3, 4)			
PC and LDT	All	50,000	1996	0.225			
			1997	0.202			
			1998	0.157			
			1999	0.113			
			2000	0.073			
			2001	0.070			
			2002	0.068			
			2003 and subsequent	0.062			
			LDT	3,751-5,750	50,000	1996	0.287
						1997	0.260
1998	0.205						
1999	0.150						
2000	0.099						
2001	0.098						
2002	0.095						
2003 and subsequent	0.093						

1. For the purpose of calculating fleet average NMOG values, a manufacturer may adjust the certification levels of hybrid electric vehicles (or "HEVs") based on the range of the HEV without the use of the engine.

i. For the purpose of calculating fleet average NMOG values, vehicles which have no tailpipe emissions but use fuel-fired heaters and which are not certified as ZEVs shall be treated as "Type A HEV ULEVs."

2. Each manufacturer's fleet average NMOG value for the total number of PCs and LDTs from zero to 3,750 pounds loaded vehicle weight produced and delivered for sale in New Jersey shall be calculated in units of grams per mile NMOG according to the following equation, where the term "produced" means produced and delivered for sale in New Jersey:  $\{[(\text{No. of Vehicles Certified to the Exhaust Emission Standards in section 1960.1(e)(1) of Title-13, California Code of Regulations, and produced}) \times (0.39)] + [\text{No. of standard vehicles produced} \times (0.25)] + [(\text{No. of Transitional Low-Emission Vehicles excluding HEVs produced}) \times (0.125)] + [(\text{No. of Low-Emission Vehicles excluding HEVs produced}) \times (0.075)] + [(\text{No. of Ultra-Low Emission Vehicles excluding HEVs produced}) \times (0.040)] + (\text{HEV contribution factor})\} / (\text{Total No. of vehicles produced, including ZEVs and HEVs})$ :

i. The HEV contribution factor shall be calculated in units of g/mi as follows:

(1) HEV contribution rate =  $\{[\text{No. of "Type A HEV" TLEVs produced}] \times (0.100) + [\text{No. of "Type B HEV" TLEVs produced}] \times (0.113) + [\text{No. of "Type C HEV" TLEVs produced}] \times (0.125)]\} + \{[\text{No. of "Type A HEV" LEVs produced}] \times (0.057) + [\text{No. of "Type B HEV" LEVs produced}] \times (0.066) + [\text{No. of "Type C HEV" LEVs produced}] \times (0.075)]\} + \{[\text{No. of "Type A HEV" ULEVs produced}] \times (0.020) + [\text{No. of "Type B HEV" ULEVs produced}] \times (0.030) + [\text{No. of "Type C HEV" ULEVs produced}] \times (0.040)]\}$

ii. Zero-emission vehicles classified as light-duty trucks, 3,751 to 5,750 pounds LVW, may be designated by the manufacturer as passenger cars and light-duty trucks zero to 3,750 pounds LVW, for the purposes of calculating fleet average NMOG values.

3. Manufacturers that certify LDTs from 3,751 to 5,750 pounds LVW, shall calculate a fleet average NMOG value in units of g/mi NMOG according to the following equation, where the term "produced" means produced and delivered for sale in New Jersey:  $\{[\text{No. of standard vehicles produced} \times (0.32)] + [(\text{No. of TLEVs produced excluding HEVs}) \times (0.160)] + [(\text{No. of LEVs produced excluding HEVs}) \times (0.100)] + [(\text{No. of ULEVs produced excluding HEVs}) \times (0.050)] + (\text{HEV contribution factor})\} / (\text{Total No. of vehicles produced, including ZEVs and HEVs})$ .

i. The HEV contribution factor shall be calculated in units of g/mi as follows, where the term "produced" means produced and delivered for sale in New Jersey:

(1) HEV contribution rate = {[No. of "Type A HEV" TLEVs produced] × (0.130) + [No. of "Type B HEV" TLEVs produced] × (0.145) + [No. of "Type C HEV" TLEVs produced] × (0.160)} + {[No. of "Type A HEV" LEVs produced] × (0.075) + [No. of "Type B HEV" LEVs produced] × (0.087) + [No. of "Type C HEV" LEVs produced] × (0.100)} + {[No. of "Type A HEV" ULEVs produced] × (0.025) + [No. of "Type B HEV" ULEVs produced] × (0.037) + [No. of "Type C HEV" ULEVs produced] × (0.050)}

4. In 2000 and subsequent model-years, small volume manufacturers shall comply with fleet average NMOG requirements.

i. Prior to the year 2000, compliance with the specified fleet average NMOG requirements shall be waived for small volume manufacturers.

ii. In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.075 g/mi for PCs and LDTs from zero to 3,750 pounds LVW.

iii. In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.100 g/mi for LDTs from 3,751 to 5,750 pounds LVW.

iv. If a manufacturer's average California sales exceeds 3,000 units of new PCs, LDTs, and medium duty vehicles based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall no longer be treated as a small volume manufacturer and shall comply with the fleet average requirements applicable for larger manufacturers as specified in section 1960.1(g)(2), Title-13, California Code of Regulations, beginning with the fourth model year after the last of the three consecutive model years.

v. If a manufacturer's average California sales falls below 3,000 units of new PCs, LDTs, and medium-duty vehicles based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall be treated as a small volume manufacturer and shall be subject to requirements for small volume manufacturers as specified in section 1960.1(g)(2), Title-13, California Code of Regulations, beginning with the next model year.

(b) In 1992 and subsequent model years, manufacturers that achieve fleet average NMOG values lower than the fleet average NMOG requirements for the corresponding model year shall receive credits in units of grams per mile NMOG determined as: {[Fleet Average NMOG Requirement] - (Manufacturer's Fleet Average NMOG Value)] × (Total No. of Vehicles Produced and Delivered for Sale in New Jersey, Including ZEVs and HEVs)}.

1. Manufacturers with fleet average NMOG values greater than the fleet average requirement for the corresponding model year shall receive debits in units of gram per mile NMOG equal to the amount of negative credits determined by the aforementioned equation. For any given model year, the total grams per mile NMOG credits or debits earned for PCs and LDTs zero to 3,750 pounds LVW and for LDTs 3,751 to 5,750 pounds LVW shall be summed together. The resulting amount shall constitute the grams per mile NMOG credits or debits accrued by the manufacturer for the model year.

2. For the 1994 through 1997 model years, manufacturers shall equalize emission debits within three model years and prior to the end of the 1998 model year by earning gram per mile NMOG emission credits in an amount equal to their grams per mile NMOG debits, or by submitting a commensurate amount of grams per mile NMOG credits that were earned previously or acquired from another manufacturer. For 1998 and subsequent model years, manufacturers shall equalize emission debits by the end of the following model year.

3. The grams per mile NMOG emission credits earned in any given model year shall retain full value through the subsequent model year.

4. The grams per mile NMOG value of any credits not used to equalize the previous model year's debit, shall be discounted by 50 percent at the beginning of the second model year after being earned, discounted to 25 percent of its original value if not used by the beginning of the third model year after being earned, and will have no value if not used by the beginning of the fourth model year after being earned.

Amended by R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).

See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).

#### **7:27-26.6 Reporting and new motor vehicle dealer requirements (OTC-LEV Program)**

(a) Commencing with the 1999 model year, each manufacturer shall report to the Department the fleet average NMOG emissions of its total deliveries for sale of vehicles in each engine family for New Jersey for that particular model year. Such reports shall be submitted within 60 days after the end of each model year, and shall be submitted in a form and manner to be determined by the Department. Fleet average reports shall, at a minimum, identify the total number of vehicles including offset vehicles sold in each engine family delivered for sale in New Jersey and California, respectively, the specific vehicle models comprising the sales in each state and the corresponding certification standards, and the percentage of each model sold in New Jersey and California in relation to total fleet sales in the respective states.

(b) In addition to all other requirements contained in this subchapter, new motor vehicle dealers shall comply with the following requirements.

1. No dealer shall sell or offer or deliver for sale a new passenger car or light-duty truck subject to this subchapter unless such vehicle conforms to the following standards and requirements:

- i. Ignition timing is set to manufacturer's specification with an allowable tolerance of  $\pm$ three degrees;
- ii. Idle speed is set to manufacturer's specification with an allowable tolerance of  $\pm$ 100 revolutions per minute;
- iii. Required exhaust and evaporative emission controls, such as exhaust gas recirculation (EGR) valves, are operating properly;
- iv. Vacuum hoses and electrical wiring for emission controls are correctly routed and connected, and operating properly; and
- v. Idle mixture is set to manufacturer's specification or according to manufacturer's recommended service procedure.

2. The requirements set forth in this subsection shall also apply to a dealer when servicing emission related components. However, only that requirement(s) appropriate to the service performed shall apply.

Amended by R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).  
See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).  
Deleted (c) and (d).

#### 7:27-26.7 Additional requirements (OTC-LEV Program)

(a) In addition to all other requirements set forth in this subchapter, new motor vehicles and new motor vehicle engines which are certified to the emission certification standards contained in N.J.A.C. 7:27-26.4 shall comply with the following requirements:

1. Passenger cars, and light-duty trucks up to 5,750 pounds loaded vehicle weight, shall be equipped with emission control labels which conform to the requirements contained in the "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978 as last amended July 12, 1991.
2. Passenger cars, and light-duty trucks up to 5,750 pounds loaded vehicle weight, shall be equipped with emission control malfunction and diagnostic systems which conform to the requirements contained in the California Code of Regulations, Title-13, Section 1968.1.
3. Passenger cars, and light-duty trucks up to 5,750 pounds loaded vehicle weight, which are gasoline-fueled or methanol-fueled shall comply with the requirements set forth in California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," dated March 26, 1976 and last amended February 21, 1990.

Amended by R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).  
See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).

#### 7:27-26.8 Requirements for vehicle transactions (New HDDE Standards Program)

(a) No person who is a resident of this State, or who operates an established place of business within this State, shall sell, lease, rent, import, deliver, purchase, acquire, receive or otherwise transfer in this State, or offer for sale, lease, or rental in this State (or attempt or assist in any of these actions) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in this State, unless the manufacturer of the engine has received an Executive Order issued by the California Air Resources Board for such engine, certifying that the engine complies with the applicable exhaust emission standards under Title 13, section 1956.8 of the California Code of Regulations, incorporated herein by reference:

1. A 2005 or subsequent model year heavy-duty diesel engine;
2. A new motor vehicle equipped with a 2005 or subsequent model year heavy-duty diesel engine; or
3. A motor vehicle with a new 2005 or subsequent model year heavy-duty diesel engine.

(b) For the purposes of this subchapter, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser, and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

New Rule, R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).  
See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).

#### 7:27-26.9 Exemptions and technology review (New HDDE Standards Program)

(a) Notwithstanding the provisions of N.J.A.C. 7:27-26.8, the requirements set forth at N.J.A.C. 7:27-26.8 through 26.11 shall not apply to:

1. A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;
2. A heavy-duty diesel engine of a model year and engine family for which CARB has determined, based upon its technology review, that compliance with its heavy-duty diesel engine standards is not required;
3. A vehicle acquired outside of New Jersey by a New Jersey resident for the purpose of replacing a vehicle registered to the resident which, while out of New Jersey, was stolen, or was damaged, or became inoperative, beyond reasonable repair; provided that such replacement vehicle is acquired within a reasonable amount of time following the time the previously owned vehicle was either stolen, damaged, or became inoperative;

4. A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;
5. An emergency vehicle;
6. A military tactical vehicle or equipment; or
7. Any other vehicle exempted by the California Health and Safety Code, section 43656.

New Rule, R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).  
See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).

**7:27-26.10 Manufacturer compliance with California orders and voluntary recalls (New HDDE Standards Program)**

(a) Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this subchapter that are sold, leased, or rented, offered for sale, lease, or rental, or registered in New Jersey, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such California Air Resources Board action, that this action is not applicable to such engines or vehicles in New Jersey.

(b) Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this subchapter, sold, leased, or rented, offered for sale, lease, or rental, or registered in New Jersey, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the California Air Resources Board, that this campaign is not applicable to such engines or vehicles in New Jersey.

New Rule, R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).  
See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).

**7:27-26.11 Enforcement**

(a) The Department and its representatives shall have the right to enter and inspect any site, building, equipment, or vehicle, or any portion thereof, at any time, in order to ascertain compliance or noncompliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., this subchapter, any exemption, or any order, consent order, agreement, or remedial action plan issued, approved or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials, motor vehicles or motor vehicle engines or any emissions therefrom, at the facility, to sketch or photograph any portion of the site, building, vehicles or motor vehicle engines, to copy or photograph any document or records necessary to determine such compliance or noncompliance, and to interview any employees or representatives of the owner, operator or

registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Except with respect to the fleet average requirements set forth in N.J.A.C. 7:27-26.5(a), failure to comply with any of the obligations or requirements of this subchapter shall subject the violator to an enforcement action pursuant to the provisions of N.J.S.A. 26:2C-19.

New Rule, R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).  
See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).

**7:27-26.12 through 7:27-26.14 (Reserved)**

**7:27-26.15 Incorporation by reference**

(a) Any reference in this subchapter to any of the documents or sources listed in (e) below shall be deemed to incorporate such document or source by reference, together with any future supplements or amendments thereto.

(b) If the entity which promulgated a document or source incorporated by reference into this subchapter proposes to amend or supplement the document or source, the Department will publish a notice of the proposed amendment or supplement in the New Jersey Register. The notice shall state how to obtain a copy of the proposal, and to whom comments on the proposal can be submitted. The Department will publish the notice within 60 days after publication of the proposed amendment or supplement.

(c) The adoption of any proposed amendment or supplement described in (b) above shall become operative in New Jersey no earlier than 30 days after publication by the Department of a notice of such adoption in the New Jersey Register.

(d) If the Department proposes to not incorporate any future supplements or amendments to any of the documents or sources incorporated by reference into this subchapter, the Department will propose an amendment to this subchapter, and will provide opportunity for public comment on such proposed amendment, in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

(e) The following documents and sources are incorporated by reference within this subchapter:

1. California Code of Regulations, Title-13, Section 1968.1;
2. "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991, CARB;
3. "California Non-Methane Organic Gas Test Procedures" adopted September 22, 1993, CARB;

4. "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted May 20, 1987, as last amended September 22, 1993, CARB;

5. "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," adopted April 16, 1975, as last amended December 15, 1994, CARB;

6. "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978, as last amended July 12, 1991, CARB;

7. California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," adopted March 26, 1976, as last amended February 21, 1990, CARB;

8. American Society for Testing Materials Standard Practice E29-88;

9. "Federal Highway Fuel Economy Test Procedure" 40 C.F.R. Part 600 Subpart B;

10. 40 C.F.R. 86.082-24;

11. "Control of Air Pollution from New and In Use Motor Vehicles and New and In Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86, Subparts A and B;

12. 40 Code of Federal Regulations (CFR) Parts 51, 52 and 85;

13. "California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy Duty Diesel Engines and Vehicles," adopted December 8, 2000, CARB;

14. 40 Code of Federal Regulations (CFR) Part 86, Subpart A, "General Provisions for Emission Regulations for 1977 and Later Model Year New Light Duty Vehicles, Light Duty Trucks, and Heavy Duty Engines, and for 1985 and Later Model Year New Gasoline Fuel and Methanol Fueled Heavy Duty Vehicles";

15. 40 Code of Federal Regulations (CFR) Part 86, Subpart I, "Emission Regulations for New Diesel Heavy Duty Engines; Smoke Exhaust Test Procedure"; and

16. 40 Code of Federal Regulations (CFR) Part 86, Subpart N, "Emission Regulations for New Otto Cycle and Diesel Heavy Duty Engines; Gaseous and Particulate Exhaust Test Procedures."

(f) Any of the documents in (e) above may be obtained by contacting the Office of Administrative Law or by contacting:

Department of Environmental Protection  
Office of Air Quality Management  
Bureau of Transportation Control  
PO Box 411  
Trenton, New Jersey 08625-0411

Amended by R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).

See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).  
In (e), added 13 through 16.

#### 7:27-26.16 Severability

Each section of this subchapter is severable. In the event that any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

#### APPENDIX

The State commits to support the NLEV Program as an acceptable alternative to the State's light-duty Clean Air Act § 177 Program otherwise referred to in this subchapter as the "OTC-LEV Program" for the duration of the State's participation in the NLEV Program.

The State recognizes that its commitment to NLEV is necessary to ensure that NLEV remain in effect.

The State is submitting this SIP revision in accordance with the applicable Clean Air Act requirements at § 110 and EPA regulations at 40 C.F.R. Part 86 and 40 C.F.R. Parts 51 and 52.

For the duration of the State's participation in NLEV, the State intends to forebear from adopting and implementing a ZEV mandate effective prior to model year 2006. Notwithstanding the previous sentence, if, no later than December 15, 2000, the USEPA does not adopt standards at least as stringent as the NLEV standards provided in 40 C.F.R. Part 86, subpart R that apply to new motor vehicles in model year 2004, 2005, or 2006, the State intends to forebear from adopting and implementing a ZEV mandate effective prior to model year 2004.

New Rule, R.1999 d.78, effective March 1, 1999 (operative April 4, 1999).

See: 30 N.J.R. 4204(a), 31 N.J.R. 648(a).

Amended by R.2001 d.446, effective December 3, 2001 (operative December 27, 2001).

See: 33 N.J.R. 2381(a), 33 N.J.R. 4128(b).  
Rewrote first paragraph.

#### SUBCHAPTER 27. CONTROL AND PROHIBITION OF MERCURY EMISSIONS

##### Authority

N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically 26:2C-8.

(d) The owner or operator of any source subject to this subchapter that has a reagent based mercury emission control system shall conduct optimization tests for mercury emissions control apparatus to determine the optimized reagent feed rate at which emissions of mercury for those sources are reasonably minimized below the applicable limits, as follows:

1. The optimization tests shall be performed as follows:

i. For iron and steel melters and coal-fired boilers, optimization testing shall be conducted within one year after the compliance date;

ii. For MSW incinerators, optimization testing shall be conducted by February 4, 2006, except if the owner or operator has demonstrated to the Department that it has achieved at least 95 percent control in all tests over the preceding two years;

2. If the owner or operator of any source subject to this subchapter owns or operates more than one identical applicable source at the same facility, the optimization tests may be performed on one source selected in the test protocol, and the results applied to the other identical sources at that facility;

3. Within 60 calendar days of the conclusion of the optimization tests, the owner or operator shall submit to the Department for approval a proposed optimized reagent feed rate which minimizes mercury emissions below the applicable limits, while considering the amount of reagent used; and

4. The owner or operator shall operate each applicable source at or above the optimized reagent feed rate approved by the Department.

(e) Any owner or operator of a source subject to this subchapter who is required to make changes to a current preconstruction permit or to an operating permit in order to operate in conformance with any requirements of this subchapter shall obtain an air pollution control permit for any required preconstruction permit actions, or for any required operating permit actions.

New Rule, R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).  
See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).

### 7:27-27.9 Reporting and recordkeeping

(a) Unless prior approval is granted by the Department for later submittal, the owner or operator of any source subject to this subchapter shall submit a copy of the report of the results of the stack emission testing, including all test runs, conducted within 60 calendar days after completion of the stack emission testing required for that quarter to the

regional air compliance and enforcement office for the county in which the facility is located and the following address:

Chief  
Bureau of Technical Services  
Department of Environmental Protection  
PO Box 437  
Trenton, New Jersey 08625-0437

(b) Unless prior approval is granted by the Department for later submittal, the owner or operator of any source subject to the optimization requirements of N.J.A.C. 7:27-27.8(d) shall submit a copy of the report of the results of optimization tests conducted pursuant to this subchapter within 60 calendar days after completion of the required tests, to the following address:

Chief  
Bureau of Pre-construction Permits  
Department of Environmental Protection  
PO Box 27  
Trenton, NJ 08625-0027

(c) If compliance is based on annual averages pursuant to N.J.A.C. 7:27-27.4(a)1, 2ii and iii or (c), or annual weighted average pursuant to N.J.A.C. 7:27-27.6 and 27.7, an owner or operator of any source subject to this subchapter shall report, for the preceding year, the annual average or annual weighted average mercury emissions within 60 calendar days after the end of the last quarter of the preceding year. If compliance is based on quarterly averages pursuant to N.J.A.C. 7:27-27.4(a)2i, an owner or operator of a MSW incinerator shall report the quarterly average control efficiency within 60 calendar days after completion of each calendar quarter. An owner or operator of an HMIW incinerator subject to this subchapter shall report mercury emissions test results within 60 calendar days after the end of the stack emission testing. Such reports shall be submitted to the regional air compliance and enforcement office for the county which the facility is located.

(d) Any owner or operator of any source subject to this subchapter that submits to the Department a report of stack emission testing, including all test runs, shall have such report reviewed prior to submission and certified by a licensed professional engineer or an industrial hygienist certified by the American Board of Industrial Hygiene.

(e) Any owner or operator of any source subject to this subchapter shall maintain at the facility a complete record, including all test reports of all stack emission testing, including all test runs, conducted at the facility on equipment subject to this subchapter. The Department may specify in writing that such reports be maintained in a specific format.

(f) Any owner or operator of any source subject to this subchapter who submits to the Department a report of stack emission testing, including all test runs, shall certify that report in accordance with N.J.A.C. 7:27-1.39.

(g) The owner or operator of any source subject to this subchapter shall make any record made pursuant to (e) above available to the Department, or its authorized representatives, for inspection for a period of five years after the date the record is made.

Amended by R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).

See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).  
Rewrote the section.

#### 7:27-27.10 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator to civil administrative penalties in accordance with N.J.A.C. 7:27A-3 and applicable civil and criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C-28.3 and N.J.S.A. 26:2C-19.

Amended by R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).

See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).

Inserted "administrative" preceding "penalties", "civil and" preceding "criminal penalties" and amended the N.J.S.A. reference.

#### 7:27-27.11 Severability

If any portion of this subchapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this subchapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

New Rule, R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).

See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).

### SUBCHAPTERS 28 THROUGH 30. (RESERVED)

### SUBCHAPTER 31. NO<sub>x</sub> BUDGET PROGRAM

#### Authority

N.J.S.A. 13:1B-3 and 26:2C-1 et seq.

#### Source and Effective Date

R.1998 d.379, effective July 20, 1998 (operative August 16, 1998).

See: 29 N.J.R. 3924(b), 29 N.J.R. 4226(a), 30 N.J.R. 2660(a).

#### 7:27-31.1 Purpose and scope

This subchapter establishes a NO<sub>x</sub> Budget Program in New Jersey which, beginning in 1999, limits emissions from stationary sources of NO<sub>x</sub>. It sets forth requirements for the monitoring, recordkeeping, and reporting of NO<sub>x</sub> emissions and for certification of compliance with this program. It makes available a trading mechanism, which allows intra-state trading as well as interstate trading. In order to support the trading mechanism, this subchapter establishes rules and procedures for the allocation of the tradeable units (that is, allowances); the transfer, use, and retirement of the allowances; and the tracking of the allowances. The NO<sub>x</sub> Budget Program set forth in this subchapter is intended to confirm with and meet USEPA's NO<sub>x</sub> Budget rules at 40 CFR 96 and meets USEPA's requirements at 40 CFR 51.121 for mitigating the interstate transport of both ozone and nitrogen oxides, a precursor to the formation of ground-level ozone.

Amended by R.2000 d.351, effective August 21, 2000 (operative September 29, 2000).

See: 31 N.J.R. 2100(a), 32 N.J.R. 3119(a).

Added the last sentence.

#### 7:27-31.2 Definitions

The following words, terms, and abbreviations used in this subchapter have the following meanings, unless the context clearly indicates otherwise:

"AAR" means authorized account representative.

"Account" means the place in the NO<sub>x</sub> Allowance Tracking System where allowances are held for a specific person or purpose. Such a place may be a compliance account, a general account, or a retirement account.

"Account certificate of representation" means the completed and signed submission required by N.J.A.C. 7:27-31.13 for certifying the designation of a NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget source or a group of identified NO<sub>x</sub> Budget sources who is authorized to represent the owners and operators of such NO<sub>x</sub> Budget source or sources with regard to matters under this subchapter.

"Account number" means the identification number given by the NATS Administrator to an account in which allowances are held in the NO<sub>x</sub> Allowance Tracking System pursuant to N.J.A.C. 7:27-31.13, NO<sub>x</sub> Allowance Tracking System.

"Acid Rain emissions limitation" means the term as defined at 40 CFR 72.2, which is a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the Clean Air Act.

"Acquiring account" means the account in an allowance transfer to which allowances are conveyed.

“Administrator” means the Administrator of the United States Environmental Protection Agency or the Administrator’s duly authorized representative.

“Allocate” or “allocation” means:

1. In respect to New Jersey, the assignment of allowances pursuant to N.J.A.C. 7:27-31.7, Annual allowance allocation; or in respect to another jurisdiction, the assignment of allowances pursuant to that jurisdiction’s comparable rules; and

2. The recording of the assigned allowances by the NATS Administrator in the appropriate NO<sub>x</sub> Allowance Tracking System compliance account or general account.

“Allowance” means a tradeable unit which represents the limited authorization to emit one ton of NO<sub>x</sub> during a control period.

“Allowance deduction” means the withdrawal by the NATS Administrator of one or more allowances from a NO<sub>x</sub> Allowance Tracking System general account or compliance account and the recording of such allowances in a retirement account. As prescribed in the procedures at N.J.A.C. 7:27-31.17 and 31.19, allowance deduction events relating to end-of-season reconciliation and penalty deductions may only be made from compliance accounts. As prescribed at N.J.A.C. 7:27-31.10, allowance deduction events relating to voluntary retirement may be made from a compliance account or a general account.

“Allowance transfer” means the withdrawal by the NATS Administrator of one or more allowances from a NO<sub>x</sub> Allowance Tracking System general account or compliance account and the recording of such allowances in a different general account or compliance account.

“Allowance transfer deadline” means the deadline by which an allowance transfer request may be submitted to the NATS Administrator to effect an allowance transfer for the purpose of meeting the requirement of N.J.A.C. 7:27-31.3(i) for the year’s control period. For each year from 1999 through 2002, this deadline shall be midnight December 31. For the year 2003 and each year thereafter, this deadline shall be midnight November 30, except that for the year 2003 and each year thereafter, if November 30 is not a business day, then the deadline shall be midnight of the first business day after November 30.

“Alternative monitoring system” means a monitoring system other than a CEMS, or component of such a system, that is designed to determine mass emissions per time period, air contaminant concentrations, or volumetric flow of a given source or group of sources, as provided for in N.J.A.C. 7:27-31.14, Emissions monitoring.

“Authorized account representative (AAR)” means the responsible individual designated in writing by the person who holds an account. This individual (or his or her alter-

nate) is the sole person who has the authority, on behalf of the account, to:

1. Submit allowance transfer requests to the NATS Administrator;

2. Certify and submit information required in this subchapter, including reports to the NATS and the NETS; and

3. With respect to a budget source, to represent and legally bind each owner and operator in matters pertaining to the NO<sub>x</sub> Budget Program.

“Banked allowance” means an allowance in a general account or a compliance account which has been neither used to reconcile emissions in the year it was originally allocated nor retired, and which is therefore carried forward in the account into the next year or into successive future years. The NATS Administrator shall flag such an allowance as “banked.”

“Base budget” or “base emission budget” means the emissions budget for each control period as prescribed by the USEPA at 40 CFR 51.121, or that has been developed by applying the emission limits, jointly agreed to by the jurisdictions who are signatories of the OTC MOU, to the baseline sources’ baseline emissions, whichever is less. This term when used in respect to:

1. A specific jurisdiction, is the emission budget so established for that jurisdiction; and

2. The interstate trading program as a whole, is the sum of the emission budgets so established for all jurisdictions in the region.

“Banking” means the retention in a general account or a compliance account of one or more allowances that were allocated for use in the current or in a previous control period, but have been neither used nor retired. Such allowances may be used or retired in a future control period.

“Baseline” means, when used in reference to the emissions or productivity of a source, one of the following:

1. For an opt-in source, the average emissions or average productivity of that source during the two consecutive May 1 through September 30 periods on which the increase in the New Jersey emission budget made to accommodate the source was based, pursuant to N.J.A.C. 7:27-31.4; or

2. For a baseline source, the emissions or productivity attributed to that source in the 1990 baseline NO<sub>x</sub> emission inventory.

“Baseline NO<sub>x</sub> emission inventory” means the emissions inventory which developed jointly by all jurisdictions in the OTR and which sets forth, for all baseline sources, the NO<sub>x</sub> emissions of these sources for the period May 1 and Sep-

tember 30, 1990. This inventory is the emission baseline from which emission reductions are calculated for purposes of determining the effectiveness of the NO<sub>x</sub> Budget Program in limiting NO<sub>x</sub> emissions.

“Baseline source” means a source which is one of the following and which operated during the May 1 through September 30 period in 1990: