

ii. For a source not used to generate electricity, compliance with this subchapter for the 2003 control period by May 1, 2003 would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in (b)6i above;

iii. It would not be possible for the source to comply with this subchapter by generating early reduction allowances or acquiring early reduction allowances from other sources;

iv. It would not be possible to comply with this subchapter by acquiring sufficient allowances from other persons who hold allowances; and

v. The owner or operator has made a written commitment to the Department to install advanced NO_x control systems or to repower, either of which is designed to achieve a 90 percent NO_x emission rate reduction.

7. The Department shall review all requests made pursuant to (b)6 above, and shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of the allocating compliance supplement pool allowances to the requests intermily approved by the Department before allocating the allowances pursuant to (b)4 above.

New Rule, R.2000 d.351, effective August 21, 2000 (operative September 29, 2000).

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

7:27-31.23 Replacement of the NO_x Budget Program

(a) N.J.A.C. 7:27-31.1 through 31.22 shall not apply to any source as of the control period beginning in 2009 and any control period thereafter.

(b) For a CAIR unit, as defined at N.J.A.C. 7:27-30.2, that has been determined to have held insufficient allowances in its NO_x Budget Program compliance account for the 2008 ozone season, the USEPA shall deduct the excess emissions from the unit's compliance account in the CAIR NO_x Ozone Season Trading Program pursuant 40 CFR Part 97 Subpart EEEE.

(c) A NO_x Budget unit that is not a CAIR unit and that has been determined to have held insufficient allowances in its NO_x Budget Program compliance account for the 2008 ozone season shall purchase three vintage 2009 CAIR NO_x ozone season allowances, as defined at N.J.A.C. 7:27-30.2, for each ton of excess emission and shall transfer the allowances to the USEPA to cover the deficiency.

New Rule, R.2007 d.223, effective July 16, 2007 (operative August 17, 2007).

Sec: 39 N.J.R. 300(a), 39 N.J.R. 2637(a).

SUBCHAPTER 32. DIESEL RETROFIT PROGRAM

7:27-32.1 Definitions

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

“Authorized installer” means a person authorized, pursuant to a written agreement with a manufacturer of a retrofit device or closed crankcase ventilation system to represent the manufacturer for the purpose of the sale, installation, repair and/or dispersal of information regarding that retrofit device or closed crankcase ventilation system.

“Best available retrofit technology” or “BART” means an aftermarket particulate emissions control device that, as determined by the Department, can be used on or in a regulated vehicle or regulated equipment, at a reasonable cost to achieve substantial reduction of fine particulate diesel emissions, and is either a diesel emissions control strategy for which CARB has issued an Executive Order, or a verified retrofit technology for which the USEPA has issued a Verification Letter. “Best available retrofit technology” includes only those retrofit devices and fuel for which the retrofit device manufacturer or fuel manufacturer certifies that the installation and use would not jeopardize the original engine warranty in effect at the time of the installation or the commencement of use of the retrofit device or fuel, and for which the manufacturer has issued a warranty pursuant to N.J.A.C. 7:27-32.9.

“California Air Resources Board” or “CARB” means the agency or its successor agency established and empowered to regulate sources of air pollution in the State of California, including motor vehicles, pursuant to section 39003, California Health & Safety Code, 1999, as amended or supplemented.

“Certified configuration” means a heavy-duty engine design certified by either of the following agencies as meeting the applicable emission standards for motor vehicles manufactured in a given model year:

1. USEPA for model year 1968 or for a more recent model year; or
2. CARB for model year 1966 or for a more recent model year.

“Closed crankcase ventilation system” or “CCVS” means a system, installed upon an internal combustion engine, that is designed to capture all solids, liquids and gases that are emitted from the vent and to divert them to the engine intake air plenum for recombustion.

“Compliance form” means a form used for ascertaining compliance with the requirements of N.J.A.C. 7:27-32.4 and 32.7, or eligibility for reimbursement of costs associated therewith, and issued and completed pursuant to N.J.A.C. 7:27-32.20.

“Constitutionally-dedicated monies” means monies dedicated pursuant to Article VIII, Section II, paragraph 6, subparagraph (d) of the State Constitution.

“DEIC inspector” means a person who is trained to perform an inspection of a diesel-powered motor vehicle at a diesel emissions inspection center.

“Department” means the Department of Environmental Protection.

“Diesel commercial bus” means a diesel bus as defined pursuant to N.J.S.A. 39:8-60, except that “diesel commercial bus” includes only diesel commercial buses with a gross vehicle weight rating in excess of 14,000 pounds, and does not include school buses.

“Diesel emission inspection center” or “DEIC” means any person licensed by the MVC to perform a diesel vehicle inspection pursuant to N.J.S.A. 39:8-69 and N.J.A.C. 13:20-47.

“Diesel engine” means an internal combustion engine with compression ignition using diesel fuel, including the fuel injection system, but excluding the exhaust system.

“Diesel Risk Mitigation Fund” or “Fund” means the special, nonlapsing fund established pursuant to N.J.S.A. 26:2C-8.53.

“Diesel solid waste vehicle” means any on-road diesel vehicle with a gross vehicle weight rating in excess of 14,000 pounds that is used to collect or transport residential or commercial solid waste. “Diesel solid waste vehicle” includes a vehicle powered by a diesel engine, used for transporting removable waste containers, including, but not limited to, open boxes, dumpsters or compactors. “Diesel solid waste vehicle” includes a solid waste cab and solid waste single-unit vehicle.

“Fine particle” means a particle emitted directly into the atmosphere from exhaust produced by the combustion of fuel and having an aerodynamic diameter of 2.5 micrometers or less.

“Fine particulate diesel emissions” means the emission of fine particles from an on-road diesel vehicle or from off-road diesel equipment.

“Fleet” means one or more on-road diesel vehicles or pieces of off-road diesel equipment.

“Fleet plan” means a fleet retrofit plan, combined fleet retrofit plan, combined fleet averaging plan or fleet averaging plan and any supplement or modification thereto.

“g/bhp-hr” means grams per brake-horsepower hour.

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

“MVC” means the New Jersey Motor Vehicle Commission.

“Notice of intent to comply” means notice by an owner of a regulated vehicle or piece of regulated equipment to the Department that he or she intends to apply best available retrofit technology to comply with this subchapter.

“Off-road diesel equipment” means any equipment or vehicle, powered by a diesel engine, that is used primarily for construction, loading, and other off-road purposes, and that is not commonly operated on a roadway except when used for roadway construction and repair. “Off-road diesel equipment” includes, but is not limited to, rollers, scrapers, excavators, rubber tire loaders, crawler/dozers, and off-highway trucks. “Off-road diesel equipment” also includes any equipment and vehicle that is not used primarily for transportation and is considered off-road equipment and vehicle, but are required to have “in-transit” plates issued by the MVC. “Off-road diesel equipment” does not include a boat or train, diesel construction truck, or any non-mobile equipment, such as a generator or pump.

“On-road diesel vehicle” means any vehicle, other than a private passenger automobile, that is powered by a diesel engine and operated on the roadways of the State, and includes, but is not limited to, a diesel bus, diesel-powered motor vehicle, and heavy-duty diesel truck as defined at N.J.S.A. 39:8-60.

“Owner” means any person who owns any on-road diesel vehicle or off-road diesel equipment subject to the provisions of this subchapter.

“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. “Person” expressly includes the Port Authority of New York and New Jersey, and the South Jersey Port Corporation.

“Private regulated commercial bus” means any regulated commercial bus not owned by the New Jersey Transit Corporation or any regulated commercial bus owned by the New Jersey Transit Corporation that is leased or operated by a provider of regulated commercial bus service other than the New Jersey Transit Corporation.

“Public regulated commercial bus” means a regulated commercial bus owned and operated by the New Jersey Transit Corporation.