

CHAPTER 27

AIR POLLUTION CONTROL

Authority

N.J.S.A. 26:2C-1 et seq. and N.J.S.A. 26:2D-1 et seq.

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

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

Law Review and Journal Commentaries

Air Pollution Regulations and Trends. I. Leo Motiuk, Joan E. Pearson, 133 N.J.Law. 34 (Mag.) (March/April 1990).

Overturning Environmental Regulations: A Primer on Breaching The Regulatory Walls. John A. McKinney, Jr., J. Wylie Donald, 160 N.J.Law. 48 (Mag.) (April 1994).

Limitations on state agency authority to adopt environmental standards more stringent than federal standards: Policy considerations and interpretive problems. Jerome M. Organ, 54 Md.L.Rev. 1373 (1995). WESTLAW cite: 54 MDLR 1373.

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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.

ii. The Federal standard is expressed in units other than the units expressed in this subchapter (for example: percent by volume, weight by VOC per volume of product, or emissions per use);

2. If the Federal regulation establishes a scope of applicability for a category of consumer products that is also regulated in this subchapter, the scope of applicability in this subchapter shall be superseded where:

i. The scope of applicability of the category in the Federal rule is defined differently; or

ii. The scope of applicability in the Federal rule provides a different exclusion or exemption as to which products within the category are required to meet the VOC standard; or

3. If the Federal regulation excludes specific compounds or substances from the allowable VOC content for any specific category of consumer products or all categories of consumer products, the same compounds or substances shall be excluded from the allowable VOC content for the same categories in this subchapter.

(b) If the Federal regulation does not establish a VOC content standard (or does not otherwise limit the emissions of VOC) for a category of consumer products that is regulated in this subchapter, the provisions of this subchapter that regulate such a category shall remain in full force and effect.

Administrative Correction.
See: 28 N.J.R. 851(a).

7:27-24.7 Civil or criminal penalties for failure to comply

Any person 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 person to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f)1 and 2.

SUBCHAPTER 25. CONTROL AND PROHIBITION OF AIR POLLUTION BY VEHICULAR FUELS

Authority

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

Source and Effective Date

R,1989 d.123, effective February 21, 1989.
See: 20 N.J.R. 1631(a), 21 N.J.R. 483(a).

Subchapter Historical Note

Public Notice: Pre-publication meeting on proposal. See: 24 N.J.R. 2128(a).

Law Review and Journal Commentaries

New Rules Establish Clean Air Act Standards. Richard M. Hluchan and Terrie-Anne Duda, 132 N.J.L.J. No. 8, S10 (1992).

7:27-25.1 Definitions

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

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

“Blender” means any person who carries out a blending process.

“Blending process” means the combination of physical and chemical operations in which components including, but not limited to, gasoline, gasoline blendstocks, and other chemical components are combined to create a finished gasoline or gasoline blendstock.

“Carbon monoxide (CO)” means a gas having a molecular composition of one carbon atom and one oxygen atom.

“Control area” means a geographic area within which gasoline to be used, sold, or dispensed as vehicular fuel in New Jersey is subject to the applicable standards set forth at N.J.A.C. 7:27-25.3 during the specified control period.

“Control period” means the applicable period each year during which gasoline within a control area is subject to the oxygen content or RVP standards set forth at N.J.A.C. 7:27-25.3.

“Crude oil” means a petroleum liquid removed from the earth and not previously used including, but not limited to, partially refined oil.

“Department” means the New Jersey Department of Environmental Protection.

“Distribution capacity” means capacity for transportation, storage and blending.

“Distributor” means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer’s facility and any retail outlet or wholesale purchaser-consumer’s facility.

“EPA” means the United States Environmental Protection Agency.

“Facility” means the combination of all structures, buildings, equipment, storage tanks, source operations and other

operations located on one or more contiguous or adjacent properties owned or operated by the same person.

“Gasoline” means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, and commonly or commercially known or sold as gasoline.

“Importer” means a person who imports gasoline from a foreign country into the United States.

“Motor vehicle” means all vehicles propelled by an internal combustion engine, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

“National ambient air quality standard” or “NAAQS” means an ambient air quality standard promulgated at 40 CFR 50.

“Nitrogen dioxide (NO₂)” means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and two oxygen atoms.

“Nitrogen oxide (NO)” means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and one oxygen atom.

“Nonconforming gasoline” means any gasoline the RVP or oxygen content of which does not during the applicable control period conform with the standards set forth in N.J.A.C. 7:27-25.3.

“Oxides of nitrogen (NO_x)” means any of the oxides of nitrogen including, but not limited to, nitrogen oxide and nitrogen dioxide.

“Oxygen content” means, in respect to the composition of gasoline, the percentage of oxygen by weight (unless specified as being by volume) contained in the gasoline. The percentage of oxygen by weight of the gasoline shall be based upon its percentage oxygenate by volume excluding denaturants and other non-oxygen-containing components. All volume measurements are adjusted to 60 degrees Fahrenheit.

“Oxygen program control area” means the area containing the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren.

“Oxygen program control period” means the control period in New Jersey during which oxygen content standards set forth at N.J.A.C. 7:27-25.3 are applicable to gasoline.

“Oxygenate” means any substance which, when blended into gasoline, increases the amount of oxygen in that gasoline blend and which is allowed to be used as a gasoline additive pursuant to 42 USC § 7545.

“Oxygenate blend” means a gasoline produced by blending one or more oxygenates into a base gasoline.

“Person” means any individual or entity and includes, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of the State or any agencies or instrumentalities thereof.

“Petroleum distillate” means any mixture of volatile organic compounds produced by a refining process including, but not limited to, naphthas, aviation gasoline, motor vehicle gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum products.

“Product development” means investigations directed toward the establishment of methods of manufacture or of specific designs of salable substances, devices, or procedures, based on previously discovered facts, scientific principles or substances.

“Refiner” means any person who owns, leases, operates, controls, or supervises a refinery.

“Refinery” means a facility which carries out refining processes.

“Refining process” means the combination of physical and chemical operations including, but not limited to, distillation, cracking, and reformulation, performed on crude oil in order to produce petroleum products, including gasoline.

“Reid vapor pressure” (RVP) means the absolute vapor pressure of a petroleum product in pounds per square inch (or kilopascals) at 100 degrees Fahrenheit (37.8 degrees Celsius).

“Research” means investigation directed toward the discovery of facts, scientific principles, reactions, or substances.

“Retail outlet” means any establishment at which gasoline is provided, sold, or offered for sale directly for use in motor vehicles.

“Retailer” means any person who owns, leases, operates, controls, or supervises a retail outlet.

“RVP control area” means the entire geographic area within the State of New Jersey.

“RVP control period” means the period from May 1 through and including September 15 of each year during which the RVP standard set forth at N.J.A.C. 7:27-25.3 is applicable to gasoline to be used in New Jersey as vehicular fuel.

“Standard conditions” means 70 degrees Fahrenheit (21.1 degrees Celsius) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

“State” means the State of New Jersey.

“Trial use” means use of a product in an experiment or series of experiments by the manufacturer or importer of that product.

“Vapor” means the gaseous form of substances which, under standard conditions, is in the solid or liquid state and which can be changed to these states by either increasing the pressure or decreasing the temperature.

“Vapor pressure” means the pressure of the vapor phase of a substance, or the sum of the partial pressures of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substance or substances.

“Volatile organic compound” or “VOC” means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA’s definition of VOC at 40 CFR 51.100(s) are set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)

chloropentafluoroethane (CFC-115)

2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)

1,1,1,2-tetrafluoroethane (HFC-134a)

1,1-dichloro-1-fluoroethane (HCFC-141b)

1-chloro-1,1-difluoroethane (HCFC-142b)

2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)

pentafluoroethane (HFC-125)

1,1,2,2-tetrafluoroethane (HFC-134)

1,1,1-trifluoroethane (HFC-143a)

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)

1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)

1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

1,1,1,3,3,3-hexafluoropropane (HFC-236fa)

1,1,2,2,3-pentafluoropropane (HFC-245ca)

1,1,2,3,3-pentafluoropropane (HFC-245ea)

1,1,1,2,3-pentafluoropropane (HFC-245eb)

1,1,1,3,3-pentafluoropropane (HFC-245fa)

1,1,1,2,3,3-hexafluoropropane (HFC-236ea)

1,1,1,3,3-pentafluorobutane (HFC-365mfc)

chlorofluoromethane (HCFC-31)

1-chloro-1-fluoroethane (HCFC-151a)

1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)

1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃)

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃)

1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅)

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅)

methyl acetate

perfluorocarbons compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no saturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no saturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

"Wholesale purchaser-consumer" means any person who is an ultimate consumer of gasoline, purchases or obtains gasoline from a supplier for use in motor vehicles, and receives delivery of the gasoline into a storage tank which has a maximum capacity of at least 550 gallons and is substantially under the control of that person.

Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).

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

Changed heading; old title "Applicability." Added "as motor vehicle fuels."

Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).

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

Substantial revision of definitions; added definitions for "ASTM", "EPA", "Facility", "Nonconforming gasoline", "Product development", "Research", "Trial use", "Volatile organic substances".

Amended by R.1992 d.102, effective March 1992 (operative March 28, 1992).

See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).

Added definition for "volatile organic compound" and amended "petroleum distillate" table consistent with change from "substance" to "compound".

Recodified from N.J.A.C. 7:27-25.2 and amended by R.1992 d.382, effective October 5, 1992.

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

Fifteen definitions added.

The former section N.J.A.C. 7:27-25.1, Scope, was repealed by this rulemaking. Prior rulemaking activities are as follows:

Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).

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

Administrative correction to the definition of "southern oxygen program control area".

See: 24 N.J.R. 4524(b).

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).

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.129, effective February 8, 1995 (to expire April 9, 1995).

See: 27 N.J.R. 787(a).

Administrative Correction.

See: 27 N.J.R. 1406(a).

Adopted Concurrent Proposal, R.1995 d.236, effective April 7, 1995 (operative June 5, 1995).

See: 27 N.J.R. 787(a), 27 N.J.R. 1479(a), 27 N.J.R. 1794(b).

Provisions of emergency amendment, R.1995 d.129, adopted without change.

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 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).

Emergency Amendment R.1995 d.607, effective October 27, 1995 (expires December 26, 1995).

See: 27 N.J.R. 4731(a).

Adopted Concurrent Proposal, R.1996 d.49, effective December 26, 1995 (operative February 24, 1996).

See: 27 N.J.R. 4731(a), 28 N.J.R. 851(b).

Administrative change.

See: 31 N.J.R. 639(b).

Administrative correction.

See: 31 N.J.R. 1487(a).

7:27-25.2 Scope and applicability

(a) This subchapter prescribes the rules of the Department for the control and prohibition of air pollution by vehicular fuels. This subchapter governs the standards for fuels used as motor vehicle fuels and provided for use as motor vehicle fuels in the State and the methods to be followed by refiners, importers, blenders, distributors, wholesaler purchaser-consumers and retailers to assure these standards are met.

(b) Any refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer of gasoline for use as motor vehicle fuel in the State is subject to the provisions of this subchapter.

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

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

7:27-25.3 General provisions

(a) Except as provided for use in (b) and (h) below, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade for use in New Jersey during the RVP control period each year, starting in 1989, gasoline having a RVP greater than 9.0 pounds per square inch.

(b) The following compliance schedule shall be in effect in 1989 only; after 1989, the compliance schedule set out in (a) above shall be in effect:

1. No refiner or importer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period May 1 through September 15, 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

2. No blender or distributor shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period June 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

3. No wholesale purchaser-consumer or retailer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period July 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

(c) Except as provided for at N.J.A.C. 7:27-25.9, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline for use in the oxygen program control area, unless:

1. The oxygen content of the gasoline equals or exceeds 2.7 percent from November 1 through and including the last day of the following February; and

2. The oxygen content of the gasoline equals or is less than 3.5 percent.

(d) The standards set forth in (c) above shall become operative on November 1, 1992 or on such delayed effective date as EPA establishes, pursuant to 42 USC 7545(m)(3)(C), due to a determination that there is or is likely to be, for any control area, an inadequate domestic supply of or distribution capacity for:

1. Oxygenated gasoline that meets the standard set forth in (c) above; or

2. The oxygenates needed to blend into gasoline to make fuel that conforms with (c) above.

(e) At no time shall a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey gasoline unless, pursuant to 42 USC 7545, the EPA has:

1. Determined to its satisfaction that the gasoline and any oxygenate or a combination of oxygenates blended into the gasoline are substantially similar to any gasoline and any concentration of an oxygenate or a combination of oxygenates utilized, pursuant to 42 USC 7525, in the certification of any model year 1975, or subsequent model year, vehicle or engine; or

2. Waived the requirement for the gasoline and any oxygenate or a combination of oxygenates blended into the gasoline to be substantially similar to any fuel or fuel additive utilized, pursuant to 42 USC 7525, in the certification of any model year 1975, or subsequent model year, vehicle or engine.

(f) Notwithstanding the provisions of (c) above, a refiner, importer, blender, or distributor may provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline which has an oxygen content less than 2.7 percent, provided that:

1. The gasoline is destined for one of the following uses:

i. Provision, sale, or exchange in trade to a retailer or wholesale purchaser-consumer at a facility located outside the oxygen program control area;

ii. Provision, sale, or exchange in trade to a retailer or wholesale purchaser-consumer at a time which is outside the oxygen program control period applicable to that retailer or wholesale purchaser-consumer;

iii. Provision, sale, or exchange in trade to another refiner, importer, blender, or distributor; or

iv. Blending with oxygenate so that the gasoline has an oxygen content which equals or exceeds 2.7 percent prior to providing, selling, or otherwise exchanging in trade the gasoline to a retailer or wholesale purchaser-consumer;

2. Documents associated with the gasoline, including, but not limited to, any record, invoice, or bill of lading, specify which one of the uses given in (f)1 above applies to the gasoline; and

3. The refiner, importer, blender or distributor ensures that gasoline is provided, sold, stored, transported, imported, or exchanged in trade in accordance with the use specified in (f)2 above.

(g) Upon the request of any consumer, a retailer shall inform the consumer as to the category of oxygenate, either alcohol or ether blends, being dispensed from any of the gasoline dispensing devices at the facility.

(h) Wholesale purchaser-consumers and retailers shall be exempt from the RVP standard established in (a) above during the month of May.

Amended by R.1992 d.382, effective October 5, 1992.

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

New (c) through (e) added.

Administrative correction to (a).

See: 24 N.J.R. 4524(b).

Amended 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).

Emergency Amendment, R.1995 d.129, effective February 8, 1995 (to expire April 9, 1995).

See: 27 N.J.R. 787(a).

Adopted Concurrent Proposal, R.1995 d.236, effective April 7, 1995 (operative June 5, 1995).

See: 27 N.J.R. 787(a), 27 N.J.R. 1479(a), 27 N.J.R. 1794(b).

Provisions of emergency amendment, R.1995 d.129, adopted without change.

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 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).

Emergency Amendment R.1995 d.607, effective October 27, 1995 (expires December 26, 1995).

See: 27 N.J.R. 4731(a).

Adopted Concurrent Proposal, R.1996 d.49, effective December 26, 1995 (operative February 24, 1996).

See: 27 N.J.R. 4731(a), 28 N.J.R. 851(b).

7:27-25.4 Recordkeeping and compliance determinations

(a) Each refiner, importer, blender or distributor shall:

1. During any applicable control period established pursuant to N.J.A.C. 7:27-25.3, test all gasoline prior to its release from a refinery, import facility, blending facility or distribution facility for use in a control area within the State to determine its RVP or oxygen content, as applicable, and for each test prepare a test report which documents the RVP or oxygen content, as applicable, of the gasoline;

2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; that, during the RVP control period, the gasoline has an RVP of 9.0 pounds per square inch or less; that, during the oxygen program control period, the gasoline conforms with the oxygen content requirements of this subchapter; the category of oxygenate, either alcohol or ether blends, being used in the gasoline; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

- i. A copy of the test report prepared pursuant to (a)1 above with the certification contained therein; or
- ii. The certification in writing on the invoice, bill of lading, or other transfer document; and

3. Maintain records on all gasoline leaving the refinery, import facility, blending facility, or distribution facility, which document the RVP and the oxygen content of gasoline; the category of the oxygenate, either alcohol or ether blends, in the gasoline; shipment quantity; shipment date; and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets, and loading tickets.

(b) Each retailer or wholesale purchaser-consumer shall maintain records on each delivery of gasoline, including RVP and the oxygen content of gasoline, the category of the oxygenate, either alcohol or ether blends, in the gasoline; delivery quantity; date of delivery; and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading and other transfer documents, invoice delivery tickets and loading tickets, and invoices and test reports certified pursuant to (a)2 above.

(c) Any sampling of gasoline required pursuant to the provisions of this subchapter shall be conducted in accordance with the following methods:

1. For determining the RVP of gasoline:
 - i. For manual sampling: ASTM D4057; or
 - ii. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R.2261(R)(3) and (k)(4)(1987); and
2. For determining the oxygen content of gasoline:

- i. The methods set forth at 40 CFR 80, Appendix D; or
- ii. Any other method approved in writing in advance by the Department and EPA.

(d) All testing for RVP required pursuant to the provisions of this subchapter shall be conducted using one of the following methods:

1. "Method 1—Dry RVP Measurement Method" promulgated at 40 CFR 80, Appendix E;
2. "Method 2—Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E;
3. "Method 3—Grabner Method" promulgated at 40 CFR 80, Appendix E; or
4. Any other equivalent test method approved in advance in writing by the Department and EPA.

(e) Any determination of the oxygen content of any sample of gasoline required pursuant to the provisions of this subchapter shall be conducted as follows:

1. The sample of gasoline shall be tested to determine the concentration, in percent by volume, of each oxygenate in the gasoline. All volume measurements used in the testing shall be adjusted to 60 degrees Fahrenheit. Only the oxygen-containing components of the oxygenate shall be taken into consideration in determining the concentration; any denaturant or other non-oxygen-containing components shall be excluded from the determination of the concentration. The testing of the sample of gasoline shall be conducted using one of the following test methods:

- i. ASTM D4815; or
- ii. Any other equivalent test method approved in advance in writing by the Department and EPA;

2. The densities (or specific gravities) of each oxygenate and of the oxygenate blend shall be established as follows:

- i. The density of each oxygenate is given in Table 1 at N.J.A.C. 7:27-25.4; and
- ii. The density of the oxygenate blend shall be calculated as follows:

(1) The density of the base gasoline into which the oxygenate(s) are blended is assumed to be 0.7420; and

(2) The density of the oxygenate blend obtained when the oxygenate(s) are blended into the base gasoline shall be calculated by determining the weighted average of the densities of the oxygenate(s) and the base gasoline. In determining this weighted average, the density of each component shall be weighted in proportion to the volumetric fraction of that component in the oxygenate blend;

3. The mass concentration of the oxygen-containing components of each oxygenate in the gasoline shall be obtained by multiplying the concentration of each oxygenate in the gasoline, determined in (e)1 above, by the following ratio: the specific gravity (or density) given for the oxygenate in Table 1 below to the specific gravity (or density) of the oxygenate blend, determined in (e)2ii above;

4. The contribution of the oxygenate to the oxygen content of the gasoline, in percent by weight, shall be determined by multiplying the mass concentration of the oxygenate in the gasoline determined in (e)3 above by the oxygen molecular weight fraction of the oxygenate, obtained from Table 1 below; and

5. The total oxygen content in percent by weight of the gasoline shall be obtained by summing the oxygen content contribution of each oxygenate in the gasoline.

(f) In order to provide allowance for test method variation, the Department shall consider any gasoline which is tested using ASTM D4815, pursuant to (e)1i above, to comply with the standards of N.J.A.C. 7:27-25.3 if its oxygen content, calculated pursuant to (e) above, is within 10 percent of the standard.

TABLE 1

Specific Gravity and Oxygen Molecular Weight Fraction of Common Oxygenates

Oxygenate	Oxygen Molecular Weight Fraction	Specific Gravity at 60 degrees F
methyl alcohol	0.4993	0.7963
ethyl alcohol	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7899
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114
tertiary butyl alcohol	0.2158	0.7922
methyl tertiary butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
ethyl tertiary butyl ether (ETBE)	0.1566	0.7452
diisopropyl ether (DIPE)	0.1566	0.7300

(g) All records and documentation required to be made or maintained in accordance with this section, including any calculations performed, shall be maintained by each refiner, importer, blender, distributor, retailer, and wholesale purchaser-consumer, as applicable, for not less than three years from the date the record is made. Records made within the past year (the previous 12 months) shall, upon request of the Department or its authorized representatives, be immediately available for review. Records made in previous years shall, upon the request of the Department or its authorized representatives, be available for review within five business days.

(h) Notwithstanding the requirements in this section for testing to determine the oxygen content of gasoline, a refiner, importer, blender or distributor may apply to the Department for approval to use an alternative method of determining the oxygen content of gasoline. The application shall be certified in accordance with N.J.A.C. 7:27-8.24. The Department shall not approve such an application unless the alternative method proposed would ensure that the oxygen content of the fuel would be determined with no less accuracy and reliability than would be achieved through testing in accordance with this section.

Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).

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

In (a)1, changed "September 1" to "September 15"; added reference to State and Federal regulations. In (c), stylistic revisions. In (d), added 1, 2, 3.

Amended by R.1992 d.382, effective October 5, 1992.

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

Changes reflect oxygen content requirements.

Amended 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).

Emergency Amendment, R.1995 d.129, effective February 8, 1995 (to expire April 9, 1995).

See: 27 N.J.R. 787(a).

Adopted Concurrent Proposal, R.1995 d.236, effective April 7, 1995 (operative June 5, 1995).

See: 27 N.J.R. 787(a), 27 N.J.R. 1479(a), 27 N.J.R. 1794(b).

Provisions of emergency amendment, R.1995 d.129, adopted without change.

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 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).

Case Notes

Private inspection center license not suspended; licensee did not improperly certify repairs. Division of Motor Vehicles v. Joe's Auto Service, 92 N.J.A.R.2d (MVH) 1.

7:27-25.5 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, any exemption, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, 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) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of gasoline being provided, stored, transported, exchanged in trade, sold, or offered for sale at that refinery, import facility, blending facility, retail, wholesale purchaser-consumer or distribution outlet. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).

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

In (a) added "any exemption".

7:27-25.6 Petition for rulemaking in the case of imminent supply shortage

If at any time a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer comes to the conclusion that the requirement of supplying 9.0 psi RVP gasoline during the control period May 1 through September 15 will cause an imminent shortage of gasoline such that supply cannot meet demand, such party shall file a petition for rulemaking with the Department pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, requesting that the Department modify the 9.0 psi RVP standard such that a shortage in gasoline supply will be averted. This petition may request that the Department pursue emergency rulemaking pursuant to N.J.S.A. 54:14B-4.4 and N.J.A.C. 1:30-4.5.

7:27-25.7 Exemptions

(a) The Department may, at its discretion, issue an exemption allowing any person to store, transfer, or use non-conforming gasoline, provided the gasoline is used solely for the purpose of research, product development, and trial use.

(b) Application for an exemption shall be made on forms obtained from the Department. Any person may request application forms from:

Assistant Director of Air and Environmental
Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection
CN 422
Trenton, New Jersey 08625-0422

(c) The Department may require an applicant for an exemption to submit such details about the intended use of the non-conforming gasoline as it considers necessary to evaluate the potential effect of such use on public health, welfare and the environment. Such information shall include, but is not limited to:

1. Specification of how the non-conforming gasoline is to be used, and the purpose of this use;
2. Explanation of why the purpose could not be accomplished through use of gasoline whose volatility conforms with the N.J.A.C. 7:27-25.3 standards;
3. For any year, the maximum number of gallons and maximum RVP of non-conforming gasoline:
 - i. To be used from May 1 through September 15; and
 - ii. To be stored at the facility during the May 1 through September 15 period;
4. A calculation of the maximum potential additional VOC emissions that could occur during the May 1 through September 15 period in any year due to the storage, transfer, and use of non-conforming gasoline; and
5. A facility diagram specifying the tanks in which non-conforming gasoline will be stored.

(d) The Department may require, as a condition of approval of an exemption, the use of control apparatus.

(e) No applicant may commence storing, transferring, and using non-conforming gasoline prior to the issuance by the Department of a written approval of an exemption.

(f) Any exemption issued by the Department pursuant to this section shall be valid for a period of no longer than three years from the date of approval.

(g) Any person holding an exemption issued by the Department pursuant to this section shall make said exemption readily available for inspection on the operating premises.

(h) Any person to whom the Department has issued an exemption pursuant to this section shall:

1. Record each day between May 1 and September 15 the quantity, in gallons, of non-conforming gasoline which is:
 - i. Stored at the facility; and
 - ii. Consumed that day in research, product development, or trial use;
2. Maintain the records kept pursuant to (h)1 above at the facility for a period no less than three years;
3. Make the records kept pursuant to (h)1 above available, upon request, for review by the Department; and

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 Labeling

(a) During any oxygen program control period in which the gasoline provided, offered for sale, sold, or otherwise exchanged in trade at a facility owned or operated by any retailer is subject to the oxygen content standards set forth at N.J.A.C. 7:27-25.3, the retailer shall label as specified in (b) through (d) below each fuel pump or other gasoline dispensing device.

(b) The label shall, except as provided in (c) below, contain the text given below. This statement shall not be altered and no additional language shall be inserted within the text. However, a phrase indicating the dates of the oxygen program control period may be added before or after this text. If a label does not contain the dates of the oxygen program control period then that label shall be removed from the fuel pump or other gasoline dispensing device at the end of the oxygen program control period. This label shall state the following:

The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

(c) If the fuel pump or other gasoline dispensing device is dispensing nonconforming fuel in accordance with a variance issued by the Department pursuant to N.J.A.C. 7:27-25.9, the label shall state the following:

The fuel dispensed from this pump does not meet standards established to reduce carbon monoxide pollution from motor vehicles but is temporarily authorized to be distributed due to a shortage of supply of fuel that meets the standard.

(d) Any label required pursuant to this section shall be:

1. Posted on the vertical surface of the gasoline dispensing device on each side of the device from which gasoline can be dispensed, on the upper two-thirds of the surface, in a position clear, conspicuous, and easily readable from the position of the driver in the vehicle to which gasoline is being dispensed; and

2. Clearly legible and in block letters that are:

i. No less than 20-point bold type; and

ii. In a color that contrasts with the background on which they are placed.

New Rule, R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(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.129, effective February 8, 1995 (to expire April 9, 1995).
See: 27 N.J.R. 787(a).

Adopted Concurrent Proposal, R.1995 d.236, effective April 7, 1995 (operative June 5, 1995).

See: 27 N.J.R. 787(a), 27 N.J.R. 1479(a), 27 N.J.R. 1794(b).

Provisions of emergency amendment, R.1995 d.129, adopted without change.

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

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

Section was "Labeling".

Public Notice: Emergency repeal 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).

7:27-25.9 Variance for shortage of supply

(a) The Department may issue to a refiner, importer, blender, or distributor who has or may have an insufficient supply of conforming gasoline, a temporary variance from the oxygen content standards set forth at N.J.A.C. 7:27-25.3 which would allow the refiner, importer, blender, or distributor to provide, offer for sale, sell, transfer, import, or exchange in trade gasoline that does not conform with the oxygen content requirements of this subchapter.

(b) Application for a temporary variance pursuant to this section shall be made on forms obtained from the Department. Any person may request an application form from:

Assistant Director of Air and
Environmental Quality Enforcement
Division of Facility Wide Enforcement
Department of Environmental Protection
CN 422
Trenton, New Jersey 08625-0422

(c) A refiner, importer, blender, or distributor seeking a variance pursuant to this section shall submit a written application to the Department, containing the following information:

1. Documentation that there is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, a natural disaster or an "Act of God";
2. A statement of the cause(s) of the shortage of conforming gasoline and an explanation of how the cause(s) are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care;
3. A statement of how an adequate supply of conforming fuel will be expeditiously obtained;
4. A comprehensive listing of all facilities to which the applicant would, pursuant to the variance, provide or sell the nonconforming gasoline. This listing shall include the name and address of each facility and the name and phone number of a contact person at each facility;
5. Specification of the minimum oxygen content of the nonconforming gasoline which will be provided or sold, during the period in which the variance is in effect; and

6. Such other information as the Department determines is necessary to ensure compliance with this subchapter and to evaluate the potential effect of approval of the variance on public health, welfare and the environment.

(d) Any application for a variance submitted to the Department pursuant to this subchapter shall include a service fee in accordance with N.J.A.C. 7:27-25.11(c) and shall be certified in accordance with N.J.A.C. 7:27-8.24.

(e) No applicant for a variance pursuant to this section may provide, offer for sale, sell or otherwise exchange in trade any non-conforming gasoline before the Department approves the variance in writing.

(f) The Department shall deny any application for a variance if:

1. The Department determines that approval of the variance 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 applicant has exclusive use or occupancy; or

2. The applicant fails to demonstrate to the satisfaction of the Department, that:
 - i. There is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, a natural disaster or an "Act of God";
 - ii. The cause(s) of the shortage of conforming gasoline are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care;
 - iii. The applicant has taken all reasonable steps to minimize the extent and duration of the inadequate supply of conforming gasoline; or
 - iv. The applicant has taken all reasonable steps to obtain an adequate supply of gasoline.

(g) The Department may deny an application for a variance 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.

(h) Any variance issued by the Department under this section shall be valid for a period stated in the variance. The period shall be no longer than 45 days.

(i) Any refiner, importer, blender, and distributor to whom the Department issues a variance pursuant to this section shall provide a copy of the variance to each distribu-

tor, retailer or wholesale purchaser-consumer named in the variance in accordance with (c)4 above.

(j) No retailer who provides or sells nonconforming gasoline and no wholesale purchaser-consumer who uses nonconforming gasoline shall be deemed by the Department to have violated the provisions of this subchapter if:

1. The retailer or wholesale purchaser-consumer is named, in accordance with (c)4 above, in a variance issued by the Department pursuant to this section; and
2. The retailer or wholesale purchaser-consumer demonstrates, to the satisfaction of the Department, that the nonconforming gasoline was provided to the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility pursuant to that variance.

(k) Any person holding a variance issued by the Department pursuant to this section shall:

1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;
2. Make said variance readily available for inspection on the operating premises to the Department or its authorized representatives;
3. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction; and
4. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.11(d), within 60 days after receipt of a fee invoice.

(l) Any person to whom the Department has issued a variance pursuant to this section shall:

1. Maintain records, on a daily basis, showing the actual oxygen content and the volume in gallons of each shipment of nonconforming gasoline provided or sold or otherwise exchanged in trade during the period that the variance was in effect. Such records shall be maintained on the operating premises for no less than three years from the date the record was made;
2. Submit to the Department, within 60 days of the Department's issuance of the variance, a report indicating the total number of gallons of nonconforming gasoline provided, sold or otherwise exchanged in trade, or used during the period the variance was valid and the actual oxygen content of that gasoline. The report shall be submitted in a format acceptable to the Department and shall be certified in accordance with N.J.A.C. 7:27-8.24;
3. Remit to the Department with the report specified in (l)2 above penalties pursuant to N.J.A.C. 7:27A-3.10(e)25. Any penalties due shall be submitted to the Department with the report. The Department will not consider any submission of a report for which penalties are required acceptable, unless the penalties are remitted with the report;

4. Make the records required to be kept pursuant to (l)1 above available, upon request, for review by the Department or its authorized representatives; and

5. Upon the request of the Department, submit to the Department all or any part of the information contained in the records required to be kept pursuant to (l)1 above.

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

1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;
2. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction;
3. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.11(d), within 60 days after receipt of a fee invoice; or
4. Comply with any requirement of this subchapter or any condition set forth in the variance approved by the Department.

(n) If the Department seeks to revoke a variance during the term of that variance, the Department shall provide the opportunity to request a hearing pursuant to the procedures set forth at N.J.A.C. 7:27-8.12. Such request shall be filed with the Department at the following address:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 E. State Street
CN 402
Trenton, New Jersey 08625-0402

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

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

Administrative change to (b).

See: 25 N.J.R. 309(a).

Repeal and Recodification, 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 7:27-25.10; repealed prior text at 7:27-25.9, "Variance for contemporaneous averaging" (see 24 N.J.R. 3539(a), 25 N.J.R. 309(a), 25 N.J.R. 2720(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 Repeal, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).

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

Section was "Variance for shortage of supply".

Public Notice: Emergency repeal 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).

7:27-25.10 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).

7:27-25.11 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.

(c) Any person who applies for a variance pursuant to N.J.A.C. 7:27-25.9 shall submit with the application a non-refundable service fee of \$500.00. No application shall be deemed complete without the required fee.

(d) Any person to whom the Department has issued a variance pursuant to N.J.A.C. 7:27-25.9 shall remit to the Department within 60 days after receipt of an invoice, a compliance inspection fee of \$200.00. Such person is subject to a compliance inspection fee only if the Department conducts at the facility one or more compliance inspections pursuant to the variance during any year, or part thereof, that the variance is in effect. The Department shall not charge such person a compliance inspection fee more frequently than once per year.

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).

**SUBCHAPTER 26. OZONE TRANSPORT
COMMISSION—LOW EMISSION VEHICLES
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 the finding by the California Air Resources Board that a motor vehicle, motor vehicle engine or engine family, or air contaminant emission control system has 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.

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

“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.