

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of consumer products that is also regulated in this subchapter, the scope of applicability in this subchapter shall be superseded where: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 unsaturations

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

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.

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).

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 other 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: