

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of consumer products that is also regulated in this subchapter, the scope of applicability in this subchapter shall be superseded where: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

"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.

"Nonconforming gasoline" means any gasoline with an RVP content that does not satisfy the standards set forth in N.J.A.C. 7:27-25.3 during the applicable control period.

"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)₂CFCF₂OCH₃)

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

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅)

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.

"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).

Amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

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

In "Control period", deleted a reference to oxygen content; deleted "Distribution capacity", "National ambient air quality standard" or "NAAQS", "Nitrogen dioxide (NO₂)", "Nitrogen oxide (NO)", "Oxides of nitrogen (NO_x)", "Oxygen content", "Oxygen program control area", "Oxygen program control period", "Oxygenate" and "Oxygenate blend"; and rewrote "Nonconforming gasoline".

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) 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).

Amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

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

Deleted former (c) through (g); and recodified former (h) as (c).

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, and for each test prepare a test report which documents the RVP 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; 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 of 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 the RVP of 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 for determining the RVP of gasoline shall be conducted in accordance with the following methods:

1. For manual sampling: ASTM D4057; or

2. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R.2261(R)(3) and (k)(4)(1987).

(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) 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.

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).

Amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

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

Rewrote the section.

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
PO Box 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 Owner and operator responsibility

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

New Rule, R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
Recodified from 7:27-25.11 by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).
Recodified from N.J.A.C. 7:27-25.10 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).
See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).
Former N.J.A.C. 7:27-25.8, Labeling, repealed.

7:27-25.9 Service fees

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

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

New Rule, R.1991 d.462, effective September 3, 1991.
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
Recodified from N.J.A.C. 7:27-25.8 and amended by R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
New subsections (c) and (d) added.
Recodified from 7:27-25.12 by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).
Amended by R.1994 d.483, effective September 19, 1994 (operative October 24, 1994).
See: 26 N.J.R. 1048(a), 26 N.J.R. 3835(a).
Emergency Amendment, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).
See: 27 N.J.R. 4004(a).
Public Notice: Emergency amendment by R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.
See: 27 N.J.R. 4116(a).
Recodified from N.J.A.C. 7:27-25.11 and amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).
See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).
Deleted former (c) and (d). Former N.J.A.C. 7:27-25.9, Variance for shortage of supply, repealed.

7:27-25.10 (Reserved)

Recodified to N.J.A.C. 7:27-25.8 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).
See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

Section was "Owner and operator responsibility".

7:27-25.11 (Reserved)

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

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

Section was "Service fees".

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

Authority

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

Source and Effective Date

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

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

7:27-26.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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