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## **ENVIRONMENTAL REGULATION**

### **Air Quality Management Program**

#### **Low Emission Vehicle (LEV) Program**

**Proposed Amendments:** N.J.A.C. 7:27-26.1, 26.2, 26.3, 26.8 through 26.11, 26.15, 26.16, and 7:27A-3.10.

**Proposed New Rules:** N.J.A.C. 7:27-29

**Proposed Repeals:** N.J.A.C. 7:27-26.3 through 26.7, and 26.12 through 26.14, and Appendix.

**Authorized by:** Bradley M. Campbell, Commissioner, Department of Environmental Protection.

**Filed:** as R. 2005 d

**Authority:** N.J.S.A 26:2C-8.15 et seq. and 54:32B-8.55

**Calendar Reference:** See Summary below for explanation of exception to calendar requirement.

**DEP Docket Number:** 24- 05- 06 /460

A public hearing concerning this proposal will be held at 10:00 a.m. on **Thursday, September 15, 2005**, at:

The Trenton War Memorial  
Memorial Drive  
The Turning Point Conference Room  
Trenton, NJ 08628

Directions to the hearing room maybe found at

[http://www.thewarmemorial.com/directions\\_page.html](http://www.thewarmemorial.com/directions_page.html)

Submit written comments by close of business on **September 30, 2005** to:

Alice A. Previte, Esq.

Attention: DEP Docket No. 24-05-06/460

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street

P.O. Box 402

Trenton, NJ 08625

The Department of Environmental Protection (Department) requests that commenters submit comments on a disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

Several documents are cited within this proposal as references or as documents being incorporated by reference. Copies of these documents may be requested from:

New Jersey Department of Environmental Protection

Public Access Center

401 E. State Street, 1st floor

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An additional source of documents cited within this notice as references or as documents being incorporated by reference are available from the website of the United States Environmental Protection Agency (USEPA), Office of Transportation and Air Quality, at <http://www.epa.gov/otaq>, and from the website of the California Air Resource Board (CARB) at: <http://www.arb.ca.gov/msprog/levprog/levprog.htm/>.

The agency proposal follows:

### **Summary**

Because the Department has provided a 60-day comment period, this notice of proposal is excepted from rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing amendments to N.J.A.C. 7:27-26, National Low Emission Vehicle (NLEV) and Heavy-Duty Diesel New Engine Requirements Program to repeal the NLEV program rules. This proposal affects only the NLEV program portion of the rules. Amendments to the Heavy-Duty Diesel New Engine Program Requirements were proposed separately (see 36 N.J.R. 5620(a), December 20, 2004). In addition, as directed by N.J.S.A. 26:2C-8.15, et seq., the Department is proposing a new subchapter 29 to implement the California Low Emission Vehicle (LEV) program in New Jersey, and add related penalties at N.J.A.C. 7:27A-3.10, Air Administrative Procedures and Penalties.

### **Background**

#### *The Federal Program*

The 1970 Federal Clean Air Act established motor vehicle tailpipe emission standards to curb emissions of carbon monoxide (CO), volatile organic compounds (VOC) and oxides of

nitrogen (NO<sub>x</sub>). The standards took effect for cars and light duty trucks in 1975. The Clean Air Act also granted the state of California, which has some of the worst air pollution in the nation, the authority to enact stricter standards than Federal ones.

The 1977 Federal Clean Air Act Amendments tightened the NO<sub>x</sub> standard for cars in two phases: 1977 through 1979, and 1981. The United States Environmental Protection Agency (USEPA) revised the Federal standards for light-duty trucks in 1979 and 1988, and set rules for heavier trucks in 1988. The Federal Clean Air Act also granted the authority for other states to adopt the California motor vehicle emission standards program, prohibiting them from setting their own standards. Thus, in the United States there are two Federally-sanctioned motor vehicle control programs -- the Federal program and the California program.

The 1990 Clean Air Act Amendments lowered the NO<sub>x</sub> emissions standards for vehicles starting in 1994. These standards are commonly referred to as the Tier 1 standards, and they resulted in a 40 percent reduction in tailpipe NO<sub>x</sub> emissions from the prior Federal program (the Federal motor vehicle control program).

In 1998, the USEPA, vehicle manufactures and the Northeastern and Mid-Atlantic states forged a voluntary agreement to introduce cleaner vehicles. This was called the NLEV program and was patterned after the California program in place at that time. The first NLEVs were available in Northeast and Mid-Atlantic states beginning with model year 1999 vehicles, and the rest of the country in model year 2001. Compared with the Tier 1 standards, the NLEV program reduced NO<sub>x</sub> emissions by 50 percent for cars, and 17 percent for light trucks. In 1999, the USEPA promulgated the motor vehicle Tier 2 emission standards starting with model year 2004 vehicles. The Tier 2 program further reduced the NO<sub>x</sub> emission standards by between 77 and 86 percent in cars and between 92 and 95 percent in trucks, compared with the NLEV program. The

Tier 2 program also gave a manufacturer the flexibility to average emission reductions across its fleet to meet the emission standards. A state that does not follow the California program must follow the Tier 2 standards.

### *The California Program*

In 1991 the California Air Resources Board (CARB) adopted its LEV program, which applied to model year 1994 through 2003 passenger cars, light-duty trucks, and medium-duty vehicles. For each model year, a manufacturer could choose how many of each type of LEV to manufacture, provided that the manufacturer's entire fleet of the vehicles met a specific fleet average non-methane organic gas (NMOG) emissions level. The program also required each manufacturer to include in its fleet of vehicles a certain percentage of Zero Emission Vehicles (ZEVs) starting in 1998.

In 1998, CARB amended the LEV program to tighten and extend the NMOG fleet average to heavier sport utility vehicles and light trucks, and to provide more flexibility in meeting the ZEV requirement by creating Partial Zero Emission Vehicle (PZEV) credits for passenger cars and light-duty trucks that achieve near zero emissions, and passenger cars and light-duty trucks using advanced technologies. Advance technology PZEVs are known as ATPZEVs. To achieve compliance with the ZEV sales mandate, manufacturers could use credits earned from the sale of PZEVs or ATPZEVs.

### *New Jersey Program*

In 1999, as part of its effort to attain compliance with National Ambient Air Quality Standards (NAAQS), New Jersey implemented the NLEV program as a way to meet its statutory

obligations and to reduce air pollution through the reduction of VOCs and NO<sub>x</sub> generated from motor vehicle emissions. Both VOCs and NO<sub>x</sub> are precursors to ground-level ozone.

Existing N.J.A.C. 7:27-26 governed New Jersey's participation in the NLEV program. The primary goal of the NLEV program was to ensure that gasoline-fueled passenger vehicles sold in New Jersey and across the nation met a low emission standard, beyond the Federal Tier 1 program. New Jersey's commitment to the NLEV program ended with the commencement of the 2006 model year (January 2, 2005). Since then, passenger cars and light-duty trucks sold in New Jersey have been subject to the Federal Tier 2 program. Accordingly, with the commencement of the 2006 model year, the existing provisions of N.J.A.C. 7:27-26, insofar as they relate to the NLEV program, are obsolete. This proposal would, in part, repeal the obsolete NLEV program rules. The proposed rules, as directed by the recent legislation discussed below, would replace the Federal Tier 2 program in New Jersey.

In January 2004 the New Jersey Legislature enacted N.J.S.A. 26:2C-8.15 et seq., requiring the Department to promulgate rules adopting the current California LEV program. The Legislature cited the benefits to human health and the environment that would be realized under such a program. In enacting the law, the Legislature found that a significant fraction of particulate emissions, smog-forming emissions, and airborne cancer risk comes from vehicle emissions. The goal of the legislation, in a large part, is to encourage the sale of advanced technology vehicles in the State, in order to reduce the emissions of ozone precursors, particulates, toxic air pollutant and greenhouse gas emissions. The statute also directs the Department to establish a ZEV Credit Bank to encourage the early introduction of advanced technology vehicles and to assist the manufacturers to transition into the State's new LEV program. In addition, the statute creates a LEV Review Commission, and provides a sales tax

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exemption for ZEVs sold in New Jersey. (See N.J.S.A. 26:2C-8.15 et seq., and 54:32B-8.55.)

The LEV Review Commission is charged with studying advances in ZEV technology including fuel cell vehicle technology, the adequacy of incentives to encourage the purchase of ZEVs and LEV program modifications made by the CARB. The Commission is to report its finding to the Governor, the Legislature, and the Commissioner of the Department, by January 1, 2008 (see N.J.S.A. 26:2C-8.19.)

The Federal Clean Air Act, section 177 (42 U.S.C. § 7507), allows states to establish more stringent standards than the Federal program by implementing the California program. The Clean Air Act mandates that states implementing the California program allow at least two model years between promulgation and applicability. Therefore, the 2009 model year is the first model year to which the proposed New Jersey LEV program would apply.

The California LEV program and, thus, the proposed New Jersey program, contain three components: vehicle emission standards, fleet-wide emission requirements, and a ZEV sales requirement. The vehicle emission standards component requires each manufacturer to certify that its passenger cars and light-trucks meet tailpipe emissions and evaporative emission standards (those emissions that escape when gasoline evaporates, generally from the fuel tank, or other parts of the fuel delivery system) and on-board diagnostic requirements. California has established four vehicle categories, each with its own emission standards. The categories are LEVs, Ultra-Low Emission Vehicles (ULEVs), Super Ultra Low Emission Vehicles (SULEVs) and ZEVs.

California's tailpipe emission standards are, in most instances, more stringent than the Federal Tier 2 standards. The evaporative emissions standards of the California LEV program are more stringent than the Federal Tier 2 evaporative standards. LEVs and ULEVs must meet

low evaporative emission standards, while ZEVs, ATPZEVs, and partial zero emission vehicles (PZEVs) must meet a zero evaporative emission standard. The CARB estimates that by 2010 more than 37 percent of the vehicles sold in states adopting the LEV program will be subject to the zero evaporative emissions standard.

Under the fleet-wide emissions average requirement, manufacturers are given the flexibility to produce any combination of the four categories of vehicles (LEV, SULEV, ULEV or ZEV), as long as the delivered for sale-weighted average emissions for the fleet of vehicles meets a declining emissions average requirement, known as the NMOG fleet average requirement. The NMOG fleet average requirement for model year 2009 is 0.038 grams per mile for all passenger cars and some light-duty trucks, and 0.047 for the remaining, heavier light-duty trucks. The NMOG fleet average requirement is reduced each model year until model year 2010, when the requirement for passenger cars and some light-duty trucks will be 0.035 grams per mile and 0.043 for heavier light-duty trucks.

The California LEV program also has a ZEV sales requirement beginning in model year 2005. New Jersey's proposed ZEV sales requirement would begin on January 1, 2009. Under the ZEV sales requirement, in 2009 11 percent of vehicles sold by large volume manufacturers must be "advanced technology vehicles," which are vehicles with zero tailpipe and evaporative emissions (ZEVs), vehicles that have some electric drive train components (ATPZEVs), and conventional gasoline vehicles that meet certain emissions, durability, and warranty requirements (PZEVs). The ZEV sales requirement increases over time to 16 percent in model year 2017.

The California ZEV sales program component allows a manufacturer to choose between two compliance paths to meet its ZEV sales requirement. The conventional path required the delivery of ZEV vehicles for sale. The second, or "alternative compliance" path allows a

manufacturer to meet the entire ZEV sales mandate (currently 10 percent) with a combination of new production ZEVs (two percent), ATPZEVs (such as hybrid electric vehicles, two percent) and PZEVs (six percent). California established weighting factors to create “equivalency” among the ATPZEVs and PZEVs to ZEVs. One ZEV is worth more than one ATPZEV or PZEV, for purposes of meeting the ZEV sales requirement. A manufacturer that chooses the alternative compliance path must produce a small number of fuel cell vehicles for national distribution, or battery electric vehicles produced and delivered for sale in California. The within proposed rules would also incorporate the California compliance options and weighting factors.

In order to help manufacturers meet the ZEV sales requirement of the State's proposed LEV program, as California has done, the Department is proposing a ZEV Credit Bank, in accordance with N.J.S.A. 26:2C-8.18. This credit bank provides manufacturers with an opportunity to earn vehicle equivalent credits by delivering qualifying vehicles for sale in New Jersey in advance of the January 1, 2009, program implementation date. The manufacturer could then apply the credits against the ZEV sales requirement. Under the proposed rules, a manufacturer would earn credits for qualifying ZEVs, ATPZEVs, and PZEVs that it sells in New Jersey, thereby encouraging the delivery for sale of a variety of advanced automobile technologies including pure battery electric vehicles, hybrid-electric vehicles, super low-emitting gasoline vehicles and hydrogen fuel cell vehicles. The Department would publish an annual list of qualifying vehicles, in order that a manufacturer would know which vehicles qualify for vehicle equivalent credits.

As discussed further below, this proposal provides an alternative rule provision that would establish a voluntary proportional crediting process to allow a manufacturer to deposit into its account in the ZEV Credit Bank a number of credits based upon the balance of its

account in the California ZEV credit bank. Manufacturers had the opportunity to earn and bank ZEV credits in California beginning in 1996, in anticipation of the ZEV sales requirement in California that began with model year 2005. Although under the proposed rules manufacturers can earn ZEV credits for sales of low emission vehicles sold as early as 1999, the manufacturers did not know in 1999 that there would be a LEV program in New Jersey, or that sales of low emission vehicles from 1999 would have an effect on their ability to comply with future New Jersey regulations. Accordingly, there has been little incentive for manufacturers to sell such vehicles in the State. The proposed proportional crediting provisions are intended to facilitate a manufacturer's transition into the ZEV sales requirement in New Jersey.

A more detailed explanation of the proposed new rules and amendments follows.

#### **N.J.A.C. 7:27-26**

On December 20, 2004, the Department published a proposal to amend N.J.A.C. 7:27-26, National Low Emission Vehicle and Heavy-Duty Diesel New Engine Standards (see 36 N.J.R. 5630), to remove those rules that relate to Heavy-Duty Diesel New Engines. Through the within proposed amendments the Department proposes to remove from N.J.A.C. 7:27-26 all provisions relating to the NLEV program. Accordingly, if both proposals are adopted, all provisions of subchapter 26 would be repealed and the subchapter reserved.

The Department is proposing to repeal the existing portions of subchapter 26 that pertain to the NLEV program because New Jersey's commitment to the NLEV program ended with the commencement of the 2006 model year (January 2, 2005).

### **N.J.A.C. 7:27-26.1 Definitions**

The Department is proposing to delete the following definitions as no longer necessary due to the lapse of the NLEV program: "air contaminant emission control system," "California Air Resources Board" or "CARB," "California standards," "CCR," "certification application," "certified," "Clean Air Act §177 program," "dealer," "dual fueled," "durability vehicle basis," "evaporative emissions," "field fixes," "fleet average," "fuel flexible," "fuel system," "g/mi" (grams per mile), "heavy-duty engine," "heavy-duty vehicle," "HEV contribution factor," "highway," "hybrid electric vehicle" or "HEV," "intermediate compliance standards," "intermediate volume manufacturer," "in-use compliance," "light-duty truck," "light-duty vehicle," "loaded vehicle weight" or "LWV," "low emission vehicle" or "LEV," "manufacturer's sales fleet," "medium-duty vehicle," "mg/mi" (milligrams per mile), "model-year," "new motor vehicle dealer," "NLEV program" or "National Low Emission Vehicle program," "non-methane organic gas" or "NMOG," "off-highway," "offset vehicle," "organic material hydrocarbon equivalent" or "OMHCE," "OTC-LEV program," "OTC-LEV program control system," "OTC-LEV program engine," "OTC-LEV program vehicle," "Ozone Transport Commission-Low Emission Vehicle Program" or "OTC-LEV Program," "Ozone Transport Region" or "OTR," "passenger car" or "PC," "reactivity adjustment factor," "rental agency," "running changes," "small volume manufacturer," "standard vehicle" or "SV," "transitional low emission vehicle" or "TLEV," "Type A HEV," "Type B HEV," "Type C HEV," "ultra low emission vehicle" or "ULEV," "useful life," "vehicle curb weight," and "zero emission vehicle" or ZEV."

### **N.J.A.C. 7:27-26.2 Applicability**

The Department is proposing to repeal N.J.A.C. 7:27-26.2(a) through (d), which are no longer necessary due to the lapse of the NLEV program. The Department is also proposing to amend N.J.A.C. 7:27-26.2(e) to remove references to specific sections applicable to new heavy-duty motor vehicles, and add language that identifies the whole subchapter as applying to new heavy-duty motor vehicles. With the removal of references to the NLEV program from the subchapter, the reference in N.J.A.C. 7:27-26.2(e) to specific sections is no longer necessary.

### **N.J.A.C. 7:27-26.3 through 16**

The Department is proposing to repeal N.J.A.C. 7:27-26.3 through 7 in their entirety because they are no longer necessary due to the lapse of the NLEV program. These sections are Prohibitions (OTC-LEV Program), Emission certification standards (OTC-LEV Program), Fleet average (OTC-LEV Program), and Additional requirements (OTC-LEV Program). The Department is also proposing to recodify existing sections N.J.A.C. 7:27-26.8 through 16 as N.J.A.C. 7:27-26.3 through 8, respectively, and to repeal N.J.A.C. 7:27-26.12 through 14. In addition, the Department is proposing to amend the list of documents and sources at N.J.A.C. 7:27-26.15(e). Those references and sources relating only to the NLEV program would be deleted, and the remaining sources and references renumbered.

The Department also proposes to repeal the Appendix to subchapter 26, inasmuch as the lapse of the NLEV program makes it no longer necessary.

### **N.J.A.C. 7:27-29**

The Department is proposing a new subchapter for the proposed LEV program rules.

### **N.J.A.C. 7:27-29.1 Definitions**

At new N.J.A.C. 7:27-29.1 the Department is proposing definitions of terms used throughout the new subchapter 29. Some of the proposed definitions are the same as, or are based upon, terms that are in existing subchapter 26. Other proposed definitions are identical to, derived from, or consistent with the California LEV program rules and the enabling legislation, N.J.S.A. 26:2C-8.15 et seq., on which these rules are based, or upon existing Federal statutes or regulations.

The proposed definitions of "air contaminant emission control system," "business," "CCR," "certificate of conformity," "Department," "emission standards," "engine family," "gross vehicle weight rating" or "GVWR," "motor vehicle" or "vehicle," "motor vehicle engine," "new motor vehicle engine," "non-methane organic gas" or "NMOG," "passenger car," "person," "sale" or "sell," "State," and "ultimate purchaser" are the same as were used in the former NLEV rules at N.J.A.C. 7:27-26.1.

The proposed terms "California Air Resources Board" or "CARB," and "dealer" are based upon the definitions at N.J.A.C. 7:27-26.2, with minor changes to clarify their meaning in the new subchapter or to update information used in the definitions. The term "CARB" was modified to indicate that the CARB's authority to regulate sources of air pollution in California is as stated in Section 39003 of California's Health and Safety Code. The term "dealer" was modified to add to the definition the offering for sale, soliciting or advertising the sale of new passenger cars and light-duty trucks, thereby broadening the scope of the proposed new rules.

The Department proposes to define at N.J.A.C. 7:27-29.1 a number of terms as they have been defined by the State Legislature at N.J.S.A. 26:2C-8.16. These terms are "advanced technology partial zero emission vehicle" or "ATPZEV," "California-certified," "California low

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emission vehicle program," "Commissioner," "partial zero emission vehicle" or "PZEV," and "zero emission vehicle" or "ZEV."

The Legislature used the undefined terms "vehicle equivalent credit" or "credit," and "ZEV Credit Bank" in N.J.S.A. 26:2C-8.15 et seq., in the context of allowing manufacturers to earn credits for delivering qualifying passenger cars and light-duty trucks prior to the start of the State's LEV program. The Department proposes to definitions at N.J.A.C. 7:27-29.1, consistent with the legislation.

The Department also proposes to define at N.J.A.C. 7:27-29.1 a number of terms as they have been defined by the state of California in its rules governing the California LEV program (codified at Title 13, California Code of Regulations, or "CCR"), upon which these proposed rules are based. These terms are "intermediate volume manufacturer," "large volume manufacturer," "manufacturer," and "medium-duty passenger car."

The Department also proposes definitions of a number of terms to be consistent with the use of the terms in California. These terms are "delivered for sale," "emergency vehicle," "executive order," "light-duty truck," "LDT-1" or "light-duty truck-1," "LDT-2" or "light-duty truck-2," "mail out," "new vehicle," "placed in service," "test group," "test vehicle," and "vehicle identification number" or "VIN." The Department proposes to define at N.J.A.C. 7:27-29.1 the term "test group" consistent with the use of the term in California. California defines the term by citing the Federal definition of "test group" as defined in the discussion of "test group determination" at 40 CFR 86.1827-01. In order to be placed in the same test group, vehicles must be in the same durability group, have the same engine displacement, the same number and arrangement of cylinders or combustion chambers, and subject to the same engine standards.

The Department proposes to define at N.J.A.C. 7:27-29.1 the term "model year" as it is defined by the USEPA. This definition is consistent with the definition the Department recently proposed in the amendments to the Heavy-Duty Diesel New Engine Program rules. (See 36 N.J.R. at 5630, December 20, 2004). The definition of model year cites the Federal definitions of "model year" and "annual production period," found at 40 CFR 85.2302 through 85.2304, inclusive. Similarly, the definition of "loaded vehicle weight" is based on the USEPA definition at 40 CFR 86.082-2.

The Department proposes to define the terms "Clean Air Act" or "CAA," and "USEPA" as they are defined throughout N.J.A.C. 7:27.

Proposed Alternative 1 to N.J.A.C. 7:27-29.1 would define the terms "California credit balance" and "California credit ratio." The terms are used in proposed Alternative 1 to N.J.A.C. 7:27-29.7, which allows a manufacturer proportional credit in its account in the ZEV Credit Bank, based upon the balance in their ZEV credit bank accounts in California as of January 2, 2008 (the beginning of model year 2009). The terms and the proportional credit allowance are discussed below in the discussion N.J.A.C. 7:27-29.7. If the Department does not adopt the proposed proportional credit allowance provisions, then the two definitions would not be adopted, as stated in Alternative 2 to N.J.A.C. 7:27-29.1.

### **N.J.A.C. 7:27-29.2 Purpose**

As directed by N.J.S.A. 26:2C-8.15 et seq., the proposed rules establish New Jersey's LEV program, which incorporates the requirements of the California LEV program. The proposed new rules will apply to all year 2009 and later passenger cars and light-duty trucks delivered for sale in New Jersey on or after January 1, 2009, and require that the passenger cars

and light-duty trucks be certified to California's emission standards. The subchapter also establishes the ZEV Credit Bank, as required in N.J.S.A. 26:2C-8.5 et seq.

### **N.J.A.C. 7:27-29.3 Applicability - LEV program**

Subject to the exemptions in N.J.A.C. 7:27-29.3(b) and (c), proposed N.J.A.C. 7:27-29.3(a) would prohibit, beginning with model year 2009, the sale, importation or registration in New Jersey of any new passenger car or light-duty truck, on or after January 1, 2009, unless the vehicle is California-certified. This prohibition is in conformance with the requirements of N.J.S.A. 26:2C-8.15 et seq. The term "delivered for sale" includes those vehicles that are leased.

If a manufacturer demonstrates that the vehicle complies with all applicable emission standards and requirements of Title 13, California Code of Regulations (CCR), the CARB will issue an Executive Order for the vehicle, indicating that the vehicle is "California-certified." A vehicle manufacturer must demonstrate that the vehicle's exhaust and (as applicable, depending on the specific vehicle category) evaporative emission control systems are durable and comply with the emission standards for the vehicle's useful life. This is done through durability and certification testing of a prototype vehicle. The manufacturer must also demonstrate compliance with the requirements for on-board diagnostics, anti-tampering, fuel tank fill-pipe and openings, and crankcase emissions, as applicable, and must submit an application for certification to the CARB and the USEPA concurrently. Both agencies must approve the application.

Production vehicles must be identical in all material respects to those for which the certification was granted. If the manufacturer makes emissions-related production running

changes or field fixes, those must be approved. Production vehicles must be properly labeled and their emission control systems warranted for the specified duration. New and customer-owned production vehicles are subject to compliance testing (by either the manufacturers or the CARB) and warranty repairs reporting by the manufacturers, either of which can result in remedial actions.

Certification is granted only to the vehicle manufacturer that controls the vehicle specifications to ensure compliance by all production vehicles. See the CARB On-Road New Vehicle and Engine Certification Program website, <http://www.arb.ca.gov/msprog/onroad/cert/cert.php>.

Proposed new N.J.A.C. 7:27-29.3(b) and (c) exempt certain passenger cars and light-duty trucks from the certification requirements of N.J.A.C. 7:27-29.3(a). The Department proposes at N.J.A.C. 7:27-29.3(b) a one-year transition period, during which non-certified model year 2009 passenger cars and light-duty trucks delivered for sale or lease on or before January 1, 2009 can continue to be sold, offered for sale or, purchased, acquired or received.

At N.J.A.C. 7:27-29.3(c) the Department proposes miscellaneous exemptions to the certification requirements. Passenger cars and light-duty trucks held for rental or daily lease to the general public, or that are being utilized for interstate commerce (such as interstate commercial delivery vehicles) that are registered and principally operated outside of New Jersey would be exempt from the certification requirements. This provision allows rental cars and light-duty trucks that are registered outside of New Jersey to continue to be rented in New Jersey.

Passenger cars and light-duty trucks that are classified as test vehicles or emergency vehicles would also be exempt. Test vehicles are developed by manufacturers for vehicle

research and development purposes. They are produced in very limited numbers and are not produced for sale to the general public. The Department exempts emergency vehicles from the diesel idling restrictions of N.J.A.C. 7:27-14.3, and at N.J.A.C. 7:27-14.2(b) exempts such vehicles from the diesel opacity limits of N.J.A.C. 7:27- 14.6. The Department proposes a similar exemption from the LEV program requirements.

The Department proposes an exemption for the special circumstance in which a New Jersey resident operating a vehicle out of State needs to replace the vehicle while out of State, because the vehicle was either damaged or became inoperative beyond reasonable repair or was stolen while out of State. This exemption only applies when the replacement vehicle is purchased at the time of the incident while the resident is out of State.

Passenger cars and light-duty trucks that are transferred to a New Jersey resident through either inheritance or court decree are exempt from these rules. In such cases, the resident has no discretion in acquiring a complying vehicle, making an exemption appropriate.

Residents of other states establishing residence in New Jersey and wishing to transfer a non-complying vehicle that was certified to Federal emission standards and registered in the resident's former state may do so when establishing residence in New Jersey.

Passenger cars and light-duty trucks sold directly from one dealer to another dealer would be exempt from the LEV requirements because the rules are not intended to restrict dealers from exchanging vehicles. Vehicles that are sold in order to be wrecked or dismantled, are exclusively for off-highway use, or that are sold for registration in another state are also exempt from the LEV program requirements.

At N.J.A.C. 7:27-29.3(d), the Department proposes language setting forth a presumption that a vehicle with 7,500 miles or fewer is a "new" vehicle for purposes of the proposed LEV

program. The Department intends by this language to prohibit a New Jersey resident or other person from using a "straw man" to purchase and register a non-complying vehicle in another state, and then re-registering the vehicle in New Jersey as a used vehicle, in order to avoid the proposed emissions requirements.

#### **N.J.A.C. 7:27-29.4 Emission Certification Standards**

As directed by N.J.S.A. 26:2C-8.17 et seq., proposed N.J.A.C. 7:27-29.4 requires that each new passenger car and light truck, manufactured in and after in model year 2009, delivered for sale in New Jersey after January 1, 2009, be certified to the emissions standards of Title 13, CCR. As discussed above, when the CARB certifies a vehicle, it issues an Executive Order stating that the vehicle has met all of the applicable standards of the LEV program. Evidence that a vehicle has met the California standards is also evidence that the vehicle has met the proposed New Jersey standards, since the standards are the same.

#### **N.J.A.C. 7:27-29.5 Non-methane Organic Gas (NMOG) Fleet Average**

In order to remain identical to the California LEV program requirements, the Department is proposing a component of the California LEV program known as the NMOG fleet average requirement. The NMOG fleet average is not a new vehicle classification, but rather a weighted average of the emissions for all of the passenger cars and light-duty trucks a manufacturer delivers for sale during the specified model year. Proposed N.J.A.C. 7:27-29.5 establishes an NMOG fleet average requirement for each manufacturer's sales in New Jersey, beginning in model year 2009. Each manufacturer would be required to demonstrate that all of its passenger

cars and light-duty trucks delivered for sale in New Jersey on or after January 1, 2009 meet an average emission standard for NMOG, known as the fleet emissions standard.

As in the California LEV program, the proposed NMOG fleet average requirement becomes progressively more stringent over time. For passenger cars and light-duty trucks with loaded vehicle weight of zero through 3,750 lbs., the NMOG fleet average exhaust emission requirement for 2009 model year will be 0.038 grams per mile. For the 2010 model year and thereafter, the NMOG fleet average will be 0.035 grams per mile. For light-duty trucks with loaded vehicle weight of 3,751 lbs. to 8,500 lbs. the NMOG fleet average for 2009 will be 0.047 grams per mile, and for the 2010 model year and thereafter the NMOG fleet average will be 0.043 grams per mile.

The declining NMOG fleet average requirement ensures that a motor vehicle manufacturer will offer for sale in New Jersey a "fleet" of passenger cars and light-duty trucks with progressively lower weighted average emission levels as the lower emitting vehicles replace the older, higher-emitting ones. It also requires each vehicle manufacturer to continually refine its emission control technologies to provide for a lower emitting sales fleet. As in California, a manufacturer may earn, bank, and trade NMOG credits to partially offset future requirements.

Although the Department is not proposing a formal NMOG bank, a manufacturer is required to submit to the Department, as set forth in proposed N.J.A.C. 7:27-29.11, an annual report documenting its compliance with the NMOG fleet average requirement, and to enumerate the NMOG credits that it has earned or used. These reports will enable the Department to evaluate a manufacturer's compliance with the NMOG fleet average requirement.

#### **7:27-29.6 ZEV Sales Requirement**

Proposed N.J.A.C. 7:27-29.6 would require each manufacturer to comply with a ZEV sales requirement comparable to California's. (See Title 13, CCR, section 1962.) The ZEV sales requirement would be based on total vehicle sales in New Jersey, and would commence with model year 2009 passenger cars and light-duty trucks produced and delivered for sale in New Jersey on or after January 1, 2009.

The ZEV sales requirement component of the California LEV program focuses on advancing technology that will further reduce emissions and is in the statute (N.J.S.A. 26:2C-8.15 et seq.) in recognition of the emission reduction benefits. The ZEV sales requirement is therefore included as a component within the proposed New Jersey LEV program. The Department's intent is to encourage a manufacturer to produce and deliver advanced technology vehicles that do not emit pollutants. However, the ZEV sales requirement proposed at N.J.A.C. 7:27-29.6 is flexible, affording a manufacturer some discretion in deciding which technology to use to meet the mandates.

The ZEV sales requirement allows manufacturers to choose between two compliance paths. The conventional path requires the manufacturer to place in service (that is, to sell to an end user) in New Jersey a certain number of ZEVs, which number is based upon the number of passenger vehicles and light-duty trucks that the manufacturer delivers for sale in the State. The second or "alternative compliance" path allows manufacturers to meet the entire ZEV mandate with a combination of ZEVs, ATPZEVs and PZEVs. As in the California program, the proposed New Jersey program includes weighting factors to create "equivalency" of the ATPZEVs and PZEVs to ZEVs. A manufacturer that chooses the alternative compliance path must produce a small number of fuel cell vehicles for national distribution; a portion of the fuel cell vehicle obligation may be met with battery electric vehicles delivered for sale in New Jersey. Each of

these options also provides for clean air benefits from the commercialization of advanced motor vehicle technologies. In model year 2009, the proposed ZEV sales requirement will be 11 percent. The requirement increases over time, until it reaches 16 percent for 2018, as set forth in Title 13, CCR, section 1962(a).

The ZEV sales requirement for the second phase of the LEV program began in California with model year 2005. As proposed, the ZEV sales requirement will begin in New Jersey in model year 2009. Because New Jersey is implementing the ZEV sales requirement four years after it has already begun in California, it is appropriate to propose provisions that will provide a transition into the ZEV sales requirement. In that regard, the Department is proposing at N.J.A.C. 7:27-29.7 to create a ZEV Credit Bank, consistent with N.J.S.A. 26:2C-8.18. A manufacturer that delivers qualifying vehicles in advance of the January 1, 2009 commencement of the proposed New Jersey ZEV sales requirement would earn vehicle equivalent credits. The manufacturer could use these credits to offset a portion of the ZEV sales requirement during and after 2009. As with the California program, by delivering one qualifying vehicle for sale in New Jersey prior to January 1, 2009, a manufacturer could earn more than one vehicle equivalent credit. The Department intends that the ability to earn and use vehicle equivalent credits will encourage vehicle manufacturers to produce and sell low emission vehicles in New Jersey sooner than 2009.

#### **N.J.A.C. 7:27-29.7 ZEV Credit Bank**

At proposed N.J.A.C. 7:27-29.7, the Department would establish a ZEV Credit Bank, as the Legislature required at N.J.S.A. 26:2C-8.18(a). The Credit Bank would allow a manufacturer to earn and bank vehicle equivalent credits for any ZEV, ATPZEV or PZEV it delivers for sale

in New Jersey on or after January 1, 1999. The manufacturer could use its credits at a later date to comply with the ZEV sales requirement of proposed N.J.A.C. 7:27-29.6. The proposed New Jersey ZEV Credit Bank would allow a manufacturer to bank, acquire from another manufacturer, and use credits in the same manner as the California program.

In order to open an account with the ZEV Credit Bank, a manufacturer must provide identifying information to the Department, which would then issue a unique account number to the manufacturer. The Department would credit the manufacturer's account when the manufacturer submits a Notice of Credit Generation, which is a form that the Department will provide. The Notice of Credit Generation, which the manufacturer must submit by September 1 following the end of the model year of the vehicles for which it seeks credit, contains information to identify the vehicles, and to show that the vehicles are California-certified to comply with the LEV program emission requirements. Nothing in these proposed rules requires a manufacturer to wait until the end of a model year to submit its Notices of Generation. A vehicle manufacturer may submit Notices of Generation to the Department periodically over the year, provided it meets the September 1 deadline. The Department anticipates that the September 1 deadline, nine months after the close of the model year, will allow a manufacturer sufficient time to provide the required information to the Department in order to obtain ZEV credit. A vehicle for which a Notice of Credit Generation has not be submitted by September 1 will not earn vehicle equivalent credits.

The credits that a manufacturer will earn are based upon the number of vehicles it delivers for sale in New Jersey, multiplied by the applicable multiplier. The multiplier is based upon the multiplier used in California, as well as on when the qualifying vehicle was delivered for sale in New Jersey. Qualifying passenger cars and light-duty trucks delivered for sale in New

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Jersey from January 1, 1999 until January 14, 2004, the effective date of N.J.S.A. 26:2C-8.15 et seq., would receive the highest multiplier used by the CARB in the California LEV program. Those qualifying passenger cars and light-duty trucks delivered for sale in New Jersey on and after January 14, 2004, would receive the same multiplier used by the CARB for the California LEV program. For example, for model year 2003, which began January 2, 2002, the credit multiplier applicable to a PZEV would be four, dropping to 1.33 for model year 2005. Therefore, a qualifying PZEV delivered for sale in New Jersey at any time prior to January 14, 2004 would earn four credits. A PZEV delivered on or after January 14, 2004 for sale in New Jersey would earn 1.33 credits, which is the same number of credits it would earn under the California program.

The proposed multipliers that the Department would apply to each ZEV, PZEV and ATPZEV are listed in the table below.

**Multipliers to be Applied to a Vehicle Delivered for Sale in New Jersey**

	2004	2005	2006	2007	2008	2009
Passenger cars and light-duty trucks	Model Year	Model Year	Model Year	Model Year	Model Year	Model Year
Delivered for Sale in NJ from January 1, 1999 to	Passenger cars and light-duty trucks Delivered for Sale in	Passenger cars and light-duty trucks Delivered for Sale in				

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	January 13, 2004	NJ on and after January 14, 2004	NJ on or after January 14, 2004				
PZEV	4	2	1.33	0.2	0.2	0.2	0.2
Introduction							
Phase-In							
Multiplier <sup>1</sup>							
PZEV Introduction	6	6	6	6	6	6	3
Phase-In							
Multiplier for							
PZEVs that Earn a							
Zero Emission							
VMT Allowance							
MY 1999 and	6 to 10 <sup>2</sup>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
2000 ZEVs with							
Extended Electric							
Range							
MY 2001 and	4	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
2002 ZEV Phase-							
In Multiplier							
MY 2001 and	<sup>3</sup>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
2002 ZEVs with							

Extended Electric

Range

Multiplier for	1.25	1.25	1.25	1.25	1.25	1.25	1.25
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Certain Type I and

Type II ZEVs<sup>4</sup>

<sup>1</sup>Multiplier is applicable to all PZEVs delivered for sale in New Jersey on the applicable dates, other than PZEVs that earn a Zero Emission Vehicle Miles Traveled (VMT) Allowance.

<sup>2</sup>Multiplier depends on extended electric range, and is calculated as set forth in California Code of Regulations, Title 13, Section 1962(d)(2).

<sup>3</sup>Multiplier depends on the electric range of the ZEV and is calculated as set forth in California Code of Regulations, Title 13, Section 1962(d)(3)(B)1. During the 2001 through 2002 model years, the combined ZEV multiplier for each ZEV in a specific model year is the product of the ZEV phase-in multiplier for each ZEV in a specific model year times the extended electric range multiplier.

<sup>4</sup>Multiplier applies to Type I and Type II ZEVs if sold to a motorist or leased for three or more years to a motorist who is given the option to purchase or re-lease the vehicle for two years or more at the end of the lease term.

In order that manufacturers will know which vehicles qualify for vehicle equivalent credits, the Department will publish annually in the New Jersey Register a list of passenger cars and light-duty trucks that are certified to the ZEV, ATPZEV and PZEV emission standards. The Department published the list of qualifying 2005 vehicles on July 25, 2005 (see \_\_\_ N.J.R. \_\_\_).

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It published the list of qualifying 1999 through 2004 vehicles on July 19, 2004 (see 36 N.J.R.3441(c)). The Legislature required the annual list at N.J.S.A. 26:2C-8.18b(2).

Under the proposed ZEV Credit Bank rules, a manufacturer may acquire vehicle equivalent credits from another manufacturer with an account with the ZEV Credit Bank. If one manufacturer acquires credits from another, the parties to the transaction would provide sufficient information, on a form that the Department will provide, so that the Department may appropriately adjust the balance of each account. Both parties to the transaction would certify the form, and the manufacturer transferring the credits would be responsible for providing the certified form to the Department. The Department may audit the accounts at any time, in order to assure that the balances are correct, and credits have been properly earned and deposited.

As specified at proposed N.J.A.C. 7:27-29.7(f), these proposed rules would not convey to any manufacturer a property interest in the credits in the ZEV Credit Bank. Nothing in the proposed subchapter shall be construed to limit the State's authority to terminate or limit these credits.

Except as provided at proposed N.J.A.C. 7:27-29.7(h), proposed N.J.A.C. 7:27-29.7(a) requires a manufacturer to open its account with the ZEV Credit Bank on or before January 1, 2009, which is the last day of the 2008 model year. Because the ZEV sales requirement begins with model year 2009, it is appropriate that any manufacturer that wants to apply vehicle equivalent credits to its ZEV sales requirement must have its account open before the commencement of the 2009 model year. However, as discussed above, and except as allowed in Alternative 1 of this section, in order to earn credits for qualifying vehicles, a manufacturer must provide the Department with a Notice of Credit Generation on or before September 1 following the close of the model year. See proposed N.J.A.C. 7:27-29.7(g).

In order to earn credits for vehicles sold prior to model year 2006, proposed N.J.A.C. 7:29-29.7(h) requires a manufacturer to open an account and submit Notices of Generation on or before September 1, 2006. This is consistent with the requirement of N.J.A.C. 7:27-29.1(g) that a manufacturer submits its Notices of Generation to the Department on or before September 1 following the close of the model year. September 1, 2006 is the September following the January 1, 2006 close of model year 2005. Proposed Alternative 1 within N.J.A.C. 7:27-29.7 would allow a manufacturer to deposit its California ZEV credit bank balance, proportioned to New Jersey's sales volume, into its New Jersey ZEV Credit Bank account. See proposed Alternative 1 at N.J.A.C. 7:27-29.7(l) through (m). Both Rhode Island and Connecticut have recently adopted similar crediting provisions in their LEV programs to facilitate transitioning into the ZEV sales requirement in their respective states.

Manufacturers have been able to earn vehicle equivalent credits in California as part of the second phase of the California LEV program for qualifying vehicles delivered for sale in California since model year 1996. In California the 10 percent ZEV sales requirement began in model year 2005. A manufacturer delivering vehicles for sale in California had notice of the opportunity to earn vehicle equivalent credits and may have accumulated credits in California through prior vehicle sales that could be used to comply with all or part of the ZEV sales mandate in California. Although the Department is proposing in these new rules to grant credits for those ZEVs, PZEVs and ATPZEVs that manufacturers delivered for sale in New Jersey as early as 1999, the ZEV sales requirement for New Jersey had not yet been proposed at the beginning of model year 1999. Accordingly, manufacturers were unaware of the benefit that could accrue to them by marketing the low emission vehicles in the State.

At proposed Alternative 1 to N.J.A.C. 7:27-29.1, the Department is proposing a definition of the new term "California credit balance," a term that would be used in proposed Alternative 1 to N.J.A.C. 7:27-29.7. The term refers to the balance of credits that a manufacturer has on deposit with the California ZEV Bank as of January 2, 2008, which date marks the beginning of model year 2009. The Department selected model year 2009 because it is the first year of the ZEV sales requirement in New Jersey. The balance of credits could only be proportioned to New Jersey vehicle sales volume, and deposited in the ZEV Credit Bank, after the manufacturer had reduced its balance in California for credits used to comply with California's model year 2008 ZEV sales requirement.

The balance of California-earned credits that a manufacturer may deposit in the ZEV Credit Bank must be proportioned to the New Jersey vehicle sales volume. The Department proposes at Alternative 1 to N.J.A.C. 7:27-29.1 a definition of "California credit ratio," which means the ratio of the number of passenger cars and light-trucks a manufacturer produced and delivered for sale in New Jersey to the number produced and delivered for sale in California for a given time period. Under proposed Alternative 1, the time period the manufacturer uses to determine its model year 2009 ZEV sales requirement as set forth in Title 13, CCR, Section 1962, is also used in determining their California credit ratio.

As part of Alternative 1 to N.J.A.C. 7:27-29.7, the Department is proposing at N.J.A.C. 7:27-29.7(m) that a manufacturer that deposits credits based upon its pre-model year 2009 balance in the California credit bank must offer in model years 2009 through 2011 the same PZEV, ATPZEV and ZEV (except Type III ZEVs) models that it offers for sale in California during the same period. The Department intends that this requirement will provide New Jersey residents with the full range of advanced technology vehicles that are being offered for sale in

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California. This will not only provide air quality benefits for New Jersey, but will facilitate a manufacturer's compliance with the model year 2009 and later ZEV sales requirement and NMOG fleet average requirements through increased sales of advanced technology vehicles in New Jersey.

Under proposed Alternative 2 within N.J.A.C. 7:27-29.7, N.J.A.C. 7:27-29.7(l) and (m) would be deleted. No proportional credit would be allowed, and manufacturers would not be required to provide the same applicable vehicle models in the State as they provide in California.

Manufacturers could however, under either Alternative, continue to earn ZEV credits for early delivery for sale of applicable vehicles, i.e., PZEVs, ATPZEVs and ZEVs, in New Jersey, as set forth at N.J.A.C. 7:27-29.7.

#### **N.J.A.C. 7:27-29.8 Fees**

The Department is authorized, pursuant to N.J.S.A. 26:2C-8.18(c), to impose fees to cover its cost to administer the ZEV Credit Bank. The Department is proposing at N.J.A.C. 7:27-29.8 to assess on each large and intermediate volume manufacturer an annual fee of one dollar per new passenger car and light-duty truck delivered for sale in New Jersey beginning with calendar year 2005. By assessing the fee on all intermediate and large volume manufacturers, the Department is spreading the cost of developing the ZEV Credit Bank and associated infrastructure among the potential users of the bank. Based upon the experience of California, the Department anticipates that all intermediate and large volume manufacturers will make use of the ZEV Credit Bank.

Under the proposed rule, each manufacturer would be required to report by March 1 the total number of passenger cars and light-duty trucks it delivered for sale in New Jersey in the

preceding calendar year, whether or not the vehicles were low emission vehicles. In reporting the number to the Department, each manufacturer would be required to submit to the Department the assembly line production report mandated under Section 2062 of Title 13, CCR. Based on the manufacturer's production report, the Department would assess the ZEV Credit Bank fee, which would be due within 30 days after the manufacturer receives the Department's invoice. If a manufacturer does not pay its fee within the prescribed time period, the manufacturer cannot open a new account with the ZEV Credit Bank, or earn, deposit or acquire credits until the fee is paid.

### **7:27-29.9 Vehicle Testing**

The Department proposes at N.J.A.C. 7:27-29.9 that each vehicle manufacturer must demonstrate that its passenger cars and light-duty trucks meet the emission standards of the California LEV program. The California LEV program requires a vehicle to meet the emission standards at three distinct periods: at the time of certification, as the passenger cars and light-duty trucks are produced on the assembly-line, and in actual customer use.

Under the California rules, which the Department is incorporating into its proposed rules, prior to vehicle production a manufacturer must submit test data to the CARB demonstrating that the vehicle meets the applicable emission standards. The manufacturer must predict the anticipated emissions deterioration of the vehicle in-use using pre-production, developmental vehicles. Once the deterioration factor is established, low mileage emission-data vehicles must be tested and the emission results adjusted using the deterioration factor to determine whether the vehicle would meet the emission standards throughout its useful life. A manufacturer is required to provide this information for each engine family in order for the vehicles to be California-

certified and receive a CARB Executive Order. An engine family is a group of vehicles having engines and emission control systems with similar operational and emission characteristics.

Once an engine family has been certified, the manufacturer must conduct quality audit emission tests on a small portion of the actual production passenger cars and light-duty trucks in each engine family as they leave the assembly line. In appropriate instances, functional tests may be conducted during the vehicle assembly process before the end of the assembly line. For components whose function cannot practically be checked on every vehicle, a statistically valid sampling test may be used as the functional tests. The CARB must approve the manufacturer's sampling test to assure that the tests are designated for the appropriate control components and systems or that the tests will be adequate to reasonably assure that the components and systems are correctly installed and are functioning properly.

During and after production, but prior to sale, the CARB may order a vehicle manufacturer to make a reasonable number of vehicles available for compliance testing and may direct that the vehicles be delivered to the CARB's emission testing laboratory. If the CARB finds that the vehicles exceed the emission standards, the CARB may invoke its New Vehicle Recall provisions. Similarly, the CARB administers its in-use compliance program by procuring late-model vehicles from their owners for emission testing to determine whether vehicles that have been properly maintained and used comply with the emission standards in actual use. If the CARB's test data demonstrate that an engine family does not comply, the manufacturer must either submit a plan to remedy the nonconformity at its expense or recall the vehicles. Under the proposed rules, vehicle manufacturers must comply with the CARB's standards in order to be in compliance in New Jersey.

Upon the Department's request, a vehicle manufacturer must submit to the Department the testing and findings made by the CARB for each of the testing requirements listed in proposed N.J.A.C. 7:27-29.9.

#### **7:27-29.10 Warranty**

The Department, at N.J.A.C. 7:27-29.10(a), proposes to incorporate into its regulations California's emissions warranty requirements for new LEVs. The warranty requirements would apply to all passenger cars and light-duty trucks for which the manufacturer is claiming early ZEV credits, and to all qualifying vehicles delivered for sale in New Jersey on or after January 1, 2009.

The emissions warranty under the California LEV regulations is longer and more comprehensive than the Federal Tier 2 emissions warranty for vehicles certified to the PZEV and ATPZEV emission standards. Manufacturers are required to provide a 15 years/150,000 mile warranty on any defect that causes illumination of the malfunction indicator light or check-engine light, and to repair any malfunction that causes the vehicle to fail the inspection/maintenance emissions test during this period. The Federal emissions performance warranty is two years/24,000 miles, whichever occurs first. The Federal warranty also covers key emission control components (catalytic converter, electronic emission control unit and the onboard diagnostics control unit) for eight years/80,000 miles.

Under the California LEV regulations, a manufacturer is required to monitor the frequency of emission-related warranty repairs and report those components that are failing above a certain rate. Under proposed N.J.A.C. 7:27-29.10(b), the Department would adopt the identical requirements. In lieu of a New Jersey-specific report, the Department is proposing at

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N.J.A.C. 7:27-29.5(c) to allow a manufacturer to submit the Failure of Emission-Related Components reports that it submits to the CARB. The manufacturer would be required to supply a copy of this report to the Department upon request.

An example of what could trigger the Department to request a copy of the report submitted to the CARB is the Department's belief that an emission-related component may be failing at a different rate in New Jersey than reported in California. The report data would enable the Department to better evaluate the issue.

### **7:27-29.11 Reporting**

At N.J.A.C. 7:27-29.11 the Department proposes additional reporting requirements for manufacturers beyond those required at proposed N.J.A.C. 7:27-29.7 for the ZEV Credit Bank and proposed N.J.A.C. 7:27-29.8 for annual fees. Beginning with the 2009 model year, proposed N.J.A.C. 7:27-29.11 would require each manufacturer to submit two reports by March 1 following the close of the completed model year. For the first report, the manufacturer would tabulate the total number of passenger cars and light-duty trucks in each test group delivered for sale in New Jersey. For the second report, each manufacturer subject to the NMOG fleet average requirements of proposed N.J.A.C. 7:27-29.5 would submit a report to the Department calculating its fleet-wide NMOG emission average for passenger cars and light-duty trucks delivered for sale in New Jersey for the model year just ended.

These reports will enable the Department to evaluate a manufacturer's compliance with the NMOG fleet average requirement and to calculate compliance with the ZEV sales requirement, in order to ensure that the emission reduction benefits of the LEV program are achieved in New Jersey.

### **7:27-29.12 Enforcement**

Proposed N.J.A.C. 7:27-29.12(a) allows the Department to inspect buildings, equipment or vehicles to determine compliance with the provisions of this subchapter. Under proposed N.J.A.C. 7:27-29.12(b), all subject manufacturers must maintain records for a period of not less than five years after submitting any applications, notices, reports or amendments to the Department. The five-year record retention period is consistent with the record-keeping requirements for compliance documents specified elsewhere in Chapter 27. The five-year period allows the Department sufficient time to conduct compliance reviews and take any necessary enforcement action.

Proposed N.J.A.C. 7:27-29(c) allows the Department to assess penalties consistent with the penalty provisions of the State's Air Pollution Control Act (N.J.S.A. 26:2C-19). The related proposed amendments to N.J.A.C. 7:27A, Air Administrative Procedures and Penalties, are discussed below.

The Department is proposing at N.J.A.C. 7:27-29.12(d) and (e) that any orders, enforcement actions or voluntary emission-related recall campaigns taken by the CARB that result in the recall of any model vehicle shall also apply to all of the same model vehicle registered in New Jersey. A manufacturer would have 30 calendar days following the issuance of the action by the CARB to demonstrate to the Department that the action is not applicable to vehicles in New Jersey. The Department believes that 30 calendar days are a reasonable amount of time for a vehicle manufacturer to make the demonstration to the Department.

### **7:27-29.13 Incorporation by Reference**

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Proposed N.J.A.C. 7:27-29.13 sets forth the sections of Title 13, CCR that are being incorporated by reference in this subchapter. In order to maintain consistency with the CCR, when California amends, supplements, repeals or otherwise changes a rule, the change shall also be effective in New Jersey. Additionally, the Department intends that, when a provision of the CCR is incorporated by reference, the incorporation includes all documents and notes associated with that provision, unless specifically excluded by the new rules. Proposed Table 1 at N.J.A.C. 7:27-29.13(b) identifies the specific provisions of Title 13, CCR, which are to be incorporated by reference into the proposed rules.

If there is an inconsistency between the New Jersey rules and the incorporated California rules, the California rules will control. This proposed provision at N.J.A.C. 7:27-29.13(d) is necessary because the Clean Air Act requires states to adopt either the California regulations or the Federal regulations. States may not adopt rules with standards that differ from one or the other programs. Nothing in the incorporated California rules shall affect the Department's ability to enforce statutes, rules, or permits, or orders administered or issued by the Commissioner. The proposed rule also provides the public with an address for obtaining copies of the incorporated California rules.

#### **7:27-29.14 Severability**

At N.J.A.C. 7:27-29.14, the Department proposes to include a “severability” provision. The provision is consistent with similar provisions in other air pollution control rules.

#### **7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act**

The proposed new rules at N.J.A.C. 7:27-29 necessitate new penalty provisions at N.J.A.C. 7:27A-3.10(m)29. The proposed penalties are consistent with penalties in N.J.A.C. 7:27A-3 for violations of comparable air rules in N.J.A.C. 7:27. For example, the proposed new penalties for violation of failure to submit reports, and improper log or record keeping, correspond to existing penalties for similar violations of N.J.A.C. 7:27. The proposed penalties for selling or leasing non-complying vehicles (see proposed N.J.A.C. 7:27-29.4(a)), violating fleet average requirements (see proposed N.J.A.C. 7:27-29.5(a)), and failing to comply with ZEV sales requirements (see proposed N.J.A.C. 7:27-29.6(a)) are consistent with penalties for comparable violations of N.J.A.C. 7:27.

On May 16, 2005, the Department published its adoption of amendments to the Air Administrative Procedures and Penalties rules at N.J.A.C. 7:27A to implement the Grace Period Law, N.J.S.A. 13:1D-125, et seq., which requires the Department to establish procedures to ensure the consistent application of grace (compliance) periods for minor violations of certain environmental statutes (See 37 N.J.R. 1789(a)). Pursuant to that law, the Department, through rulemaking, designates certain types of violations of rules contained in sixteen environmental statutes as minor or non-minor violations.

The Department has determined that, based upon the criteria set forth at N.J.S.A. 13:1D-129, some violations of the within proposed rules at N.J.A.C. 7:27-29 would result in an emission increase. Such a violation would be contrary to the purpose of the Air Pollution Control rules, which is to control air pollution. Consequently, the violation would be considered non-minor and would not be subject to a grace period. Other violations are strictly administrative, and would not result in an emission increase. Those violations would be designated minor, and would be subject to a grace period.

### **Social Impact**

The Department anticipates that these proposed new rules at N.J.A.C. 7:27-29 will have a positive social impact on the residents of New Jersey. The implementation of the LEV emission standards for new passenger cars and light-duty trucks sold in New Jersey will help to reduce those precursor emissions that lead to the formation of ground-level ozone. Since the precursors for ground-level ozone (NO<sub>x</sub> and VOCs) are also precursors to the formation of fine particulate matter (called PM<sub>2.5</sub>, for particulate matter smaller than 2.5 microns in diameter), it is expected that the proposed rules will also have a positive social impact by reducing PM<sub>2.5</sub> concentrations. In addition, vehicles that comply with the emission requirements of the LEV program will reduce emissions of carbon monoxide, as well as hazardous air pollutants, toxic substances and greenhouse gas emissions.

Ground-level ozone and fine particulate matter are both criteria air pollutants with health-based National Ambient Air Quality Standards (NAAQS) that are exceeded in all or parts of New Jersey; therefore, reducing the emissions that form these pollutants will aid the State in its quest to attain these national standards. Although New Jersey has attained the NAAQS for carbon monoxide, several areas of the State are maintenance areas for that criteria pollutant, and as such, any effort to keep levels of that pollutant below the national standard is encouraged.

Implementation of the LEV requirements in New Jersey is expected to reduce emissions of hazardous air pollutants (HAPs) (substances listed in Section 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b)) and toxic substances (substances listed in N.J.A.C. 7:27-17). HAPs are substances that may present a threat of adverse human health effects or adverse environmental effects. Examples of VOCs emitted from motor vehicles that are HAPs are toluene, 1,3-

butadiene and benzene. In addition to being classified as a HAP, benzene is also classified as a toxic substance and is a human carcinogen.

The CARB recently incorporated the carbon dioxide (CO<sub>2</sub>) equivalent emission standards into the California LEV program. New Jersey is adopting the California LEV program emission standards in their entirety to remain identical to California as required by the Clean Air Act. As such New Jersey's environment will benefit from reductions in greenhouse gases, including CO<sub>2</sub>, methane, oxides of nitrogen and hydroflurocarbons.

On February 18, 2003, the Department published regulations requiring large stationary sources to report emissions of the greenhouse gases carbon dioxide (CO<sub>2</sub>) and methane (CH<sub>4</sub>) (35 N.J.R. 1059(a)). These regulations revised the definition of distillates of air at N.J.A.C. 7:27-21.1 to remove CO<sub>2</sub> from the chemical species listed as distillates of air, thereby classifying CO<sub>2</sub> as an air contaminant at N.J.A.C. 7:27-21.

On October 18, 2004, the Department proposed further regulatory action to classify CO<sub>2</sub> as an air contaminant. (See 36 N.J.R. 4607(a).) This clarification of the status of CO<sub>2</sub> is a regulatory prelude to anticipated future regulatory adoption of a Model Rule proposed through the Regional Greenhouse Gas Initiative (RGGI). New Jersey is participating through RGGI, along with eight other states in the Northeast and Mid-Atlantic (Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont), in the development of a regional CO<sub>2</sub> cap-and-trade program. Prior to regulating CO<sub>2</sub> as an air pollutant, the Department would need to make a formal determination and advise the public that regulating CO<sub>2</sub> is in the "best interest of human health, welfare, and the environment" as required by the Air Pollution Control Act (APCA), N.J.S.A. 26:2C-1 et seq. The proposed rule to reclassify CO<sub>2</sub> as

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an air contaminant serves as this formal determination and public advisory (See N.J.S.A. 26:2C-9.2i).

As such, the greenhouse gas component to the LEV proposal is consistent with similar actions taken by the Department with respect to stationary source emissions of greenhouse gases.

Motor vehicle emissions contain VOCs and NO<sub>x</sub>, both of which, in the presence of sunlight, react in the ambient air to form ozone. Ozone continues to be New Jersey's most pervasive air quality problem. Although the ozone that occurs naturally in the upper regions of the earth's atmosphere provides critical shielding from the sun's ultraviolet radiation, its formation in the lower atmosphere (referred to as ground-level ozone) is associated with a variety of adverse health, environmental and quality of life effects. This is particularly true during summer months, when the weather conditions are most favorable for formation of ground-level ozone.

Ground-level ozone, formed by chemical reactions that take place in the atmosphere, can be transported by the wind. This means that elevated levels of ozone can occur many miles away from the source of their original precursor emissions. Therefore, unlike more traditional pollutants, such as sulfur dioxide and lead, which are emitted directly and can be controlled at their source, reducing ozone concentrations poses additional control challenges. To address this concern, states need not only to control local ozone precursor emissions, but also to work regionally to insure reductions in the transported precursors that cross their borders. This is why, in addition to proposing a LEV program to help reduce ozone precursor emissions from gasoline-fueled motor vehicles, New Jersey has proposed and adopted regulations based on regional efforts to address other primary manmade sources of ozone precursors. Rules based on the Model Rule for Mobile Equipment Repair and Refinishing; and Model Rule for Solvent

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Cleaning Operations were published on June 2, 2003 (see 35 N.J.R. 2509(a)). Rules based on the Model Rule for Architectural and Industrial Maintenance were published on June 21, 2004. (see 35 N.J.R. 3078(a)). Rules based on Model Rule for Consumer Products and Model Rule for Portable Fuel Container Spillage Control were promulgated on May 3, 2004 (see 36 N.J.R. 2218(a)). Specifically, New Jersey, and most of the other states in the Ozone Transport Region have proposed and adopted rules to address highly evaporative solvents (emissions from consumer products, solvent cleaning, mobile repair and refinishing, and paints), gasoline emissions (emissions from portable fuel containers) and combustion by-products (NO<sub>x</sub> emissions from industry sources). New Jersey's proposed NO<sub>x</sub> rules have not yet been adopted. (See 36 N.J.R. 4228(c)).

Ground-level ozone can irritate lung airways and cause inflammation much like sunburn. Other symptoms from exposure include wheezing, coughing, pain when taking a deep breath, and breathing difficulties during exercise or outdoor activities. Even at very low levels, exposure to ground-level ozone can result in decreased lung function, primarily in children active outdoors, as well as increased hospital admissions and emergency room visits for respiratory illnesses among children and adults with pre-existing respiratory diseases, such as asthma ([www.epa.gov/air/urbanair/ozone/hlth.html](http://www.epa.gov/air/urbanair/ozone/hlth.html)). In addition to these primary symptoms, research now indicates that repeated exposure to ozone pollution for several months could cause permanent lung damage. More recent information from the USEPA in its first external review draft of the ozone criteria document, entitled "Air Quality Criteria for Ozone and Related Photochemical Oxidants" (January 2005), continues to support the conclusions drawn in its 1997 document, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone"

(See 62 Fed. Reg. 60317 November 7, 1997). Specifically, these documents show that chronic exposure to ozone is associated with declines in lung function, inflammation, and development of asthma in children and adults.

Ozone exposure is especially problematic for susceptible populations – small children, the elderly, and asthmatics. In addition, recent evidence has linked the onset of asthma to exposure to elevated ozone levels in exercising children ("Asthma in exercising children exposed to ozone: A cohort study," McConnell, R., et al. (2002) *Lancet*, 359:386-391).

Elevated ozone levels are predicted to cause premature death, the onset of new cases of asthma, and asthma attacks (USEPA, Final Tier 2 Rule: Air Quality Estimation, Selected Health and Welfare Benefit Methods, and Benefits Analyses Results, EPA 420-R-99-032, December 1999). Two new studies provide further evidence linking ozone to premature deaths. The *Journal of the American Medical Association* recently reported a study that examined respiratory and cardiovascular deaths in 95 cities in the United States between 1987 and 2000. The study found that increasing levels of ozone could be linked to thousands of premature deaths annually. The researchers estimated that the annual death toll in the 95 cities would be 3,767, including 319 annually in New York City, due to elevated levels of ozone ("Ozone and short-term mortality in 95 U.S. Urban Communities, 1987 to 2000," Bell, M.I., et. al., *Journal of the American Medical Association* (2004), 292:2372-2378). A similar study conducted in Europe drew the same conclusions when looking at the effects of ozone on short-term mortality in 19 of 23 European cities ("Acute effects of ozone on mortality from the Air Pollution and Health: A European Approach Project," Gryparis, A., et al., *American Journal of Respiratory and Critical Care Medicine* (2004), 170: 1080-1087).

In addition to its adverse health effects, ozone interferes with the ability of vegetation to produce and store nutrients, which makes plants more susceptible to disease, insects, other pollutants, and harsh weather. This impacts annual crop production throughout the United States, resulting in significant losses, and injures native vegetation and ecosystems. Ozone damages the leaves of trees and other plants, as well, adversely impacting the appearance of cities, national parks, and recreation areas (<http://www.epa.gov/air/urbanair/ozone/>). Ozone can also damage certain man-made materials, such as textile fibers, dyes, and paints (EPA Fact sheet on the New 8-Hour Ozone and Fine (2.5 microns) Particulate Matter Health Standards, July 1997).

In addition to forming ground-level ozone, NO<sub>x</sub>, VOCs and sulfate emissions can form PM<sub>2.5</sub>. PM<sub>2.5</sub> is a combination of directly emitted primary particles, as well as secondary particles formed from precursor compounds. The transport issues described for ozone also apply to fine particulate matter. The health effects associated with exposure to fine particles are significant, mainly due to the fact that particles of this size (less than 2.5 microns in diameter) can easily reach into the deepest regions of the lungs. Epidemiological studies have shown a significant correlation between elevated fine particle levels and premature mortality. Other significant health effects associated with fine particle exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function and difficulty breathing, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia.

The USEPA has estimated that attainment of the new annual and 24-hour PM<sub>2.5</sub> standards nationally would prolong tens of thousands of lives and prevent tens of thousands of hospital

admissions each year. In addition, these new standards would prevent hundreds of thousands of doctor visits, absences from work and school, and respiratory illnesses in children (40 CFR, Parts 51, 72, 73, 74, 77, 78, and 96; Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Final Rule, pg. 35).

As with ozone exposure, individuals particularly sensitive to fine particle exposure include older adults, people with heart and lung disease, and children. Lung impairment from acute exposure can persist for two to three weeks. The elderly have been shown to be particularly at risk for premature death from the effects of particulate matter. Health studies have shown that there is no clear threshold below which adverse effects are not experienced by at least certain segments of the population. Thus, some individuals particularly sensitive to fine particle exposure may be adversely affected by fine particle concentrations below the annual and 24-hour standards. In addition to the health effects associated with the particles themselves, chemicals adsorbed in and on the particles can also be toxic. By reducing the levels of ozone and PM<sub>2.5</sub> precursors, implementation of the LEV program indirectly reduces the formation of these fine particles in the atmosphere.

PM<sub>2.5</sub> also contributes to decreased visibility. The 1999 Federal Regional Haze Rule (see 40 C.F.R. Part 51) protects Class I areas that are primarily National Parks and Wilderness Areas. New Jersey has a Class I area at the Brigantine Wilderness Area of the Edwin B. Forsythe National Wildlife Refuge. In response to USEPA Regional Haze requirements, New Jersey must work with its neighboring states to establish goals to improve visibility at that Class I area. Reducing PM<sub>2.5</sub> precursor emissions is a major part of the plan to meet those goals.

NO<sub>x</sub> emissions alone have serious human health effects, as well as when they participate in the formation of ozone and fine particulate matter. Although nitric oxide (NO) is a relatively

nonirritating gas, it is readily oxidized to nitrogen dioxide (NO<sub>2</sub>), which can damage respiratory defense mechanisms, allowing bacteria to proliferate and invade the lung tissue. NO<sub>2</sub> causes irritation to the lungs, lowers resistance to respiratory infections, and contributes to the development of emphysema, bronchitis, and pneumonia. Oxides of nitrogen react chemically in the atmosphere to form nitric acid, which contributes to acid rain formation.

Gasoline-fueled motor vehicles are a primary contributor of carbon monoxide emissions, as well. Carbon monoxide is a poisonous gas at certain threshold levels. Once absorbed into the bloodstream, carbon monoxide may have both direct and indirect effects on the cardiovascular system by interfering with the oxygen-carrying ability of the blood. Exposure to carbon monoxide aggravates angina and other aspects of heart disease and decreases exercise tolerance in persons with cardiovascular problems. In fetuses, infants, elderly persons, and individuals with respiratory diseases, elevated levels of carbon monoxide are also a serious health risk.

Although the entire State is currently in attainment of the carbon monoxide NAAQS, portions of the State are still considered maintenance areas for that criteria pollutant, and as such, any effort to continue to keep carbon monoxide levels below the NAAQS is beneficial to the citizens of New Jersey.

Motor vehicles are significant contributors of CO<sub>2</sub>, the predominant greenhouse gas emitted in New Jersey. CO<sub>2</sub> emissions from on-road gasoline-fueled motor vehicles in New Jersey represent approximately 30 percent of the total CO<sub>2</sub> equivalent emission inventory in 2001 (NJDEP utilizing data from the Federal Energy Information Agency), which is considerably higher than the 20 to 25 percent average for the northeast states (Reducing Greenhouse Gas Emissions from Light-Duty Motor Vehicles, Northeast States Center for a

Clean Air Future, September, 2004). The most significant impact from increasing levels of CO<sub>2</sub> and other greenhouse gases are the climatic effects. By reducing the levels of greenhouse gases emitted by motor vehicles in New Jersey, the LEV program will help to reduce the adverse impacts of greenhouse gases on ecological systems and human health.

Although there is uncertainty about the exact impact of greenhouse gases on the Earth's climate, it is generally regarded in the scientific community that detectable changes are taking place. These changes include effects on temperature, precipitation and sea level rise, all of which could have significant adverse effects on many ecological systems as well as on human health and the economy. New Jersey, being a coastal state, is particularly vulnerable to changes in sea level that could result from global climate change.

Global warming can have adverse impacts on human health. Extended periods of high summertime temperatures can result in increased mortality and heat-related illnesses, especially in urban areas due to their heat trapping effect. The USEPA reports that in Newark, New Jersey, a two to three degree Fahrenheit warming could increase heat-related deaths during a typical summer from about 25 to 125 (in 1997). (USEPA, Climate Change and New Jersey, September 1997.)

In addition, global warming contributes to conditions favorable for the formation of ground-level ozone by increasing ambient temperatures. The USEPA states that a four-degree warming in New York City, with no other change in weather or emissions, could increase concentrations of ozone by four percent and that similar increases could occur in New Jersey. (USEPA, Climate Change and New Jersey, September 1997.)

The heatwave that occurred in the summer of 2003 in Europe has been related to the increase in greenhouse gases ("Human Contribution to the European Heatwave of 2003," Peter

A. Stott, D.A. Stone, M.R. Allen, *Nature*, Volume 432, December 2, 2004). Although it could not be concluded that the increase in greenhouse gases caused the heatwave, the study concluded with a confidence level greater than 90 percent that the increase in greenhouse gas emissions has at least doubled the risk of a heatwave of the magnitude seen in Europe in 2003.

New Jersey's coastline could be adversely affected by the sea level rise caused by global warming. Continued sea level rise expected to occur from global warming can lead to contamination of drinking water, loss of beaches, damage to coastal ecosystems, and flood damage to infrastructure. Salt-water infiltration in coastal ecosystems in New Jersey would adversely impact habitat for wildlife and fisheries. New Jersey's water supply could also be adversely effected from global climate change by changes in temperature and precipitation. Prolonged periods of drought can severely impact New Jersey's water supply. Increased evaporation rates due to higher temperatures during the summer months can lead to lower river and stream flow rates, increasing the potential for contamination of water supplies.

Another health benefit of implementing the LEV program in New Jersey is an expected reduction in emissions of HAPs and other toxic substances contributed by motor vehicles. HAPs and other toxic substances can cause serious health and environmental effects. Health effects include cancer, birth defects, nervous system problems and death due to massive accidental releases (USEPA, Plain English Guide to the Clean Air Act, April 1993). Many of the VOCs emitted in motor vehicle exhaust are also HAPs, such as toluene, 1,3-butadiene xylenes, ethylbenzene, hexane, methyl tertiary butyl ether and benzene. Detailed information about the health effects of each of the HAPs is available in separate fact sheets from an USEPA (EPA Health Effects Notebook for Hazardous Air Pollutants-Draft (EPA-452/D-95-003, PB95-503579,

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December 1994; <http://www.epa.gov/ttn/atw/> and the ATSDR ToxFAQs website (<http://www.atsdr.cdc.gov/toxfaq.html>).

As part of USEPA's National Air Toxics Assessment activities, the USEPA conducted a national-scale assessment of 33 air pollutants (a subset of 32 air toxics on the Clean Air Act's list of 188 air toxics plus diesel particulate matter (diesel PM)). The last assessment was conducted for the year 1996 and will soon be updated based on 1999 emission inventory data (USEPA, National Air Quality and Emissions Trend Report, Chapter Five, Air Toxics, 1999). Nineteen of the 33 air pollutants were identified as pollutants of concern for New Jersey because the concentrations were predicted to exceed human health benchmarks in one or more counties. The pollutants of concern were determined by comparing modeled concentrations to health benchmarks to calculate risk ratios. Contaminants with risk ratios greater than one were considered to be pollutants of concern to New Jersey. Mobile source emissions significantly contributed (greater than 30 percent) to the modeled concentrations of five of these 19 contaminants ([www.state.nj.us/dep/airmon/airtoxics/nj.html](http://www.state.nj.us/dep/airmon/airtoxics/nj.html)).

In summary, as described above, the proposed LEV program rules will have a positive social impact because the rules will result in reductions in ozone, PM<sub>2.5</sub>, CO, CO<sub>2</sub> and other greenhouse gases, HAPs and other toxic substances. The efforts to decrease the concentrations of these pollutants in the environment will enhance the quality of life for New Jersey citizens by reducing their exposure to harmful substances and improving the environment in New Jersey. Reduction of greenhouse gas emissions from motor vehicles would lessen the potential for climate change, and thereby reduce the impacts on human health, the environment and the economy.

The Department anticipates that the proposed repeals from and amendments to N.J.A.C.

7:27-26 will have no impact, since the NLEV program has lapsed.

### **Economic Impact**

The proposed new rules at N.J.A.C. 7:27-29 are expected to have a minimal economic impact upon the members of the public who purchase automobiles in the State beginning with model year 2009. The manufacturing costs to comply with this proposal and the Federal Tier 2 program are similar, although some vehicle by vehicle variations may exist. Additionally, the addition of the relatively new greenhouse gas requirements in the California program may increase the initial price of a vehicle, but the increase in cost would be offset by the reduced operating cost, such as fuel savings, and may result in a net savings to the purchaser. The proposed rules are not expected to appreciably reduce model availability in New Jersey.

With respect to the cost of passenger cars and light-duty trucks certified to the LEV emission standards, the CARB believes that the technology needed to comply with the LEV standards will likely be the same basic emission control approaches being utilized on current passenger cars with only slightly more refinement and corresponding cost increases (CARB, Addendum Presenting and Describing Revisions to: Initial Statement of Reasons (ISOR) for Proposed Rulemaking, Public Hearing to Consider Adoption of Regulations to Control Greenhouse Gas Emissions from Motor Vehicles, September 10, 2004).

Accordingly, as detailed in the CARB's Staff Report for adoption of the second phase of the LEV Program, the CARB estimates that the retail cost increase attributable to the exhaust element will range from \$68.00 for passenger cars to \$276.00 for the heaviest light-duty trucks to meet the LEV Program's SULEV standards. ("LEV II" and "CAP 2000" Amendments To The

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California Exhaust and Evaporative Emission Standards and Test Procedures for Passenger Cars, Light-Duty and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles: Final Statement of Reasons, September 1999.)

The USEPA estimates the additional retail cost for vehicles meeting the proposed Tier 2 emission standards to be \$78.00 to \$245.00. (40 CFR Parts 80, 85, and 86 Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements; Final Rule, 65 Fed. Reg. 6775 (February 10, 2000).)

Therefore, the additional cost to New Jersey's consumers for passenger cars and light-duty trucks meeting the emissions standards of the California LEV program versus Federal Tier 2 standards is negligible. In addition, the extended warranty of 15 years, 150,000 miles for PZEVs and ATPZEVs may result in lower repair costs to the consumer over time.

The Department anticipates that the greenhouse gas emissions standards in the proposed LEV program rules will result in no net increase in cost due to the net savings through decreased operating costs over the life of the vehicle (CARB, ISOR). The CARB has estimated the overall cost increase attributable to the SULEV standards to be \$68.00 to \$276.00. USEPA estimates the additional retail cost for vehicles meeting the Tier 2 emission standards to be \$78.00 to \$245.00. Therefore, the Department estimates that the additional costs to New Jersey's consumers for vehicles meeting the LEV standards vs. the Tier 2 standards would range from \$0 to \$31.00 per vehicle, which is the difference between the costs of the California and the Federal programs. Assuming a vehicle lifetime of 10 years, the additional cost for a vehicle certified to California's standards would be \$3.10 per year. Assuming 500,000 applicable vehicle sales per year in New Jersey, the total annual cost of the California program above the Federal program would be \$1,550,000. The Department's projected emission reduction benefits for the LEV

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program are 6.8 tons per day of VOC and NO<sub>x</sub> combined for calendar year 2017. On a dollar per ton basis, the proposed LEV program would cost approximately \$625.00 per ton of VOC and NO<sub>x</sub> reduced.

These proposed rules also provide a positive economic impact on vehicle manufacturers. Vehicle manufacturers that participate in the ZEV Credit Bank program may use their banked credits to offset the ZEV sales requirements of New Jersey's LEV program, thereby easing their transition into the program requirements. Use of the credits will assist manufacturers in complying with the anticipated ZEV requirements, and is expected to reduce the manufacturer's overall costs to comply with the LEV program. For model year 2009, without using the ZEV Credit Bank, the manufactures would need to deliver for sale in New Jersey a fleet of passenger cars and light-duty trucks of which 11 percent must meet zero emission requirements. By using vehicle equivalent credits on deposit in the ZEV Credit Bank, a manufacturer could produce and deliver for sale fewer such passenger cars and light-duty trucks and use banked credits to offset the remaining requirements.

There will be additional compliance costs for manufacturers with the inclusion of CO<sub>2</sub> equivalent emission standards into the LEV program beginning with the 2009 model year. The CARB has estimated the average cost of compliance with the near term greenhouse gas emission standards (2009 through 2011) for passenger car/LDT-1 vehicles is \$367.00 and for LDT-2 vehicles \$277.00. (CARB, ISOR).

The CARB has estimated that the average cost of compliance with the mid-term greenhouse gas emission standards (2012 through 2014) for passenger cars and light-duty trucks-1 will result in an average cost of \$1,064. The estimated average cost for compliance for light-duty trucks-2 (a light-duty truck with a loaded vehicle weight greater than 3,750 pounds, and a

gross vehicle weight of less than or equal to 8,500 pounds) is \$1,029. Nonetheless, the CARB indicates that the fundamental conclusions presented in their ISOR as to the effect of the greenhouse gas emission standards on vehicle owners is that the greenhouse gas emission standards will result in a net monthly savings for the average vehicle purchaser through decreased operating costs fuel costs over the life of the vehicle (CARB, ISOR).

The most direct economic impact from these proposed rules will be upon vehicle manufacturers that deliver newly manufactured passenger cars and light-duty trucks to New Jersey for sale. The Department is proposing to assess a \$1.00 annual fee on each new passenger car and light-duty truck a manufacturer delivers for sale in New Jersey for each calendar year. The fee is to cover the Department's cost to implement the ZEV Credit Bank. The Department anticipates that the total annual cost to manufacturers delivering passenger cars and light-duty trucks for sale in New Jersey will be approximately \$500,000 per year, based on the annual sales of new passenger cars and light-trucks in New Jersey.

The Legislature authorized the Department to assess fees to cover the Department's cost of administering the ZEV Credit Bank. (See N.J.S.A. 26:2C-18.18(c).) The Department based the fees in proposed N.J.A.C. 7:27-29.8 on the projected number of employees and other resources, such as services for software development and maintenance, that it will require for administration of the ZEV Credit Bank, and on projections for anticipated manufacturer participation in the Bank and the projected number of transactions. The Department projects that it will need two full time staff to administer the ZEV Credit Bank, at an anticipated total salary cost of approximately \$200,000 per year including fringe benefits and indirect costs.

Database development and maintenance cost is projected to be \$150,000 the first year, and \$50,000 in each subsequent year. The Department also expects to incur costs associated

with vehicle registration database reports needed for quality assurance of the ZEV Credit Bank.

The Department estimates the annual costs for these reports at \$100,000. Based on these estimates, the cost of the ZEV Credit Bank will be approximately \$500,000 in fiscal year 2006 and \$400,000 in each subsequent year. Based upon these projections, the Department anticipates that the proposed per vehicle fee will cover the Department's cost to administer the ZEV Credit Bank program.

The Department anticipates that the proposed repeals from and amendments to N.J.A.C. 7:27-26 will have no impact, since the NLEV program has lapsed.

### **Environmental Impact**

Prior to mandatory start of the program in model year 2009, these proposed new rules at N.J.A.C. 7:27-29 do not impose a mandatory requirement on manufacturers. Nevertheless, the Department anticipates that these proposed rules will have a positive environmental impact in New Jersey by encouraging manufacturers to deliver qualifying low emission vehicles for sale in the State prior to the start of the mandatory program.

Based on projections of sales of ZEVs, PZEVs and ATPZEVs in California, the Department estimates that as many as 150,000 PZEVs could be delivered for sale in New Jersey in calendar year 2007. This would lead to emission reductions in New Jersey before the sale of model year 2009 passenger cars and light-duty trucks. The Department cannot quantify the emission reductions that could result from the voluntary early introduction provisions of these rules. This is due to the uncertainties in the number of passenger cars and light-duty trucks that may be sold, the projected differences in emission certification levels between a PZEV and the comparable Federal emissions certification level for each particular make and model and their

use. However, if current trends in emissions certification continue, the emissions reductions could be substantial with a positive impact on the environment through reduced emissions of ozone precursors and reduced emissions of toxic air pollutants, as discussed in the Social Impact, above.

The Department has modeled the projected emission reductions of ozone precursor emissions from implementation of the LEV program beginning in model year 2009 in New Jersey and analyzed the emission reduction benefits of the LEV program relative to the Federal Tier 2 program that would be in place. The results of the analysis show an emission reduction benefit from implementation of the LEV program in New Jersey of 6.8 tons per day of VOC and NO<sub>x</sub> combined in 2017. This represents a 3.3 percent reduction in the statewide on-road emissions inventory for VOCs and NO<sub>x</sub>.

The analysis was performed for the year 2017 because this is the most distant future year that the Department has statewide forecasts of vehicle activity. The USEPA MOBILE6 model version MOBILE 6.2.03 (September 24, 2003) was used to perform the analysis.

The Department based its estimate of the emission reduction benefits from the proposed New Jersey LEV program on the modeling of the California standards, as set forth in the USEPA guidance entitled "Modeling Alternative NLEV Implementation and Adoption of California Standards in MOBILE6," June 5, 2002. This guidance supplements and revises the guidance given in Section 7.4.1 of the document entitled: "Technical Guidance on the Use of MOBILE6 for Emission Inventory Preparation" located on EPA/OTAQ's website at <http://epa.gov/otaq/models/mobile6/m6techgd.pdf>. The USEPA's models represent the California LEV program prior to the recent revisions incorporating the greenhouse gas emission standards. In order to apply the models to the proposed LEV program in New Jersey, the

Department calculated the figures based upon the assumption that the LEV program will replace the Federal Tier2 Program beginning with Model Year 2009 and continuing through 2017.

CARB has estimated reductions in emissions of NMOG and NO<sub>x</sub> emissions that are expected to occur as a result of the CO<sub>2</sub> emission standards (California Environmental Protection Agency, Air Resources Board, Staff Proposal Regarding the Maximum Feasible and Cost-Effective Reduction of Greenhouse Gas Emissions from Motor Vehicles, June 14, 2004). As reported by the CARB, these surrogate reductions in emissions of ozone precursor gases are primarily attributable to reductions in emissions associated with the fuel cycle including refining and distribution of gasoline. As such, the Department expects similar reductions from implementation of the LEV program in New Jersey; however, the Department cannot quantify them at this point.

As discussed in the Social Impact, above, beginning with model year 2009 a CO<sub>2</sub> equivalent emission standard is incorporated into the LEV program as part of the greenhouse gas reduction program. Accordingly, the CO<sub>2</sub> equivalent fleet average emission requirement would apply to passenger cars and light-duty trucks (including medium-duty passenger vehicles) delivered for sale in New Jersey beginning with model year 2009 passenger cars and light-duty trucks delivered for sale in New Jersey on and after January 1, 2009 and thereafter. The Department has not yet calculated the projected CO<sub>2</sub> equivalent emission reductions for New Jersey. However, the Department expects that the reductions for New Jersey, on a percentage basis, would be similar to those projected for the California fleet. The CARB has projected a 17 percent reduction in CO<sub>2</sub> equivalent emissions from the light-duty fleet in 2020 and a 25 percent reduction in 2030 (California Environmental Protection Agency, Air Resources Board, Staff Report: "Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider

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Adoption of Regulations to Control Greenhouse Gas Emissions from Motor Vehicles," August 6, 2004 Staff Proposal).

The Department anticipates that the proposed repeals from and amendments to N.J.A.C. 7:27-26 will have no impact, since the NLEV program has lapsed.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65), require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

The Federal Clean Air Act, section 177 (42 U.S.C. § 7507), allows states to establish more stringent standards than the Federal program by implementing the California program. Although the LEV program that the Department proposes is more stringent than the Federal Tier 2 standards, it is identical to the Federally approved California program, which Federal law allows as an alternative to the Tier 2 program. Therefore, the proposed rules are not more stringent than one of the two federally authorized standards.

N.J.S.A. 26:2C-8.15, et seq., effective January 14, 2004, directs the Department to implement the California LEV program beginning on January 1, 2009 and to establish a ZEV Credit Bank. The LEV program has requirements that go beyond the comparable Federal emissions standards program for passenger cars and light-duty trucks, such as the ZEV sales requirement, but the proposed requirements are not beyond the Federally-approved California program. In mandating that the Department adopt rules to implement the LEV program in New Jersey, the Legislature has fulfilled the intent of the Federal Standards Analysis, determining that the California LEV program provides emission reductions that will lead towards better air

quality in New Jersey, that the program is cost-effective and that the emissions standards are achievable under current technology.

The New Jersey Legislature found that the LEV program provides for greater reductions in pollutants than the Federal program. The State has committed to implementing the NLEV program until the commencement of model year 2006 but can implement the LEV program after the commencement of model year 2006. The Legislature further found that a significant fraction of particulate emissions, smog forming emissions and airborne cancer risk comes from vehicle emissions and is expected to increase with the projected population increase over the next decade. The Legislature stated that mobile sources of emissions have received less regulatory attention than industrial facilities and area sources of pollution.

The Legislature further found that ground-level ozone is formed when automobile, industrial and other pollutants chemically react with bright sunshine and high temperatures. The Legislature cited documentation that ground-level ozone irritates the respiratory system and aggravates chronic respiratory diseases such as asthma and bronchitis and therefore concluded that ground-level ozone and toxic air pollutants have a substantial negative impact on the health and quality of life of residents of the State and found that reducing ground-level ozone will help reduce these negative health effects. The Legislature therefore determined that it is in the public interest to implement the LEV Program beginning January 1, 2009.

Because the proposed rules are mandated by the New Jersey Legislature, and are not more stringent than one of the two federally-authorized standards, no further analysis is necessary.

### **Jobs Impact Statement**

The proposed new rules at N.J.A.C. 7:27-29 are not expected to have an impact on employment and jobs in New Jersey. The Department does not anticipate that the proposed new rules will result in business creation, elimination or expansion, or business competitiveness in New Jersey. The costs expected to be incurred by heavy-duty diesel vehicle owners and operators to comply with the proposed new rules are not anticipated to affect their operations in such a way as to impact employment.

The Department anticipates that the proposed repeals from and amendments to N.J.A.C. 7:27-26 will have no impact, since the NLEV program has lapsed.

### **Agriculture Industry Impact**

Pursuant to P.L. 1998, c. 48, adopted on July 2, 1998, the Department evaluated this proposal to determine the nature and extent of the impact of the regulatory action on the agriculture industry. The Department determined that the proposed new rules at N.J.A.C. 7:27-29 will have no adverse impact on the agriculture industry in New Jersey. Rather, to the extent that the rules encourage the sale of low emission vehicles in the State, thereby contributing to a reduction in ground-level ozone and greenhouse gas emissions, the agricultural industry would benefit. Elevated ozone levels cause damage to foliage and greenhouse gas emissions can result in climatic changes that can be adverse to the agricultural industry.

One of the earliest and most obvious manifestations of ozone impact on the environment is the impact on sensitive plants. Subsequent side effects include reduced plant growth and decreased crop yield. If ground-level ozone were reduced, then the negative impacts on agriculture would also be reduced.

Agricultural production is potentially vulnerable to climate change risks associated with increasingly unpredictable variations in both temperature and precipitation. By reducing greenhouse gas emissions that can lead to climatic changes, this proposal will have a positive agricultural impact.

The Department anticipates that the proposed repeals from and amendments to N.J.A.C. 7:27-26 will have no impact, since the NLEV program has lapsed.

### **Regulatory Flexibility Statement**

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department evaluated the reporting, record keeping and other compliance requirements that these rules would impose upon small businesses. The Regulatory Flexibility Act defines the term “small business” as “any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.” The Department is not aware of any vehicle manufacturer that is resident in New Jersey that employs fewer than 100 employees.

Small businesses involved in selling or purchasing passenger cars or light-trucks could be affected by the regulations. Dealerships will be able to sell CARB-certified passenger cars and light-duty trucks to buyers from states bordering New Jersey. Because passenger cars and light-duty trucks must be CARB-certified in order to be registered in New Jersey, New Jersey residents will not be able to buy non-complying passenger cars and light-duty trucks out of State for registration in New Jersey, but may be able to buy complying passenger cars and light-duty trucks out of State.

The ZEV program requirements are not expected to have a major cost impact on automobile dealers. Because manufacturers have an interest in placing ZEVs, it is expected that manufacturers that choose to sell ZEVs will work with their dealerships in marketing strategies. In addition, N.J.S.A. 26:2C-8.15 et seq. establishes a sales tax exemption for the sale of new battery-electric ZEVs in New Jersey. This provides a financial incentive that should facilitate the sale of ZEVs in New Jersey. Dealerships will experience some cost increases associated with sales and service of PZEVs and ATPZEVs, since in some cases these are a technology that a dealership has not previously handled, and is thus required to train service personnel to service these vehicles.

These proposed regulations also result in no significant changes in paperwork requirements for dealers. While dealers must assure that the passenger cars and light-duty trucks they sell are California-certified, the Department expects that most manufacturers will include provisions in their ordering mechanisms to ensure that only California-certified passenger cars and light-duty trucks are shipped to New Jersey dealers.

The implementation of these regulations is not expected to be burdensome in terms of paperwork to small businesses that own or operate passenger cars and light-duty trucks. The cost of compliance for small businesses would presumably not differ from the cost borne by all other affected entities. The cost of purchasing a compliant vehicle cannot yet be determined and would depend upon how much of the increased cost of manufacture is passed on to the purchaser. Small businesses would not need to employ professional services in order to comply with these requirements. Any increased compliance costs are not expected to be excessive or to fall disproportionately on small businesses.

The Department anticipates that the proposed repeals from and amendments to N.J.A.C.

7:27-26 will have no impact on small businesses, since the NLEV program has lapsed.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rules on the achievement or smart growth and implementation of the State Development and Redevelopment Plan (State Plan). This regulatory action does not relate to the State's official land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

Since the proposed rules will require the delivery of low emission passenger cars and light-duty trucks for sale in the State, thereby helping to protect air quality, the proposed rules support the conservation and environmental protection goals and policies underlying the State Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

**Full text** of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:27-26.3 through 7:27-26.7, and 26.12 through 26.14.

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## **SUBCHAPTER 26: [NATIONAL LOW EMISSION VEHICLE (NLEV) AND] HEAVY-DUTY DIESEL NEW ENGINE REQUIREMENTS PROGRAM**

### **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.]

...

["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).

“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.]

...

["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.]

...

["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.]

...

["Heavy-duty engine" means an engine which is used to propel a heavy-duty 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.

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

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

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

"Light-duty vehicle" means light-duty trucks and passenger cars.

"Loaded vehicle weight" or "LVW" means vehicle curb weight plus 300 pounds.

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

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

"Medium-duty vehicle" means any pre-1995 model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 and subsequent model year heavy-duty low emission vehicle or ultra-low emission vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less, or any 1995 and subsequent model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less.

"Mg/mi" means milligrams per mile.

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

...

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

...

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

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

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

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

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

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

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

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

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

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

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

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

...

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

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

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

...

["Small volume manufacturer" means any vehicle manufacturer with sales less than or equal to 3,000 new light-duty vehicles and medium-duty vehicles per model year based on the

average number of vehicles sold in California by the manufacturer each model year from 1989 to 1991; provided that, for manufacturers certifying for the first time in California, model-year sales shall be based on projected California sales.

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

...

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

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

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

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

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

...

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

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

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

### **7:27-26.2 Applicability**

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

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motor vehicles and motor vehicle engines, otherwise referred to in this subchapter as "OTC-LEV program vehicles, engines and control systems."

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

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

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

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1900, incorporated herein by reference, will proceed in accordance with the USEPA NLEV regulations at 40 C.F.R. § 86.1707.

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

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

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

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

7:27-[26.8]**26.3** Requirements for vehicle transactions [(New HDDE Standards Program)] (No change in rule text)

7:27-[26.9]**26.4** Exemptions and technology review [(New HDDE Standards Program)] (No change in rule text)

7:27-[26.10] **26.5** Manufacturer compliance with California orders and voluntary recalls [(New HDDE Standards Program)] (No change in rule text)

7:27-[26.11]**26.6** Enforcement (No change in rule text)

7:27-[26.15]**26.7** Incorporation by reference

(a) – (d) (No change)

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

[1. California Code of Regulations, Title-13, Section 1968.1;

2. "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991, CARB;

3. "California Non-Methane Organic Gas Test Procedures" adopted September 22, 1993, CARB;

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

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

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

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

[8]1. American Society for Testing Materials Standard Practice E29-88;

[9. "Federal Highway Fuel Economy Test Procedure" 40 C.F.R. Part 600 Subpart B; 10. 40 C.F.R. 86.082-24;]

[11]2. "Control of Air Pollution from New and In Use Motor Vehicles and New and In Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86, Subparts A and B;

[12]3. 40 Code of Federal Regulations (CFR) Parts 51, 52 and 85;

[13]4. "California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy Duty Diesel Engines and Vehicles," adopted December 8, 2000, CARB;

[14]5. 40 Code of Federal Regulations (CFR) Part 86, Subpart A, "General Provisions for Emission Regulations for 1977 and Later Model Year New Light-duty Vehicles, Light-duty Trucks, and Heavy Duty Engines, and for 1985 and Later Model Year New Gasoline Fuel and Methanol Fueled Heavy Duty Vehicles";

[15]6. 40 Code of Federal Regulations (CFR) Part 86, Subpart I, "Emission Regulations for New Diesel Heavy Duty Engines; Smoke Exhaust Test Procedure"; and

[16]7. 40 Code of Federal Regulations (CFR) Part 86, Subpart N, "Emission Regulations for New Otto Cycle and Diesel Heavy Duty Engines; Gaseous and Particulate Exhaust Test Procedures."

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

Department of Environmental Protection

Office of Air Quality Management

Bureau of Transportation Control

PO Box 411

Trenton, New Jersey 08625-0411

7:27-26.[16]8 Severability (No change in rule text)

#### [APPENDIX

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

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

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

For the duration of the State's participation in NLEV, the State intends to forbear from adopting and implementing a ZEV mandate effective prior to model year 2006. Notwithstanding the previous sentence, if, no later than December 15, 2000, the US EPA does not adopt standards

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at least as stringent as the NLEV standards provided in 40 C.F.R. Part 86, subpart R that apply to new motor vehicles in model year 2004, 2005, or 2006, the State intends to forbear from adopting and implementing a ZEV mandate effective prior to model year 2004.]

## **SUBCHAPTER 29: LOW EMISSION VEHICLE PROGRAM**

### **7:27-29.1 Definitions**

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

**“Advanced technology partial zero emission vehicle” or “ATPZEV” means a vehicle certified as an advanced technology partial zero emission vehicle pursuant to the CARB vehicle standards for the applicable model year and has received a CARB Executive Order, but shall not include a partial zero emission vehicle or a zero emission vehicle.**

**"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 modifications on a motor vehicle which causes a reduction of air contaminants emitted from the motor vehicle engine, including but not limited to exhaust control systems, fuel evaporative 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.**

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**"California-certified" means a vehicle having a valid Executive Order stating that the vehicle meets all applicable requirements under applicable sections of Title 13, CCR and approved for sale in California by the CARB.**

**"California Air Resources Board" or "CARB" means the agency or its successor established and empowered to regulate sources of air pollution in the state of California, including motor vehicles, pursuant to Section 39003, California Health & Safety Code, as amended or supplemented.**

#### **ALTERNATIVE 1**

**"California credit balance" means the balance of credits that a manufacturer has on deposit with the California ZEV Bank on January 2, 2008.**

**"California credit ratio" means the ratio of the average number of PCs and LDT-1s that a manufacturer produced and delivered for sale in New Jersey to the average number of PCs and LDT-1s the manufacturer produced and delivered for sale in California during the time period selected by the manufacturer for calculation of their ZEV sales requirement for model year 2009, as set forth in Title 13, CCR, Section 1962.**

#### **ALTERNATIVE 2**

**The definitions of California credit balance and California credit ratio are deleted.**

#### **END OF ALTERNATIVES**

**"California low emission vehicle program" means the low emission vehicle program being implemented in the state of California, pursuant to the provisions of the Clean Air Act and the California Code of Regulations.**

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**“CCR” means the California Code of Regulations.**

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

**“Clean Air Act” or "CAA" means the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., as amended and supplemented.**

**“Commissioner” means the Commissioner of the Department.**

**“Dealer” means any person actively engaged in the business of offering to sell, soliciting or advertising the sale, buying, transferring, leasing, selling or exchanging new motor vehicles and who has an established place of business.**

**“Delivered for sale means vehicles that have received a bill of lading for sale in New Jersey and are shipped, or are in the process of being shipped to a dealer in New Jersey.**

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

**"Emergency vehicle" means any publicly owned vehicle operated by a peace officer in the performance of their duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire calls and any publicly owned authorized emergency vehicle used by an emergency medical technician or –paramedic or any ambulance used by a private entity under contract with a public agency.**

**"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.**

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**"Executive order" means a document issued by the CARB certifying that a specified test group or model year vehicle has met all applicable requirements adopted by the CARB pursuant to the applicable sections of Title 13, CCR for the control of specified air contaminants from motor vehicles and is thereby certified for sale in California. .**

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

**"Intermediate volume manufacturer" means a manufacturer that has been designated by the CARB as an intermediate volume manufacturer as defined at Title 13, CCR, Section 1900.**

**"Large volume manufacturer" means a large volume manufacturer as defined at Title 13, CCR, Section 1900.**

**"Light-duty truck" means any 2000 and subsequent model year motor vehicle certified to the standards in Title 13, CCR, Section 1961(a)(1), rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds gross vehicle weight or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.**

**"LDT-1" or "Light-duty truck-1" means a light-duty truck with a loaded vehicle weight of 3,750 pounds or less.**

**"LDT-2" or "Light-duty truck-2" means a light-duty truck with a loaded vehicle weight of greater than 3,750 pounds and a gross vehicle weight of less than or equal to 8,500 pounds and includes medium-duty passenger vehicles when determining compliance with the greenhouse gas emission standards of this subchapter.**

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**"Loaded vehicle weight" means the vehicle curb weight plus 300 pounds.**

**"Mail out" means a widely distributed general correspondence issued by the CARB whenever said board needs information from the public, or when it wishes to inform the public of new information.**

**"Manufacturer" means any small, intermediate, or large volume vehicle manufacturer as defined at Title 13, CCR, Section 1900.**

**"Medium-duty passenger vehicle" means medium-duty passenger vehicle as defined at Title 13, CCR, Section 1900.**

**"Model year" means model year as defined at 40 CFR 85.2302 and determined in accordance with the provisions of 40 CFR 85.2301 through 85.2304, as supplemented or amended, and incorporated herein by reference.**

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

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

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

**"New vehicle" means any vehicle with 7,500 miles or fewer on its odometer.**

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

**"Partial zero emission vehicle" or "PZEV" means a vehicle certified as a partial zero emission vehicle pursuant to the CARB vehicle standards for the applicable model year and has received a CARB Executive Order, but shall not include an advanced technology partial zero emission vehicle or a zero emission vehicle.**

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**“Passenger car” means any motor vehicle designed primarily for transportation of individuals and having a design capacity of 12 individuals or fewer.**

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

**“Placed in service” means having been sold to an ultimate purchaser and not to a dealer or other distribution chain entity, and having been individually registered for on-road use by the New Jersey Motor Vehicle Commission.**

**“Sale” or “sell” means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.**

**“State” means the State of New Jersey, unless otherwise specified.**

**“Test group” means a grouping of vehicles as defined by 40 CFR 86.1827-01, as supplemented or amended, and incorporated herein by reference.**

**“Test vehicle” means an experimental or prototype motor vehicle that appears to have very low emission characteristics, or a used motor vehicle within which an experimental motor vehicle pollution control device is installed, and which has also received a test vehicle or fleet permit from the CARB.**

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

**“USEPA” means the United States Environmental Protection Agency.**

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**“Vehicle equivalent credit” or “credit” means ZEV credit and represents one ZEV, PZEV or ATPZEV that a manufacturer delivers for sale in New Jersey, multiplied by the applicable credit multiplier as established in N.J.A.C. 7:27-29.7.**

**“Vehicle identification number” or “VIN” means a unique, 17 digit, alphanumeric code that the vehicle manufacturer assigns to a vehicle.**

**“Zero emission vehicle” or “ZEV” means a vehicle certified as a zero emission vehicle pursuant to the CARB zero emission vehicle standards for the applicable model year, but shall not include an advanced technology partial zero emission vehicle or a partial zero emission vehicle.**

**“ZEV Credit Bank” means the system designated by the Department, that records and tracks the generation, verification, transfer, voluntary retirement, use, and invalidation of vehicle equivalent credits.**

#### **7:27-29.2 Purpose**

**(a) This subchapter establishes in the State a LEV program, which incorporates the requirements of the California LEV program.**

**(b) The LEV program shall apply to all model year 2009 and subsequent motor vehicles that are passenger cars and light-duty trucks subject to the California LEV program and delivered for sale in New Jersey on or after January 1, 2009.**

**(c) This subchapter establishes the ZEV Credit Bank, through which manufacturers of passenger cars and light-duty trucks may earn, bank, and acquire from other manufacturers credits for certain qualifying vehicles. Vehicle manufacturers may use the credits to offset the ZEV sales requirements of the LEV program.**

**7:27-29.3 Applicability - LEV program**

(a) **Except as set forth in (b) and (c) below, no dealer or other person within this State shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, acquire, receive, or register on or after January 1, 2009 a new 2009 or subsequent model-year passenger car or light-duty truck unless the vehicle has been certified by the CARB and has received a CARB Executive Order.**

(b) **Prior to January 1, 2010, model year 2009 vehicles that do not meet the requirements of (a) above, but were produced and delivered for sale in New Jersey on or before January 1, 2009, and have a certificate of conformity issued pursuant to the Clean Air Act, may be sold, offered for sale, purchased, acquired or received in New Jersey.**

(c) **The prohibitions contained in (a) above shall not apply to passenger cars and light-duty trucks that are:**

**1. Held for daily lease or rental to the general public or engaged in interstate commerce, which are registered and principally operated outside of New Jersey;**

**2. Test vehicles and emergency vehicles;**

**3. Acquired by a resident of this State for the purposes of replacing a vehicle registered to such resident, which vehicle was damaged, or became inoperative beyond reasonable repair, or was stolen while out of this State; provided that such replacement vehicle is acquired out of State at the time the previously registered vehicle was either damaged or became inoperative beyond reasonable repair or was stolen;**

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- 4. Transferred by inheritance;**
  - 5. Transferred by court decree;**
  - 6. Have a certificate of conformity issued pursuant to the Clean Air Act and originally registered in another state by a resident of that state who subsequently establishes residence in this State;**
  - 7. Sold directly from one dealer to another dealer;**
  - 8. Sold for the purpose of being wrecked or dismantled;**
  - 9. Sold exclusively for off-highway use; or**
  - 10. Sold for registration out of State.**

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

#### **7:27-29.4 Emission certification standards**

**(a) Each model year 2009 and subsequent motor vehicle subject to N.J.A.C. 7:27-29.3(a) shall be California-certified.**

#### **7:27-29.5 NMOG fleet-wide average exhaust emission requirement**

**(a) A manufacturer of model year 2009 or later passenger cars or light-duty trucks delivered for sale in New Jersey on or after January 1, 2009, shall demonstrate compliance with the NMOG fleet-wide average exhaust emission requirement of Title 13, CCR, Section**

**1961, which average shall be based on the number of the manufacturer's vehicles subject to**

**N.J.A.C. 7:27-29.3(a).**

**(b) A manufacturer may accrue NMOG credits and debits and use them in accordance with Title 13, CCR, Section 1961(c), except that the formula for accruing credits at Title 13, CCR, Section 1961(c) shall be based upon the number of vehicles the manufacturer produces and delivers for sale in New Jersey in accordance with N.J.A.C. 7:29.3(a).**

**7:27-29.6 ZEV Sales Requirement**

**(a) Beginning on January 1, 2009, for vehicles manufactured in model year 2009 and each subsequent model year, each manufacturer shall comply with the ZEV sales requirement at Title 13, CCR, Section 1962, including early credit and banking provisions.**

**(b) An intermediate volume or large volume manufacturer of ZEVs, ATPZEVs and PZEVs may use vehicle equivalent credits in accordance with Title 13, CCR, Section 1962, to offset the ZEV Sales Requirement of (a) above.**

**7:27-29.7 ZEV Credit Bank**

**(a) Beginning in model year 2009, each intermediate volume and large volume manufacturer of ZEVs, ATPZEVs and PZEVs shall open an account in the ZEV credit bank. Except as set for in (h) below, the account must be opened no later than January 1, 2009.**

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**(b) In order to open an account with the ZEV Credit Bank, the manufacturer shall submit to the Department an account application form containing the following information:**

**1. For the account holder:**

**i. Name;**

**ii. Mailing address;**

**iii. Telephone number;**

**iv. Type of business (if applicable);**

**v. Authorized representative's name, title, phone number, fax number**

**and email address; and**

**vi. Authorized representative's signature.**

**(c) Upon receipt of a complete account application, the Department shall issue a unique identifier for the account and notify the account applicant of the identifier.**

**(d) In order to deposit credits into the ZEV Credit Bank, a manufacturer shall submit a Notice of Credit Generation to the Department on a form that the Department provides. The Notice of Credit Generation shall include the following:**

**1. For ZEVs delivered for sale in the State:**

**i. Manufacturer's ZEV Credit Bank account identifier;**

**ii. Model year of vehicle qualifying for credit;**

**iii. CARB Executive Order number;**

**iv. ZEV Tier type (NEV, 0, I, II, III for California, III for Section**

**177 states);**

**v. Vehicle identification number; and**

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**vi. Date the vehicle was delivered for sale in New Jersey.**

**2. For ZEVs placed in service in the State, all information listed under (d)1,**

**above, and also the following:**

**i. Date the vehicle was placed in service**

**ii. Whether the vehicle was placed in service with an option to**

**purchase or lease the vehicle;**

**3. For ATPZEVs and PZEVs delivered for sale in the State:**

**i. Vehicle certification class (ATPZEV or PZEV)**

**ii. Manufacturer's ZEV Credit Bank account identification;**

**iii. Model year of vehicle(s);**

**iv. Date the vehicle was delivered for sale in New Jersey.**

**v. For ATPZEVs, the Federal test group;**

**vi. The CARB executive order number;**

**vii. Number of vehicles delivered; and**

**viii. VIN for each vehicle, or the range of consecutive VINs for each group of vehicles.**

**(e) The number of the credits generated and deposited for each qualifying vehicle shall be the number of qualifying vehicles times the applicable multiplier forth in Title 13 of the California Code of Regulations section 1962, except the multiplier applied to vehicles produced and delivered for sale in New Jersey from January 1, 1999 to January 13, 2004 shall be the highest applicable multiplier used by the CARB for the period January 1, 1999 to January 13, 2004.**

**(f) A vehicle equivalent credit does not constitute or convey a property right.**

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**(g) Except as provided in (h), below, annually each manufacturer shall submit to the Department Notices of Generation or notice of a transfer to another manufacturer. Credits generated or acquired that are not reported to the Department on or before September 1 following the close of the model year in which the qualifying vehicle was produced and delivered for sale in the State shall not be deposited into the manufacturer's account, and cannot be used to offset ZEV Sales Requirements.**

**(h) In order to generate and deposit credits for vehicles delivered for sale in the State during the 1999 through 2005 model years, a manufacturer shall open an account with the ZEV Credit Bank and submit an appropriate Notice of Credit Generation to the Department on or before September 1, 2006.**

**(i) A manufacturer with an account in the ZEV Credit Bank may acquire credits from another manufacturer with an account in the ZEV Credit Bank; however, if the credits are to be used for future compliance with the ZEV sales requirement at N.J.A.C. 7:27-29.6, the transaction must be recorded in the ZEV Credit Bank and certified by both parties to the transaction.**

**(j) For each acquisition of credits from another manufacturer, the manufacturer from whom the credits are acquired shall supply the following information to the Department, on a form that the Department shall supply:**

- 1. Date of acquisition;**
- 2. Model year the credits were generated;**
- 3. Type of vehicle (NEV, ZEV type, ATPZEV or PZEV); and**
- 4. Number of credits in grams/mile NMOG.**

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**(k) The Department will verify all credits and, if discrepancies are found, will notify the manufacturer and adjust the account. The Department may audit an account at any time.**

### **ALTERNATIVE 1**

**(l) A manufacturer may deposit into its account in the ZEV Credit Bank a number of credits equal to its California credit balance as of January 2, 2008, multiplied by the California credit ratio. The deposit may be made only after all credit obligations for model years 2008 and earlier have been satisfied in California.**

**(m) A manufacturer electing to deposit credits under (l), above, shall offer for sale in New Jersey in model years 2009 through 2011 any PZEV, AT-ZEV or ZEV, except Type III ZEVs, that it offers for sale in California during the same period.**

### **ALTERNATIVE 2**

**Subsections (l) and (m) are deleted.**

### **END OF ALTERNATIVES**

### **7:27-29.8 Fees**

**(a) Each intermediate volume and large volume vehicle manufacturer shall pay to the Department an annual fee of \$1.00 per vehicle for each passenger car and light-duty truck, including both Federal Tier 2 certified and California-certified vehicles, delivered for sale in New Jersey on or after January 1, 2005, and which vehicles the manufacturer has been required to report under Section D.6(a), "California Assembly-Line Test**

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**Procedures for 1983 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," as set forth at Title 13, CCR, Section 2062.**

**(b) For vehicles delivered for sale in calendar year 2005 and thereafter, each intermediate volume and large volume manufacturer shall report its New Jersey production numbers to the Department by March 1 of the succeeding calendar year.**

**(c) The Department shall notify each manufacturer of the total fee due. The manufacturer shall remit the fee to the Department within 30 days after receipt of the Department's notice. Payment shall be made payable to the Treasurer, State of New Jersey.**

**(d) An intermediate volume or large volume manufacturer failing to pay the fee shall not be permitted to open an account in the ZEV Credit Bank, or earn, deposit, use or acquire vehicle equivalent credits until such time as its fee and any unpaid balance are paid.**

**7:27-29.9 Vehicle Testing**

**(a) Each new vehicle model subject to N.J.A.C. 7:27-29.3(a) shall satisfy the motor vehicle emission requirements of Title 13, CCR, Sections 1960.1, 1960.5, 1961, 1962, 1962.1, 1965, 1968.1, 1968.2, 1968.5, 1976, 1978, 2037, 2038, 2062, 2101, 2111, and 2235.**

**1. A manufacturer shall demonstrate compliance by presenting to the Department upon request copies of the applicable Executive Order.**

**(b) Each manufacturer of a vehicle subject to N.J.A.C. 7:27-29.3(a) shall conduct Inspection Testing and Quality Audit Testing in accordance with Title 13, CCR, Section 2062, and shall provide the test results to the Department upon request.**

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**1. A manufacturer shall demonstrate compliance by presenting to the Department upon request copies of the test results for testing conducted pursuant to N.J.A.C. 7:27-29.3(b) and the determination and findings made by the CARB.**

**(c) Each new vehicle subject to N.J.A.C. 7:27-29.3(a), prior to being offered for sale in New Jersey, shall meet the motor vehicle emission requirements of Title 13, CCR, Section 1961, as determined by compliance testing, conducted by CARB in accordance with Title 13, CCR, Sections 2101 through 2110, 2150, and 2151.**

**1. A manufacturer shall demonstrate compliance by presenting to the Department upon request copies of the test results for testing conducted pursuant to N.J.A.C. 7:27-29.3(c) and the determination and findings made by the CARB.**

**(d) For the purposes of detection and repair of vehicles subject to this subchapter failing to meet the motor vehicle emission requirements of Title 13, CCR, Section 1961 the Department may conduct, after consultation with the CARB, In-Use Vehicle Enforcement Testing in accordance with the protocol and testing procedures in Title 13, CCR, Section 2140.**

**1. A manufacturer shall demonstrate compliance by presenting to the Department upon request copies of the test results for testing conducted pursuant to N.J.A.C. 7:27-29.3(d) and the determination and findings made by the CARB.**

**7:27-29.10 Warranty**

**(a) Each manufacturer of a vehicle subject to N.J.A.C. 7:27-29.3(a) shall warrant to the ultimate purchaser and each subsequent purchaser that the vehicle shall comply over**

**its period of warranty coverage with all requirements of Title 13, CCR, Sections 2035 through 2038, 2040, and 2041.**

**(b) Each manufacturer of a vehicle subject to N.J.A.C. 7:27-29.3(a) shall submit to the Department upon request a Failure of Emission-Related Components report as defined at Title 13, CCR, Section 2144.**

**(c) For purposes of compliance with (b) above, a manufacturer may submit copies of the Failure of Emission-Related Components report that are submitted to the CARB.**

#### **7:27-29.11 Reporting Requirements**

**(a) In addition to the reporting requirements in N.J.A.C. 7:27-29.7 (ZEV Credit Bank) and 7:27-29.8 (Fees), beginning with the 2009 model year each manufacturer of a vehicle subject to N.J.A.C. 7:27-29.3(a) shall submit annually to the Department, no later than March 1 following the close of the model year, a report documenting total deliveries for sale in New Jersey of vehicles in each test group during that model year.**

**1. For the 2009 model year, the report shall separately show deliveries for sale prior to January 1, 2009 and on and after January 1, 2009.**

**(b) Beginning with the 2009 model year, each manufacturer of a vehicle subject to N.J.A.C. 7:27-29.3(a) shall submit annually to the Department, by no later than March 1 following the close of the model year, a report, prepared according to Title 13, CCR, Section 1961, calculating the NMOG fleet-wide average exhaust emission for the model year just ended for vehicles delivered for sale in New Jersey.**

**1. For the 2009 model year, the report shall separately show deliveries for sale prior to January 1, 2009 and on and after January 1, 2009.**

**7:27-29.12 Enforcement**

**(a) The Department or its representative shall have the right to enter and inspect any site, building, equipment, or vehicle, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., this subchapter, any exemption, or any order, consent order, agreement, or remedial action plan issued, approved or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any material, motor vehicle or motor vehicle engine or any emissions therefrom, at the facility; to sketch or photograph any portion of the site, building, vehicles or motor vehicle engines; to copy or photograph any document or record 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 or appropriate credentials as requested and compliance with appropriate standard safety procedures.**

**(b) Records to support any application, notice, report or amendment submitted to the Department under this subchapter shall be maintained for a period of no less than five years after submitting the information to the Department, and shall be made readily available to the Department upon request.**

**(c) Failure to comply with any of the obligations or requirements of this subchapter shall subject the violator to an enforcement action pursuant to the provisions of N.J.S.A. 26:2C-19 and N.J.A.C 7:27A-3.**

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**(d) Any order or enforcement action taken by the CARB to correct noncompliance with any section of Title 13, CCR, which action results in the recall of any vehicle pursuant to Title 13, CCR, sections 2109 through 2135, shall be applicable in New Jersey, except where the manufacturer demonstrates to the Department's satisfaction within 30 days of issuance of the CARB action that the action is not applicable to vehicles subject to N.J.A.C. 7:27-29.3(a).**

**(e) Any emission-related recall campaign, voluntary or otherwise, initiated by any manufacturer pursuant to Title 13, CCR, Sections 2113 through 2121, shall extend to all similar vehicles subject to N.J.A.C. 7:27-29.3(a), except where the manufacturer demonstrates to the Department's satisfaction within 30 days of the CARB approval of the campaign that the campaign is not applicable to vehicles subject to N.J.A.C. 7:27-29.3(a).**

#### **7:27-29.13 Incorporation by Reference**

**(a) Unless specifically excluded by this subchapter, when a provision of the CCR is incorporated by reference, all notes, comments, appendices, diagrams, tables, forms, figures, and publications are also incorporated by reference.**

**(b) Prospective incorporation by reference means the ongoing process, beginning [the operative date of these rules], whereby all provisions of regulations incorporated into this subchapter from the CCR, as set forth in Table 1, below, are continually automatically updated in order to maintain consistency with the most current CCR. Thus, any supplements, amendments, and any other changes including, without limitation, repeals or stays that affect the meaning or operational status of a California rule, brought about by either judicial or administrative action and adopted or otherwise noticed by the state of**

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California, shall be paralleled by a similar change to the New Jersey rule so that the New Jersey rule will have the same meaning and status as its California counterpart. Similarly, to maintain consistency, all applicable new California regulations are also adopted into this subchapter by this automatic process.

(c) Provisions of the CCR that are excluded from incorporation by reference in these rules are excluded in their entirety, unless otherwise specified. If there is a cross-reference to a California citation that was not specifically incorporated, the cross-referenced citation is not incorporated by virtue of the cross-reference. Provisions that have been excluded from incorporation by reference are also excluded from the process of prospective incorporation by reference.

(d) In the event that there are inconsistencies or duplications in the requirements of the provisions incorporated by reference from the CCR and the rules set forth in this subchapter, the provisions incorporated by reference from the CCR shall prevail.

(e) Nothing in these provisions incorporated by reference from the CCR shall affect the Department's authority to enforce statutes, rules, permits or orders administered or issued by the Commissioner.

(f) On or after [the operative date of this rule], new California rules, amendments, supplements, and other changes, brought about through administrative or judicial action, automatically incorporated through the prospective incorporation by reference process, shall be effective upon publication in the California Regulatory Notice Register and operative on the operative date cited by California in the relevant California Regulatory Notice Register notice, unless the Department publishes a notice of proposal repealing the

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**adoption in New Jersey of the California regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.**

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

**Table 1**

**California Code of Regulations (CCR)**

**Title 13**

**Provisions Incorporated by Reference**

**Title 13, CCR**

**Title**

**Chapter 1 Motor Vehicle Pollution Control Devices**

**Article 1 General Provisions**

**Section 1900**

**Definitions**

**Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)**

**Section 1956.8(g) and Exhaust Emission Standards and Test Procedures – 1985 and**

**(h) Subsequent Model Heavy Duty Engines and Vehicles**

- 
- Section 1960.1**                    **Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles**
- Section 1961**                    **Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles**
- Section 1961.1**                    **Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.**
- Section 1962**                    **Zero Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles**
- Section 1965**                    **Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles**
- Section 1968.1**                    **Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles**

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**Section 1968.2**                    **Malfunction and Diagnostic System Requirements – 2004 and**  
**Subsequent Model Year Passenger Cars, Light-Duty Trucks and**  
**Medium-Duty Vehicles**

**Section 1968.5**                    **Enforcement of Malfunction and Diagnostic System**  
**Requirements for 2004 and Subsequent Model Year Passenger**  
**Cars, Light-Duty Trucks, and Medium-Duty Vehicles and**  
**Engines**

**Section 1976**                    **Standards and Test Procedures for Motor Vehicle Fuel**  
**Evaporative Emissions**

**Section 1978**                    **Standards and Test Procedures for Vehicle Refueling Emissions**

**Article 6 Emission Control System Warranty**

**Section 2035**                    **Purpose, Applicability and Definitions**

**Section 2036**                    **Defects Warranty Requirements for 1979 through 1989 Model**  
**Year Passenger Cars, Light-Duty Trucks and Medium-Duty**  
**Vehicles; 1979 and Subsequent Model Year Motorcycles and**  
**Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such**  
**Vehicles.**

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**Section 2037**                      **Defects Warranty Requirements for 1990 and Subsequent**  
**Model Year Passenger Cars, Light-Duty Trucks and Medium-**  
**Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles**

**Section 2038**                      **Performance Warranty Requirements for 1990 and Subsequent**  
**Model Year Passenger Cars, Light-Duty Trucks and Medium-**  
**Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles**

**Section 2039**                      **Emission Control System Warranty Statement.**

**Section 2040**                      **Vehicle Owner Obligations**

**Section 2041**                      **Mediation; Finding of Warrantable Condition**

**Section 2046**                      **Defective Catalyst**

**Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing.**

**Article 1 Assembly Line Testing.**

**Section 2062**                      **Assembly-line Test Procedures 1998 and Subsequent Model-**  
**years**

**Article 2 Enforcement of New and In-use Vehicle Standards**

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**Section 2101**                      **Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action.**

**Section 2109**                      **New Vehicle Recall Provisions.**

**Section 2110**                      **Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model-Year.**

**Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls.**

**Section 2111**                      **Applicability.**

**Section 2112**                      **Definitions.**

**Appendix A to Article 2.1.**

**Section 2113**                      **Initiation and Approval of Voluntary and Influenced Recalls.**

**Section 2114**                      **Voluntary and Influenced Recall Plans.**

**Section 2115**                      **Eligibility for Repair.**

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**Section 2116**

**Repair Label.**

**Section 2117**

**Proof of Correction Certificate.**

**Section 2118**

**Notification.**

**Section 2119**

**Record keeping and Reporting Requirements.**

**Section 2120**

**Other Requirements Not Waived.**

**Section 2121**

**Penalties**

**Article 2.2 Procedures for In-Use Vehicle Ordered Recalls.**

**Section 2122**

**General Provisions.**

**Section 2123**

**Initiation and Notification of Ordered Emission-Related Recalls.**

**Section 2124**

**Availability of Public Hearing.**

**Section 2125**

**Ordered Recall Plan.**

**Section 2126**

**Approval and Implementation of Recall Plan.**

**Section 2127**

**Notification of Owners.**

**Section 2128**

**Repair Label.**

**Section 2129**

**Proof of Correction Certificate.**

**Section 2130**

**Capture Rates and Alternative Measures.**

**Section 2131**

**Preliminary Tests.**

**Section 2132**

**Communication with Repair Personnel.**

**Section 2133**

**Record keeping and Reporting Requirements.**

**Section 2135**

**Extension of Time**

**Article 2.3 In-Use Vehicle Enforcement Test Procedures.**

**Section 2136**

**General Provisions.**

**Section 2137**

**Vehicle Selection.**

**Section 2138**                      **Restorative Maintenance.**

**Section 2139**                      **Testing.**

**Section 2140**                      **Notification of In-Use Results.**

**Article 2.4 Procedures for Reporting Failure of Emission-Related Components.**

**Section 2141**                      **General Provisions.**

**Section 2142**                      **Alternative Procedures.**

**Section 2143**                      **Failure Levels Triggering Recall.**

**Section 2144**                      **Emission Warranty Information Report.**

**Section 2145**                      **Field Information Report.**

**Section 2146**                      **Emissions Information Report.**

**Section 2147**                      **Demonstration of Compliance with Emission Standards.**

**Section 2148**                      **Evaluation of Need for Recall.**

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**Section 2149**

**Notification of Subsequent Action.**

**Chapter 3 Surveillance Testing**

**Section 2150**

**Assembly-Line Surveillance**

**Section 2151**

**New Motor Vehicle Dealer Surveillance**

**Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks.**

**Section 2235**

**Requirements.**

**(h) Any of the documents in (e) above may be obtained by contacting:**

**Department of Environmental Protection**

**Division of Air Quality**

**Bureau of Motor Vehicle Inspection and Maintenance**

**P.O. Box 437**

**Trenton, New Jersey 08625-0411**

**Attention: LEV Program**

**They may also be obtained by contacting:**

**State of California**

**Office of Administrative Law**

**300 Capitol Mall, Suite 1250**

**Sacramento, California 95814-4339**

**or at the California Office of Administrative Law website at <http://www.oal.ca.gov/>**

**7:27-29.14 Severability**

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

CHAPTER 27A

AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR  
ADJUDICATORY HEARINGS

7:27-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a)-(l) (No change.)

(m) The violations of N.J.A.C. 7:27, whether the violation is minor or non-minor in accordance with (q) through (t) below, and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

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CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1. -28. (No change.)

**29. The violations of N.J.A.C. 7:27-29, Low Emission Vehicle Program, and the civil administrative penalty amounts for each violation, per vehicle, are as set forth in the following table:**

<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>
<u>N.J.A.C. 7:27-29.3(a)</u>	<u>Delivery of Non-Certified Vehicle</u>	<u>NM</u>	<u>\$2,500</u>	<u>\$5,000</u>	<u>\$12,500</u>	<u>\$30,000</u>
<u>N.J.A.C. 7:27-29.5(a)</u>	<u>Failure to meet fleet-wide average</u>	<u>NM</u>	<u>\$5,000</u>	<u>\$10,000</u>	<u>\$25,000</u>	<u>\$50,000</u>
<u>N.J.A.C. 7:27-29.6(a)</u>	<u>Failure to meet ZEV Sales Requirement</u>	<u>NM</u>	<u>\$5,000</u>	<u>\$10,000</u>	<u>\$25,000</u>	<u>\$50,000</u>

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<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>
<u>N.J.A.C. 7:27-15.7(b)</u>	<u>Open account in the ZEV credit bank</u>	<u>M</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$7,500</u>
<u>N.J.A.C. 7:27-15.7(m) and (n)</u>	<u>Report ZEV credits and transactions</u>	<u>M</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$7,500</u>
<u>N.J.A.C. 7:27-15.8(a)3</u>	<u>Report production numbers</u>	<u>M</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$7,500</u>
<u>N.J.A.C. 7:27-15.9(a), (b), (c), and (d)</u>	<u>Provide reports upon request</u>	<u>M</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$7,500</u>
<u>N.J.A.C. 7:27-15.10(b)</u>	<u>Provide reports upon request</u>	<u>M</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$7,500</u>

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<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>
<u>N.J.A.C. 7:27-15.11(a) and (b)</u>	<u>Submit report</u>	<u>M</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$7,500</u>

30. -31. (No change.)

(n)-(t) (No change.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis, addressing the requirements of Executive Order 27 (1994) and N.J.S.A. 52:14B-23, permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize this proposal.

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Date \_\_\_\_\_ Bradley M. Campbell

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Commissioner,

Department of Environmental Protection