ENVIRONMENTAL PROTECTION

ENVIRONMENTAL REGULATION

AIR QUALITY MANAGEMENT ELEMENT

Air Pollution Control
Prevention of Air Pollution from Consumer Products

Adopted Amendments:	N.J.A.C. 7:27-24.1 through 24.7; and 7:27A-3.10
Proposed:	September 15, 2003, at 35 N.J.R. 4241(b).
Adopted:	April 7, 2004, by Bradley M. Campbell, Commissioner, Department of Environmental Protection.
Filed:	April 8, 2004, as R.2004 d.182, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).
Authority:	N.J.S.A. 13:1B-3(e), 13:1D-9 and 26:2C-1 et seq., in particular 26:2C-8.
DEP Docket Number:	18-03-08/247.
Effective Date:	May 3, 2004
Operative Date:	June 6, 2004.
Expiration Date:	Exempt N.J.A.C. 7:27; November 9, 2004, N.J.A.C. 7:27A.

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:27-24, Prevention of Air Pollution from Consumer Products, the Department's rules governing the standards, emission limits and equipment specifications for consumer products, including portable fuel containers, and making related changes to the penalty code revisions at N.J.A.C. 7:27A-3. These amendments will help the State continue to make progress towards attainment of the one-hour ozone standard.

The comments the Department received on the proposed amendments are summarized and responded to below in the section with the heading, "Summary of Public Comments and Agency Responses."

Summary of Hearing Officer's Recommendation and Agency Response:

The Department held a public hearing on November 14, 2003, at its headquarters at 401 East State Street, Trenton, New Jersey to provide interested parties the opportunity to present comments on the Department's proposed amendments. The public comment period closed on November 15, 2003. Bob Stern, Acting Chief of the Bureau of Air Quality Planning, served as the Hearing Officer at the public hearing. After reviewing the comments presented at the hearing and the written comments received by the Department, the Hearing Officer recommended that the proposed amendments be adopted with the changes described below in the Summary of Public Comments and Agency Responses and in the Summary of Agency-Initiated Changes. The Department has accepted the Hearing Officer's recommendation.

The hearing record is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection
Office of Legal Affairs
ATTN: Docket No. 18-03-08/247
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

Copies of this adoption document are also available from the Department's website at www.state.nj.us/dep/aqm, where Air Quality Management rules, proposals, adoptions and SIP revisions are posted.

Summary of Public Comments and Agency Responses:

The Department received oral and written comments on the proposed amendments from the following persons:

1. Catherine C. Beckley, Cosmetic, Toiletry and Fragrance Association
2. Randy Minniear, State Street Associates on behalf of the National Paint & Coatings Association
3. Eileen Moyer, Reckitt Benckiser Inc.
4. Joseph T. Yost, Consumer Specialty Products Association

Comments are arranged by section. If a comment does not pertain to a specific section of the rule, it has been placed under the "General Comments" category. At the end of each comment, the specific commenter(s) is referenced by placing the above numbers in parentheses.

The comments are as follows:

General Comments

1. COMMENT: Two commenters expressed general support for the proposed rules. (3, 4)

RESPONSE: The Department appreciates the commenters' support for the proposed amendments and new rules.

2. COMMENT: Two commenters stated they support the Department's efforts to adopt consumer products rules that are uniform with the consumer product rules of other states in the Ozone Transport Region. All four commenters supported the proposed rules' consistency with the Ozone Transport Commission's (OTC) "Model Rule for Consumer Products." One or more of the commenters noted consistency of the definitions, VOC standards, exemptions and effective dates. One commenter stated this consistency is extremely important and fulfills one of the goals of the OTC and industry stakeholders. Another commenter stated this consistency is critical in order to ensure that manufacturers can market their products throughout the United States without impacting interstate commerce. One commenter stated that this consistency will ensure the harmonization of regulatory standards for consumer products in New Jersey and throughout the 12 other jurisdictions that comprise the Ozone Transport Region. (1, 2, 3, 4)

RESPONSE: The Department appreciates the commenters' support for the proposed amendments and new rules. The Department actively participated in the development of the OTC model rules with other OTC states to ensure regional consistency. The Department believes New Jersey's adopted Consumer Products rules achieve a reasonable level of consistency with the OTC Model Rule for Consumer Products, the OTC Model Rule for Portable Fuel Container Spillage Control and with the consumer product rules and portable fuel container rules of other OTC states.

3. COMMENT: One commenter stated the proposed rules will provide a fair regulatory framework that will protect the environment and allow manufacturers to produce and sell widely-used consumer products in New Jersey and throughout the Ozone Transport Region. (4)

RESPONSE: The Department agrees with the commenter.

N.J.A.C. 7:27-24.2 Applicability

4. COMMENT: At N.J.A.C. 7:27-24.2(d)5iii, the term "and" should be replaced with the term "or," where the rule states "…sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces;…" The commenter provided no basis in support of this change. (2)

RESPONSE: N.J.A.C. 7:27-24.2(d)5iii as adopted exempts certain non-aerosol adhesives from the requirements of N.J.A.C. 7:27-24 if they are sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. Most of the other states, including California, use the term "and." California inspectors could not determine if a product was subject to its consumer product rules when it was typically being sold in 11-12 fluid ounce tubes, which might weigh more than one pound depending upon the product's density. California decided to use the term "and" so that fewer products would be exempt from its consumer product rules. For this reason, and to be consistent with most of the other states, the Department has retained use of the term "and" on adoption.

N.J.A.C. 7:27-24.3(e) Product-in-compliance statement in shipping documentation

Comments 5, 6 and 7 below pertain to the same issue and are responded to collectively below.

5. COMMENT: Three commenters recommended that the Department remove proposed rule N.J.A.C. 7:27-24.3(e), which requires all invoices, bills of lading or shipping documents provided to a distributor or retailer in New Jersey to state that the product complies with the New Jersey VOC limits. All three commenters stated that this proposed requirement is not included in the OTC Model Rule for Consumer Products and no other state requires such state-specific designations. One commenter stated that it creates a New Jersey-only standard. One commenter stated that it is contrary to the Department's stated goal of adopting regionally consistent regulations. (1, 3, 4)

6. COMMENT: One commenter stated that from a business practice perspective, it would be extremely difficult to ensure that the shipping document compliance statement, proposed at N.J.A.C. 7:27-24.3(e), would refer directly to New Jersey. Manufacturers often employ regional distributors that ship within the Ozone Transport Region (OTR). Because two states that border New Jersey - Pennsylvania and New York - have consumer product rules based on the OTC Model Rule for Consumer Products, it would be very difficult to prevent New York products (with the same VOC limit as New Jersey) from entering New Jersey with New Jersey-specific invoices. Another commenter stated that given New Jersey's close proximity to the OTR States that have already promulgated final consumer products regulations based on the OTC Model Rule for Consumer Products, nationally marketed products will comply with the VOC standards set forth in the OTC Model Rule and thus, there is no need to include the shipping document compliance statement requirement. (1, 4)

7. COMMENT: Two commenters stated that the shipping document compliance statement requirement proposed at N.J.A.C. 7:27-24.3(e) places an unnecessary or significant administrative burden on manufacturers. One commenter stated that this requirement would provide no measurable environmental benefit. One commenter stated that this requirement

would require companies to modify the programs they use to generate shipping documents. One commenter stated that this requirement provides no benefit to the purchaser of products and that the commenter's customers do not use shipping documents as a means of determining whether customers are being supplied compliant products. According to this commenter, shipping documents do not go to those individuals who are responsible for ensuring that compliant products are placed on store shelves or purchased for use in an institution; it is common industry practice to provide customers with hold harmless agreements that hold the manufacturer responsible for ensuring that compliant products are being supplied to the manufacturer's customers; retailers and distributors aggressively hold manufacturers to these agreements; and this has been a long-standing industry practice that has worked well over the years, as not following these agreements will jeopardize good customer relations and potential future sales. (3, 4)

RESPONSE TO COMMENTS 5 THROUGH 7: Proposed N.J.A.C. 7:27-24.3(e) pertained to consumer products shipped to New Jersey for sale and use in New Jersey and required each manufacturer or distributor shipping these products to New Jersey to include on the shipping document it sends to a distributor or retailer a statement that the products shipped are in compliance with Subchapter N.J.A.C. 7:27-24. The Department added this provision to the proposal, even thought it was a departure from the OTC Model Rule for Consumer Products, because the Department believed this provision would help assure that CFCPs and PFCs and spouts sold in New Jersey for sale and use in New Jersey would be compliant with subchapter N.J.A.C. 7:27-24, to protect retailers from being liable for receiving non-compliant products and to be consistent with the proposed amendments to N.J.A.C. 7:27-23, Prevention of Air Pollution from Architectural Coatings.

However, for many of the reasons stated above, the commenters convinced the Department that this proposed provision would not substantially further compliance. In addition the Department believes that the adopted provisions at N.J.A.C. 7:27-24.2(h) will provide sufficient protection of retailers being shipped non-compliant products. Therefore, in the adopted rule the Department deleted proposed N.J.A.C. 7:27-24.3(e), removed references to this citation from N.J.A.C. 7:27-24.2(c) and N.J.A.C. 7:27A-3.10(m)24, and changed citation N.J.A.C. 7:27-24.3(f) and (g) to 24.3(e) and (f) respectively. The deletion of N.J.A.C. 7:27-24.3(e) on adoption does not affect the shipping documentation requirements at N.J.A.C. 7:27-24.2(f) and 24.3(b)2 for products shipped from New Jersey or through New Jersey to destinations for use outside of New Jersey.

N.J.A.C. 7:27-24.5(a) through (c) Registering chemically formulated consumer products

8. COMMENT: Two commenters opposed the "registration" and "re-registration" requirements proposed at N.J.A.C. 7:27-24.5(a) - (c). Two commenters stated these proposed requirements are inconsistent with the OTC Model Rule. One commenter stated the proposed requirements differ from the current reporting requirements in California and other states and should be

deleted. One commenter stated that these requirements run counter to the trend by states to decrease the collection of such data. Two commenters suggested that the Department take the approach they claimed was taken by the OTC model rule, California and four OTC states, which is that upon 90 days written notice from the Department a company must produce information specified by the Department on an as-needed basis. (1, 3, 4)

RESPONSE: The OTC Model Rule and the consumer products rules of New York, Pennsylvania, Delaware and California require all manufacturers to submit the explanation of the code for the date of manufacture. In order to submit an explanation of the code for the date of manufacture, the manufacturer would have to submit its name and mailing address. This is essentially what N.J.A.C. 7:27-24.5(a) required for registrations. The only difference is that N.J.A.C. 7:27-24.5(a)4 required the manufacturer to also submit the phone number of a contact person and the CFCP categories to which the manufacturer's CFCPs belong, two pieces of information that enhance the Department's enforcement activities, that are already in existing Subchapter 24, and that are already required by the Federal consumer products rule (40 CFR 59.209(d)) if the distributor is not named on the product label. Regarding variances, alternative control plans (ACPs) and innovative product exemptions (IPEs), the Department expects compliance via these options to occur only infrequently; therefore, the additional information required for variances, ACPs and IPEs would not be included in nearly all registrations and re-registrations.

The commenters appear to mistakenly believe that under the OTC Model Rule for Consumer Products and the rules of other states the state must request a manufacturer to submit the explanation of the code for the date of manufacture, instead of this being a required submission. The OTC Model Rule for Consumer Products requires this submission; this submission is not upon request. The OTC Model Rule for Consumer Products at 6(b) states "if a manufacturer uses a code indicating the date of manufacture … an explanation of the code must be filed with the OTC State no later than twelve months prior to the effective date of the applicable standard…." Also, as stated above, the consumer products rules of New York, Pennsylvania, Delaware and California (California has a slightly different requirement for antiperspirants and deodorants) require manufacturers to submit the explanation of the code for the date of manufacture prior to the effective date of the applicable standard, not within 90 days upon request as the commenters stated.

The Department adopted N.J.A.C. 7:27-24.5(a) – (c) as proposed.

9. COMMENT: Two commenters claimed the information collected by submitting the registration or re-registration as per proposed N.J.A.C. 7:27-24.5(a) - (c) would be a duplicative report and effort for companies, since it is the same information the Department requires to be submitted with the explanation of the date codes. Dropping the registration requirement would allow Department staff to work on implementing the rule, instead of collecting duplicative

information. (1, 4)

RESPONSE: The Department disagrees with the commenters, who appear to have misunderstood the rule proposal. N.J.A.C. 7:27-24.5(a) as proposed requires a manufacturer to provide specifically listed information when it electronically registers or re-registers its CFCPs. N.J.A.C. 7:27-24.5(e) as proposed requires a manufacturer to include the explanation of the code for the date of manufacture as part of this electronic registration or re-registration. The Department's intention is for all of this information to be provided in a single submittal. The rule does not require the manufacturer to submit the explanation of the code for the date of manufacture at one time and the other registration information at another time. The Department adopted N.J.A.C. 7:27-24.5(a) - (c) as proposed.

10. COMMENT: One commenter stated that there is no benefit to require companies to indicate the regulated product categories they market or to re-register if new categories are added to their product lines. One commenter stated that having to provide the list of CFCP categories does not add anything. One commenter stated that only those companies that are subject to these regulations are required to submit the key for their date-code system; that, therefore, the Department will have a listing of companies that enforcement officials can use to determine compliance; that the appropriate contact information will be included in the date-code registration, so the Department will receive the information it needs to determine those companies that are subject to the regulations; and that the manufacturer's name is on the label of products that are being marketed, so it would be a simple task to match the manufacturer's name on the label to the registration list if the compliance of a product is being questioned. One commenter stated that by limiting registrations and re-registrations to date code systems, that since date-code systems do not change that frequently, the Department would not have to deal with significant unnecessary paperwork that does not provide a benefit to the regulatory process. (3, 4)

RESPONSE: The Department's existing consumer products rules already require manufacturers to list their product categories as part of the registration submitted to the Department. Manufacturers have been submitting product categories in their registrations since 1996. The rules as adopted makes no change to this substantive requirement but, rather, merely changes the means of registration submittal. Also, the Federal consumer products rule, at 40 CFR § 59.209(d), requires product categories to be submitted as part of the Initial Notification Report. The electronic registrations and re-registrations will enhance enforcement, thus benefiting the environment, by making manufacturer names, regulated CFCP categories, applicable VOC content limits and manufacture date-code explanations readily available to enforcement staff via a shared Department database or electronic spreadsheet, which will make it easier to identify the CFCP categories to which a company's products belong.

11. COMMENT: One commenter stated that the registration and re-registration requirements

would impose needless administrative burdens on the Department's staff and on manufacturers. One commenter stated that by restricting the registration and re-registration to date-code information, the Department can reduce its administrative burden. (3, 4)

RESPONSE: The Department agrees that there will be a slight increase in administration by manufacturers, at least initially, to comply with the electronic registration and re-registration requirements of these adopted amendments. However, the Department has reduced this anticipated burden by developing a standard registration/re-registration form at www.state.nj.us/dep/baqp. Also, the electronic database or spreadsheet of registrations the Department will develop may benefit the regulated manufacturers in that if Subchapter 24 were amended in the future, the Department could use this electronic database or spreadsheet to perform outreach. Also, compared to New Jersey's existing consumer products rules, the only new information the adopted rules require to be submitted is the explanation of the code of the date of manufacture. Further, the adopted rules require a manufacturer to submit the explanation (or key) only of its code for the date of manufacture, not of the company's entire date-code system. The additional administrative burden on the Department would involve only the creation of a standard electronic registration/re-registration form and maintenance of the electronic spreadsheet or database.

N.J.A.C. 7:27-24.5(b) and (e) Explanation of code for date of manufacture

12. COMMENT: Two commenters stated that since the Department requires the submission of date-codes, the State will receive not only the date-code, but also other information such as product categories, brand names, names of marketing companies, plant location and batch number. One commenter stated this additional information is generally part of the information conveyed by the date-codes. (1, 4)

RESPONSE: The Department's proposed rule at N.J.A.C. 7:27-24.5(e) requires a CFCP manufacturer to submit the date-code explanation to the Department. The Department's proposed rules at N.J.A.C. 7:27-24.1 clearly defines "date-code" as "a code indicating the day, month and year on which a product was manufactured, filled or packaged." Therefore, by definition, date-code does not include product categories, brand names, marketing companies, manufacturing plant location, batch number or any other information the manufacturer may have date-coded. The Department adopted N.J.A.C. 7:27-24.5(e) as proposed.

13. COMMENT: Two commenters urged the Department to classify date-code information as confidential business information, as set forth at N.J.A.C. 7:27-1.6 through 29 and protected under applicable New Jersey law, without requiring a special request by the manufacturer. The commenters stated the following: date-code information is highly proprietary information; in addition to providing information about the date of manufacture, date-codes generally convey additional information such as the plant location and batch number and this data are an integral

part of many manufacturers' product stewardship programs; and if not properly protected, this highly confidential information could be used by competitors to determine the sales trends for specific products (for example, by conducting surveys of products on retail store shelves). The commenters suggested that the New Jersey rules should either grant date-code submissions confidential business information status, or at least include a provision requiring the Department to notify a company of a third-party request for date-code information and allow a company to demonstrate why such information should be confidential before the Department releases the requested information. (1, 4)

RESPONSE: The Department's proposed rules do not require a manufacturer to submit its explanation of any code other than for the date of manufacture. Please see the Response to Comment 12 above. The Department's proposed rules at N.J.A.C. 7:27-24.5(b) prohibit any information, including the explanation of the code for the date of manufacture, submitted as part of the registration or re-registration from being claimed confidential. The Department recommends that, if a manufacturer wants to keep the explanation of other coded information (other than the explanation of the code for the date of manufacture) confidential, that the manufacturer not send the explanation of the other coded information to the Department. Under New Jersey law, the explanation of the code for the date of manufacture is not entitled to confidential information status. Accordingly, the Department has adopted N.J.A.C. 7:27-24.5(b) as proposed.

14. COMMENT: One commenter suggested that to protect the confidentiality of information contained in the date-code, the Department should replace the proposed requirement for mandatory electronic submittal of the date-code explanations as part of the registration or re-registration at proposed N.J.A.C. 7:27-24.5(e) with a requirement for separate electronic submittal of the date-code explanation, unless such electronic submittal would impose a hardship on the manufacturer, and with a requirement that the Department treat the information about a manufacturer's products as confidential business information. The commenter stated these changes would provide the necessary protection of highly sensitive business information and would conform to the Department's innovative proposal to allow manufacturers to provide this information in electronic format. (4)

RESPONSE: No purpose would be served by the manufacturer's making two separate electronic submittals. As the Department stated in the Response to Comment 13 above, under New Jersey law the manufacturer's explanation of the code for the date of manufacture is not entitled to confidential information status and, as the Department stated in the Response to Comment 12 above, the proposed rules do not request a manufacturer to submit its explanation of any code other than for the date of manufacture. Accordingly, the Department has adopted N.J.A.C. 7:27-24.5(e) as proposed.

N.J.A.C. 7:27-24.6 Chemically formulated consumer products: recordkeeping and

reporting

Comments 15 through 18 address related or similar questions and responded to collectively below.

15. COMMENT: Three commenters raised objections to the Department's proposed recordkeeping requirements. These requirements increase the period that manufacturers would have to retain manufacturing records from three years to five years. Two commenters stated the expansion of the recordkeeping requirements to five years is inconsistent with the OTC model rule, California's rule, and the United States Environmental Protection Agency's (EPA's) national consumer product rule, and that it exceeds the standard legal and regulatory retention periods followed by industry and required under other regulations. Two commenters recommended the record retention requirement be changed to three years. Two commenters stated the five-year record retention requirement is a vestige of the State's 1995 consumer product rules. One commenter stated this recordkeeping requirement will result in confusion to the regulated community. (1, 3, 4)

16. COMMENT: Two commenters stated that the proposed five-year record retention requirement will be burdensome to large and small companies. (1, 3)

17. COMMENT: One commenter stated the proposed recordkeeping requirement is at variance with the Department's stated goal of "…minimizing the economic impact to manufacturers…by…minimizing reporting and recordkeeping…requirements." (4)

18. COMMENT: One commenter stated that the proposed recordkeeping requirement will not provide any benefit to the Department; greater than 99 percent of products produced on any given day will no longer be on a retail store shelf in three years; since the Department desires product records for compliance verification purposes, a three-year retention period is sufficient; and if the Department finds a compliance problem with a product, it will be within three years, with active enforcement, except for some very small "mom and pop" shops. (3)

RESPONSE TO COMMENTS 15 THROUGH 18: The Department's proposal required five year retention periods for four types of documents related to CFCPs.

The first type of document is shipping documentation for CFCPs or PFCs to be sold in New Jersey. Proposed N.J.A.C. 7:27-24.3(e) required manufacturers, distributors and retailers to retain this shipping documentation for five years. However, as stated in the Department's Response to Comments 5 through 7, proposed N.J.A.C. 7:27-24.3(e) was not adopted; and therefore, this recordkeeping requirement is no longer applicable and not included in the adopted amendments. Therefore, the adopted amendments contain no record retention period requirement for any shipping documentation.

The second type of document is compliance test records. Proposed N.J.A.C. 7:27-24.6(d) required manufacturers to retain compliance test records for five years, increased from three years in the existing rule. The Department retained this proposed requirement in the adopted amendments. The commenters are correct in asserting that this requirement differs from the OTC Model Rule for Consumer Products and the rules of the other OTC states. The Department disagrees with the commenter's statement that because nearly all of a particular CFCP is removed from store shelves within three years, manufacturers need to retain compliance test records for only three years. The Department believes that a five year retention period of compliance test records is needed to give the Department's enforcement staff adequate time to complete any enforcement investigations. The Department believes the need to retain these records for enforcement activities to protect public health outweighs industry's request for consistency with the OTC Model Rule and the rules of the other OTC states.

The third type of document is manufacturer information which the Department needs to collect in order to perform a survey of CFCPs sold. In order to reduce the burden to manufacturers and to adhere to the Department's goal of minimizing companies' recordkeeping requirements, the Department has changed the proposal's five year requirement to three years at N.J.A.C. 7:27-24.6(d) in the adopted amendments.

The fourth type of document is limited survey information for CFCPs that are not included in any of the regulated CFCP categories listed in Table 1 at proposed N.J.A.C. 7:27-24.4(a), but that contain greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances equal to or greater than 0.02 pounds per square inch, absolute. In order to reduce the burden to manufacturers and to adhere to the Department's goal of minimizing companies' recordkeeping requirements, the Department changed the proposal's five year requirement to three years at N.J.A.C. 7:27-24.6(d) in the adopted amendments.

Summary of Agency-Initiated Changes:

In addition to the changes in response to comments explained above, the Department is making changes to the following provisions:

N.J.A.C. 7:27-24.4(k)i, ii and iii were incorrectly codified in the proposal and are re-codified correctly in these adopted amendments to N.J.A.C. 7:27-24.4(k)1, 2 and 3, respectively.

At N.J.A.C. 7:27-24.7(c)1 the Department corrects an error in the proposal. As proposed, N.J.A.C. 7:27-24.7(c)1 required certain records needed to demonstrate compliance to be retained for only three years. In the proposal, the Department intended to require at both N.J.A.C. 7:27-24.6(d) and 24.7(c)1 that compliance test records must be retained for at least five years, and not three years, to give the Department's enforcement staff adequate time to complete any

enforcement investigations. Accordingly, the Department is changing N.J.A.C. 7:27-24.7(c)1 on adoption to require compliance test records for chemically formulated consumer products (CFCPs) to be kept for at least five years.

Adopted N.J.A.C. 7:27-24.6 sets forth the various recordkeeping requirements for a CFCP manufacturer. N.J.A.C. 7:27-24.6(a) requires a CFCP manufacturer to retain the results of any testing performed to demonstrate compliance with a VOC content limit. N.J.A.C. 7:27-24.6(d) requires a manufacturer to retain for five years those records needed to demonstrate compliance.

Adopted section N.J.A.C. 7:27-24.7 sets forth the testing requirements a manufacturer must follow to demonstrate that a CFCP complies with a VOC content limit. N.J.A.C. 7:27-24.7(a) requires a CFCP to be tested using the test methods listed in N.J.A.C. 7:27-24.7(b) through (g). N.J.A.C. 7:27-24.7(c) describes a test method that relies on records of the amounts of constituents used to make the CFCP. As proposed, N.J.A.C. 7:27-24.7(c)1 required these records be retained for at least three years. However, because the record retention provision relates to compliance documents, the Department intended the retention period to be five years, rather than the three years stated in the proposal.

Although the five year document retention provision at N.J.A.C. 7:27-24.6(d) and 24.7(c)1 differs from the three-year retention requirement of the OTC Model Rule, the Department believes the need to retain records demonstrating compliance in order that the Department can undertake appropriate enforcement activities to protect public health outweighs industry's request for consistency with the OTC Model Rule and the rules of the other OTC states. Survey information, which these adopted rules require be retained for three years, is not as important for enforcement investigations as compliance test records.

Moreover, it is the policy of the Department's Air Quality Program to require compliance test records to be retained for five years. For example, the Department's Air Quality Program rules at N.J.A.C. 7:27-8.9(g), 16.5(j), 16.18(j), and 16.22(a) require that compliance test records be retained for five years. However, at proposed N.J.A.C. 7:27-24.7(c)1, the Department erroneously required a three-year compliance test record retention period. The Department corrects this error by replacing the term "three" with the term "five" at N.J.A.C. 7:27-24.7(c)1 as adopted.

Federal Standards Analysis

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 which exceed any Federal standards or requirements to include in the rulemaking document a Federal standard analysis.

The Department has performed a comparison of the rules and amendments to N.J.A.C. 7:27-24, Prevention of Air Pollution from Consumer Products, to analogous Federal regulations, namely, CFR §§ 59.100 to 59.413, National Volatile Organic Compound Emission Standards for Consumer and Commercial Products. These Federal regulations have been promulgated pursuant to the Federal Clean Air Act and set forth the substantive Federal standards. Based on its review of Federal regulations, the Department has determined that the rules and amendments for CFCPs are more stringent than Federal standards. Since no Federal regulations exist for PFCs, the Department has determined that the rules for PFCs do not exceed Federal standards.

The new rules and amendments are needed to fulfill a requirement, imposed by USEPA pursuant to the Federal Clean Air Act, 42 U.S.C. §§7401 et seq., that New Jersey adopt sufficient control measures to address additional VOC (ozone precursor) emission reductions identified by USEPA as being needed for New Jersey in its State Implementation Plan (SIP) to attain the one-hour ozone standard by the mandated attainment dates of 2005 for the New Jersey portion of the Southern New Jersey-Philadelphia-Wilmington nonattainment area and 2007 for the New Jersey portion of the Northern New Jersey-New York City-Southwestern Connecticut nonattainment area. Therefore, adoption of these new rules and amendments is necessary for the State to comply with Federal requirements.

One of the options that the USEPA proposed to New Jersey and several other states was that the State work with the OTC to develop a regional strategy to reduce VOCs and NO_x in order to address the required emission reductions. OTR states were required to provide to the USEPA, by October 31, 2001, a SIP revision that identified the control measures to be adopted to address the required emission reductions. New Jersey complied with this requirement.

New Jersey worked with the OTC and other jurisdictions in the OTR to develop a set of control measures to meet the additional emission reduction requirements by the mandated attainment dates. The CFCP and PFC rules are two of the control measures identified by the OTC. The control measures were selected based on VOC inventory emissions, potential emission reductions, technological feasibility of the proposal and timeliness of potential implementation. The OTC found no other feasible measures that could substitute for CFCPs and PFCs and still meet the USEPA mandated emission shortfall requirement. The VOC emission reductions from these rules and amendments are expected to provide approximately 39 percent (half from CFCPs and half from PFCs) of the total VOC emission reductions from the five OTC VOC model rules.

Cost Benefit Analysis

The amendments for CFCPs would primarily impact manufacturers of products. In order to comply with the rules, manufacturers may have to reformulate some of their products to meet the rules' requirements or refrain from selling them in New Jersey for use in New Jersey. Distributors and suppliers will need to ensure proper distribution of products to the appropriate

states. Also, potentially affected are retailers, businesses that supply ingredients and equipment to these manufacturers, businesses that use CFCPs and consumers.

As discussed in more detail in the proposal's Economic Impact, the estimated cost per unit ranges from no cost increase (net savings or no cost for various categories) to approximately $0.60 per unit of product. The CARB economic analysis concluded that most manufacturers would be able to absorb the cost of the rules and amendments with no significant adverse economic impacts. In addition, the manufacturer may or may not choose to pass some or all of these costs on to the consumer. Based on the economic analysis, the Department does not anticipate any significant adverse effects on consumers.

Companies that supply raw materials for existing non-compliant products may experience a decline in demand for their products. On the other hand, those companies which supply solvents, other chemicals and equipment for use in reformulating CFCPs could potentially benefit from the rules and amendments as they experience an increase in demand for their products.

Distributors and retailers may be impacted if the potential increase in costs of products dampen demand for the products. The potential consumer impact analysis assumes that manufacturers, distributors and retailers pass on any additional compliance costs to the consumers. This may be conservative because the manufacture may absorb some or all of the cost of compliance. Based on the potential consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for distributors and retailers.

Impacts to businesses that use CFCPs would be similar to the potential additional costs a consumer would experience as discussed in the consumer impact analysis. Based on the consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for businesses who use CFCPs.

The Department anticipates the benefits of the rules and amendments to be an increase in the quality of life and protection of human health, the environment and agriculture. The Department expects the adopted rules and amendments to have a significant and positive environmental impact. The primary environmental benefit will be a reduction in the emission of VOCs, which are precursor emissions that lead to the formation of ground-level ozone. As discussed earlier, ground-level ozone is breathed by people and animals and comes into contact with crops and other vegetation, as well as man-made structures and surfaces. This exposure can cause a variety of adverse effects. The rules are also expected to reduce emissions of hazardous air pollutants and toxic substances. In addition, the rules will reduce particulate matter of 2.5 microns or less equivalent aerodynamic diameter (PM 2.5), some of which is created from VOC emissions. It is estimated that the adopted CFCP rules and amendments will achieve a 14.2 percent reduction of the entire consumer products VOC emissions inventory, beyond the current

USEPA Federal rules, or a reduction of approximately 32 percent of the emissions from the categories being regulated. This equates to a VOC emission reduction of approximately 12 tons per day in 2007.

As discussed in the proposal's Economic Impact, the estimated cost-effectiveness of the rules and amendments for each product category ranges from no cost (and in some cases a net savings) to approximately $7.73 per pound of VOC reduced. The estimated emission reduction-weighted average (ERWA) cost-effectiveness is $1.15 per pound of VOC reduced or $2,300 per ton of VOC reduced.

In addition to the environmental and health benefits, economic benefits, which are difficult to quantify, may also be realized. Owners and employees of businesses will enjoy the environmental, health and other social benefits of the new amendments. A reduction in air pollution will lead to healthier and more productive workers. The Department is adopting this rule to meet USEPA requirements. Failure to achieve these reductions could subject New Jersey to economic sanctions, which would adversely affect all businesses and taxpayers in the State.

Conclusion

In adopting these rules and amendments, the Department has balanced the need to protect the environment and the public health and to comply with the USEPA requirements against any economic impacts of the rule. Based on the research, surveys and evaluations done by CARB, the OTC and the Department, the Department has determined that these rules and amendments are achievable under current technology and are cost-effective. The Department has determined that establishing these adopted rules and amendments, even though more stringent than the Federal rule, is essential in order to meet the ozone precursor emission reduction requirements by the required attainment dates, and to protect the environment and public health. The states of Delaware, New York, and Pennsylvania have already adopted rules substantially equivalent to this New Jersey adopted rule.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *__thus__*; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 27
AIR POLLUTION CONTROL

SUBCHAPTER 24. PREVENTION OF AIR POLLUTION FROM CONSUMER PRODUCTS

7:27-24.2 Applicability

(a) – (b) (No change from proposal)

(c) Manufacturers of chemically formulated consumer products that are not covered by (b)1 above but that contain greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (one millimeter of mercury), absolute or greater measured as standards conditions, shall comply with the recordkeeping requirements at N.J.A.C. 7:27-24.6(c) through (e) and (i). However, the manufacturers of such chemically formulated consumer products are not subject to the following requirements: N.J.A.C. 7:27-*[24.3(e);]* 24.4; 24.5; 24.6(a), (b), (f) through (h) and (j); and 24.7.

(d)- (h) (No change from proposal)

7:27-24.3 General provisions

(a) – (d) (No change from proposal)

(e) *[Each manufacturer and distributor of a consumer product subject to N.J.A.C. 7:27-24.2(b) shall include on the invoice, bill of lading, or other shipping document provided to the distributor or retailer receiving the product in New Jersey a statement indicating that the product included on that shipping document and subject to N.J.A.C. 7:27-24.2(b), shipped by that manufacturer or distributor for sale in New Jersey, is in compliance with this subchapter. These documents shall be maintained by the manufacturer, distributor and/or retailer for no less than five years and shall be made available by the document recipient to the Department upon written request.]*

*[(f)]*Any submittal to the Department, other than a registration or re-registration, shall be certified in accordance with N.J.A.C. 7:27-1.39, Certification of information.

[(g)] ***(f)***In each written request by the Department for information, the Department shall specify the information to be reported and may specify the format in which it is to be reported.

7:27-24.4 Chemically formulated consumer products: standards

(a) – (j) (No change from proposal)

(k) Any submittal made pursuant to (j)5 above shall be sent to the address given at N.J.A.C. 7:27-24.3(d) and the envelope or package shall be labeled as follows:

[i.] ***1.*** For an IPE, “Attention: Consumer Product Innovative Product Exemption;”

[ii.] ***2.*** For an ACP, "Attention: Consumer Product Alternative Control Plan;" or

[iii.] ***3.*** For a variance, "Attention: Consumer Product Variance."

(l) (No change from proposal)

7:27-24.6 Chemically formulated consumer products: recordkeeping and reporting

(a) – (c) (No change from proposal)

(d) Records sufficient to provide the information required pursuant to (a)*[, (b), and (c)]* ***1 and 2*** above shall be maintained by each manufacturer for five years after each calendar year for which the data is collected. ***Records sufficient to provide the information required pursuant to (a)3, (b), and (c) above shall be maintained by each manufacturer for three years after each calendar year for which the data is collected.***

(e) – (j) (No change from proposal)

7:27-24.7 Chemically formulated consumer products: testing

(a) – (b) (No change from proposal)

(c) Compliance with a VOC content limit at N.J.A.C. 7:27-24.4(a) may also be demonstrated through calculation of the VOC content of a consumer product from records of the amounts of constituents used to make the product (excluding packaging), pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a chemically formulated consumer product keeps, for each day of production, accurate records of the amount and chemical composition of the individual product constituent1s. These records must be kept for at least *[three]* ***five*** years;

2. - 3. (No change from proposal)

(d) - (i) (No change from proposal)

CHAPTER 27A

AIR ADMINISTRATION PROCEDURES AND PENALTIES

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:27A-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 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.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1. - 23. (No change.)

24. Civil administrative penalties for each violation of N.J.A.C. 7:27-24, Control of Air Pollution from Consumer Products, are as set forth in the following table:

Citation and Rule Summary	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-24.3(b) Distributor identification and shipping documentation availability	Manufacturer, Distributor, Seller	$ 8,000	$ 16,000	$ 40,000	$ 50,000
[N.J.A.C. 7:27-24.3(e) Shipping documentation compliance statement]	*[Manufacturer, Distributor, Seller]*	*[$ 4,000]*	*[$ 8,000]*	*[$ 20,000]*	*[$ 50,000]*

...

25. - 31. (No change.)

(n) - (p) (No change.)