

Title 26. Health and Vital Statistics
Chapter 2C. Air Pollution Control
Diesel Retrofit Law (P.L. 2005, c. 219 and P.L. 2006, c.94)

26:2C-8.26 Findings, declarations relative to regulation of fine particle emissions from diesel engines.

The Legislature finds and declares that the emissions of fine particles into the air pose an extraordinary health risk to the people of the State; that the Department of Environmental Protection has determined that 1,000 deaths and 68,000 cases of asthma in the State each year are attributed to the exceedance of the federal 2.5 micron fine particle standard in the State; that exhaust emissions from diesel-powered vehicles and equipment contribute substantially to the fine particle problem, and pose both cardiovascular and cancer risks; that the United States Environmental Protection Agency has classified diesel exhaust as likely to be carcinogenic to humans by inhalation at environmental exposures; that the United States Environmental Protection Agency has also identified diesel particle matter and diesel exhaust organic gases as a mobile source air toxic; that studies repeatedly have found links between exposure to fine particles and health effects, including premature death and increased incidents of asthma, allergies, and other breathing disorders; and that these studies include the examination of the health impacts of the exposure to diesel emissions for school children riding diesel-powered school buses.

The Legislature further finds and declares that, although some new diesel-powered vehicles and equipment operate more cleanly and may contribute less to air quality problems than their predecessors, diesel-powered trucks, buses, and off-road equipment tend to remain in service as long as 20 years or more; that, among these types of vehicles and equipment, diesel commercial buses and diesel solid waste vehicles operate in significant numbers in urban areas of the State where the reduction of fine particle diesel emissions should be prioritized because fine particle diesel emissions are at the highest concentrations in these areas; that the emissions from diesel school buses directly impact the health of school children throughout the State; that unless emissions from some on-road diesel-powered vehicles and off-road diesel-powered equipment currently operating in the State are controlled, all on-road diesel-powered vehicles and off-road diesel-powered equipment will continue to emit high levels of fine particles and contribute to air pollution in the State for many years to come; that filters and other devices and cleaner burning fuels are available to reduce emissions from older diesel vehicles and equipment; that retrofitting certain diesel-powered vehicles and equipment with emissions reducing devices, operating these vehicles and equipment on cleaner burning fuel, or both, could significantly improve air quality; that although such requirements impose costs, the costs are relatively small when compared with the costs of the vehicles or equipment they update or the cost of the impact on the public health from the air pollution that the requirements abate; that by exercising discretion in the types of vehicles and equipment and the matching of technologies to vehicles and equipment, the cost of installing and using pollution-reducing devices and fuels can be minimized and the air pollution reduction and public health benefits can be maximized; and that the Department of Environmental Protection has estimated that targeting reductions of fine particles from these vehicles and equipment could remove 315 tons per year from the ambient air in the State and could prevent more than 150 premature deaths.

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The Legislature therefore determines that it is of vital importance to the health of the people of the State to begin to reduce significantly fine particle emissions and exposure of school children to these emissions; and that this start can be most effectively and economically accomplished by requiring the use of the best available retrofit technologies for the reduction of fine particle emissions in diesel-powered commercial buses, school buses, solid waste vehicles, and publicly owned on-road vehicles and off-road equipment.

L.2005,c.219,s.1.

26:2C-8.27 Definitions relative to regulation of fine particle emissions from diesel engines.

As used in sections 1 through 31 of P.L.2005, c.219 (C.26:2C-8.26 et seq.):

"Best available retrofit technology" means the equipment, retrofit device, or fuel, or any combination thereof, designated by the United States Environmental Protection Agency as a verified technology for diesel retrofit programs, or by the California Air Resources Board as a verified technology for diesel emissions control, for use on or in specific makes, model years, types, and classes of on-road diesel vehicles or off-road diesel equipment, and that, as determined by the Department of Environmental Protection, may be used on or in regulated vehicles or regulated equipment, at a reasonable cost, to achieve substantial reduction of fine particle diesel emissions. "Best available retrofit technology" may include, but is not limited to, particle filters, diesel oxidation catalysts, flow through filters, and modified diesel fuel, provided that these diesel retrofit devices and diesel emissions control strategies are verified technologies according to the United States Environmental Protection Agency or the California Air Resources Board. "Best available retrofit technology" shall include only those retrofit devices and fuel for which the retrofit device manufacturer or fuel manufacturer agrees, in a manner determined appropriate by the department, that the installation and use of the retrofit device or the use of the special fuel would not jeopardize the original engine warranty in effect at the time of the installation or the commencement of use of the retrofit device or fuel, and for which the retrofit device manufacturer or fuel manufacturer has provided a warranty pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). "Best available retrofit technology" shall not include repowering of any vehicle or piece of equipment, or the use of ultra-low sulfur diesel fuel;

"Commission" means the New Jersey Motor Vehicle Commission;

"Compliance form" means a form used for ascertaining compliance with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) or eligibility for reimbursement of costs associated therewith, and issued pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42);

"Constitutionally dedicated moneys" mean moneys dedicated pursuant to Article VIII, Section II, paragraph 6, subparagraph (d) of the State Constitution;

"Department" means the Department of Environmental Protection;

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"Diesel commercial bus" means a diesel bus as defined pursuant to section 2 of P.L. 1995, c.157 (C.39:8-60), except that "diesel commercial bus" shall include only diesel commercial buses with a gross vehicle weight rating in excess of 14,000 pounds, and shall not include school buses;

"Diesel engine" means an internal combustion engine with compression ignition using diesel fuel, including the fuel injection system but excluding the exhaust system;

"Diesel Risk Mitigation Fund" or "fund" means the fund established pursuant to section 28 of P.L.2005, c.219 (C.26:2C-8.53);

"Diesel solid waste vehicle" means any on-road diesel vehicle with a gross vehicle weight rating in excess of 14,000 pounds that is used for the purposes of collecting or transporting residential or commercial solid waste, including vehicles powered by a diesel engine used for transporting waste containers, including, but not necessarily limited to, open boxes, dumpsters or compactors, which may be removed from the tractor. "Diesel solid waste vehicle" shall include solid waste cabs and solid waste single-unit vehicles;

"Fine particle" means a particle emitted directly into the atmosphere from exhaust produced by the combustion of diesel fuel and having an aerodynamic diameter of 2.5 micrometers or less;

"Fine particle diesel emissions" means emissions of fine particles from an on-road diesel vehicle or from off-road diesel equipment;

"Fleet" means one or more on-road diesel vehicles or pieces of off-road diesel equipment;

"Off-road diesel equipment" means any equipment or vehicle, other than a diesel construction truck, powered by a diesel engine that is used primarily for construction, loading, and other off-road purposes and, when in use, is not commonly operated on a roadway except when used for roadway construction and repair, including, but not necessarily limited to, rollers, scrapers, excavators, rubber tire loaders, crawler/dozers, and off-highway trucks. "Off-road diesel equipment" shall include equipment and vehicles that are not used primarily for transportation and are considered off-road equipment and vehicles but, for the purposes of moving the equipment and vehicles from place to place on the roadways of the State, are required to have "in-transit" plates issued by the New Jersey Motor Vehicle Commission. "Off-road diesel equipment" shall not include any non-mobile equipment, such as a generator or pump, and shall not include boats or trains;

"On-road diesel vehicle" means any vehicle, other than a private passenger automobile, that is powered by a diesel engine and operated on the roadways of the State, and shall include, but need not be limited to, diesel buses, diesel-powered motor vehicles, and heavy-duty diesel trucks as defined pursuant to section 2 of P.L.1995, c.157 (C.39:8-60);

"Owner" means any person, the State, or any political subdivision thereof, that owns any on-road diesel vehicle or off-road diesel equipment subject to the provisions of P.L.2005, c.219

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(C.26:2C-8.26 et al.);

"Private regulated commercial bus" means any diesel commercial bus not owned by the New Jersey Transit Corporation, and any diesel commercial bus owned by the New Jersey Transit Corporation but leased or operated by a provider of diesel commercial bus service other than the New Jersey Transit Corporation;

"Public regulated commercial bus" means any diesel commercial bus owned and operated by the New Jersey Transit Corporation;

"Regulated commercial bus" means any diesel commercial bus registered and operating in the State;

"Regulated equipment" means any regulated off-road diesel equipment or any piece of off-road diesel equipment that is required to use best available retrofit technology pursuant to an approved fleet averaging plan;

"Regulated off-road diesel equipment" means any off-road diesel equipment operating in the State that is owned by the State or any political subdivision thereof, or a county or municipality, or any political subdivision thereof;

"Regulated on-road diesel vehicle" means any on-road diesel vehicle registered in the State that is owned by the State or any political subdivision thereof, a county or municipality, or any political subdivision thereof;

"Regulated school bus" means a school bus powered by a diesel engine, and owned by a school district, nonpublic school, or school bus contractor who has entered into a contract with a school district or a nonpublic school to transport children to and from a primary or secondary school in the State, that was originally designed to carry 10 or more passengers, and is in service on or after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.);

"Regulated solid waste vehicle" means any diesel solid waste vehicle registered in the State that is owned by the State or any political subdivision thereof, or a county or municipality or any political subdivision thereof, or that is owned by a person who has entered into a contract in effect on or after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), with the State or any political subdivision thereof, or a county or municipality or any political subdivision thereof, to provide solid waste services;

"Regulated vehicle" means any regulated commercial bus, regulated on-road diesel vehicle, regulated solid waste vehicle, or any regulated school bus required to comply with any requirements pursuant to subsection b. of section 7 of P.L.2005, c.219 (C.26:2C-8.32) from model year 2006 or a preceding model year and registered in the State, or any on-road diesel vehicle registered in the State that is required to use best available retrofit technology pursuant to an approved fleet averaging plan;

"Retrofit device" means a best available retrofit technology that is an after-market apparatus

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installed on an on-road diesel vehicle or on a piece of off-road diesel equipment;

"School bus" means a school bus as defined under R.S.39:1-1;

"Technology" means any equipment, device, or fuel used alone or in combination to achieve the reductions in emissions required for best available retrofit technology; and

"Ultra-low sulfur diesel fuel" means diesel fuel that the United States Environmental Protection Agency designates or defines as ultra-low sulfur diesel fuel.

L.2005,c.219,s.2.

26:2C-8.28 DEP rules, regulations.

a. The Department of Environmental Protection, no later than 270 days after the effective date of this section, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

b. The rules and regulations adopted pursuant to subsection a. of this section shall include, but not need not be limited to:

(1) the designation of the required reduction in fine particle diesel emissions and choices of the best available retrofit technologies available to owners of regulated vehicles or regulated equipment to meet the required reduction for each make, model or type of regulated vehicles or regulated equipment, including, but not limited to, the description of the hierarchy and levels of best available retrofit technologies as they correspond to the emissions reductions anticipated from the use of each best available retrofit technology, and the requirements for implementing the use of best available retrofit technologies by any owner of regulated vehicles or regulated equipment who elects not to submit a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan pursuant to section 7 or section 9 of P.L.2005, c.219 (C.26:2C-8.32 or C.26:2C-8.34);

(2) guidelines and requirements for developing fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans, and any supplements or modifications thereto, including, but not limited to:

(a) a description of the components that, at a minimum, are to be included in a fleet retrofit plan;

(b) guidelines for use by owners of regulated vehicles or regulated equipment concerning how to develop an inventory of regulated vehicles or regulated equipment, prepare the required fleet retrofit plan, and determine the technology required for each vehicle or piece of equipment;

(c) the choices of the best available retrofit technologies available to owners of

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regulated vehicles or regulated equipment for each make, model or type of regulated vehicle or regulated equipment to achieve reductions in fine particle emissions;

(d) information on how to select the specific best available retrofit technologies and ensure the fleet retrofit plan, combined fleet plan, or fleet averaging plan requirements are met;

(e) procedures and provisions for the review and approval, and enforcement of fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans for regulated vehicles or regulated equipment; and

(f) provisions ensuring, in the implementation requirements for fleet retrofit plans, combined fleet plans, or fleet averaging plans, due consideration of the efforts of owners of regulated vehicles or regulated equipment who voluntarily retrofit regulated vehicles or regulated equipment prior to the required submittal of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan;

(3) the procedures for contacting the department with questions about the requirements of, and compliance with, the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), and for obtaining any technical guidance needed in preparing the fleet retrofit plans, combined fleet retrofit plans, or fleet averaging plans;

(4) in consultation with the Department of Education, the Department of Health and Human Services, the New Jersey Motor Vehicle Commission, and the Department of Law and Public Safety, provisions concerning the idling and queuing of school buses and enforcement of violations thereof, in accordance with section 8 of P.L.2005, c.219 (C.26:2C-8.33) and no less stringent than restrictions on idling pursuant to department rules and regulations in effect on the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.); and

(5) any requirements or guidelines concerning the installation of closed crankcase technology in regulated school buses or compliance with the provisions of section 6 of P.L.2005, c.219 (C.26:2C-8.31);

(6) warranty provisions for best available retrofit technologies and their installation and use on regulated vehicles or regulated equipment; and

(7) any other provisions the department determines necessary for the implementation of P.L.2005, c.219 (C.26:2C-8.26 et al.).

c. No provision of the rules and regulations adopted pursuant to subsection a. of this section may:

(1) designate any other types, makes, models, or classes of vehicles or equipment as regulated vehicles or regulated equipment other than regulated vehicles and regulated equipment as defined in section 2 of P.L.2005, c.219 (C.26:2C-8.27);

(2) require the installation and use of a retrofit device on a private regulated commercial

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bus earlier than 180 days after the owners of public regulated commercial buses have been required to install and have begun to use best available retrofit technologies that are retrofit devices on public regulated commercial buses;

(3) require the installation or use of a retrofit device on a regulated vehicle or piece of regulated equipment unless:

(a) the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund for that year; and

(b) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay for the cost of purchase and installation of the retrofit device required to be installed or used in that given year, by rule or regulation or by a provision of a plan submitted pursuant to section 7 or section 9 of P.L.2005, c.219 (C.26:2C-8.32 or C.26:2C-8.34).

Provided that the State Treasurer has issued the certification required under subparagraph (a) of paragraph (3) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated vehicles or pieces of equipment.

d. The rules and regulations adopted pursuant to paragraph (6) of subsection b. of this section shall at a minimum require that:

(1) the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment the full repair and replacement cost of the best available retrofit technology, including parts and labor, if the best available retrofit technology fails to perform as verified;

(2) the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment, if the installation or use of the best available retrofit technology damages the engine or the engine components of the regulated vehicle or piece of regulated equipment, the repair or replacement of engine components to return the engine components of the regulated vehicle or piece of regulated equipment to the condition they were in prior to damage caused by the best available retrofit technology;

(3) the manufacturers of best available retrofit technology authorize installers of best available retrofit technology other than fuel as authorized installers of the best available retrofit technology; and

(4) only authorized installers of best available retrofit technology install best available retrofit technology other than fuel.

The specific provisions of these requirements and the specific provisions of any warranty may be established by the department through rules and regulations adopted pursuant to this

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section or under separate rules and regulations adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), including but not limited to, the period of time during which a warranty would be in effect.

L.2005,c.219,s.3.

26:2C-8.29 DEP to consult when developing rules, regulations concerning diesel commercial buses.

The Department of Environmental Protection shall consult with the New Jersey Motor Vehicle Commission and the New Jersey Transit Corporation when developing the provisions of the rules and regulations to be adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) concerning diesel commercial buses. No later than 60 days before any proposed rules or regulations are filed for publication in the New Jersey Register, the Department of Environmental Protection shall submit for comment to the New Jersey Transit Corporation any rules or regulations concerning diesel commercial buses proposed for adoption pursuant to section 3, section 19, or section 20 of P.L.2005, c.219 (C.26:2C-8.28, C.26:2C-8.44, or C.26:2C-8.45). The Department of Environmental Protection, wherever possible, shall incorporate into requirements imposed on the New Jersey Transit Corporation the use of improved pollution control or fuels other than conventional diesel fuel used by the New Jersey Transit Corporation pursuant to section 22 of P.L.1984, c.73 (C.27:1B-22), but may require additional controls or fuel use for diesel commercial buses operated by, or under contract to, the New Jersey Transit Corporation. No provision of section 22 of P.L.1984, c.73 (C.27:1B-22) shall be construed to supersede, or exempt the New Jersey Transit Corporation from, any requirements the Department of Environmental Protection may establish pursuant to this section. The Department of Environmental Protection shall give due consideration to the efforts and actions of the New Jersey Transit Corporation for any reduction of fine particle diesel emissions that it has achieved by the installation of retrofit equipment on on-road diesel vehicles in its fleet or the use of special fuels by its fleet to use prior to the submittal of any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

L.2005,c.219,s.4.

26:2C-8.30 Public outreach program to owners of affected vehicles, equipment.

The Department of Environmental Protection shall develop and implement, in consultation with the New Jersey Motor Vehicle Commission, a public outreach program to notify and inform the owners of regulated vehicles or regulated equipment affected by the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) of the provisions of the law. In developing and implementing the public outreach program, the department shall make every effort to reach those owners that can be identified with the information that is available to the department and through other State agencies or departments, but the department shall not be responsible for notifying and informing owners that could not be identified, and not the New Jersey Motor Vehicle Commission nor any other State agency or department shall be required to identify every owner.

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L.2005,c.219,s.5.

26:2C-8.31 Closed crankcase technology for regulated school buses.

a. No later than two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), or two years after the date on or by which both certifications required in this subsection have been made, whichever is later, every owner of a regulated school bus shall have installed on the regulated school bus closed crankcase technology as specified by the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

No owner of a regulated school bus shall be required to install closed crankcase technology pursuant to this subsection unless:

(1) the State Treasurer certifies in each of the two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.) that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund; and

(2) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the closed crankcase technology required pursuant to this subsection in that two-year period.

Provided that the State Treasurer has issued the certification required under paragraph (1) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated vehicles or pieces of equipment.

b. The Department of Environmental Protection shall provide, and each owner of a regulated school bus shall obtain from the department, a compliance form for each regulated school bus. The owner of the regulated school bus shall submit a cost estimate to the department detailing the cost of any retrofit device to be installed as part of the closed crankcase technology and any cost associated with the installation of the closed crankcase technology prior to its purchase or installation. The department may determine whether the estimated costs are unreasonable, based upon criteria including, but not limited to, prevailing market rates and acquisition by the State of comparable technology. If the department makes such a determination, the department shall enter into negotiations with the owner of the regulated school bus to resolve the discrepancy.

The owner of the regulated school bus shall complete the compliance form, retain a copy for the owner's records, and return it to the department as soon as practicable after the installation of the closed crankcase technology to verify compliance with the requirements of subsection a. of this section and to seek reimbursement for the cost of the closed crankcase technology. The compliance form shall include the cost of any retrofit device installed as part of the closed

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crankcase technology and any cost associated with the installation of the closed crankcase technology. After the installation of the closed crankcase technology on a regulated school bus, a copy of the completed compliance form shall be kept on each regulated school bus at all times.

c. The department shall review the compliance forms submitted pursuant to subsection b. of this section and forward them to the State Treasurer. The State Treasurer shall reimburse each owner of a regulated school bus the cost of any retrofit device installed as part of the closed crankcase technology requirement and any cost associated with the installation of the closed crankcase technology indicated on the compliance form, in accordance with the provisions of sections 28 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-8.53 through C.26:2C-8.56).

d. The Department of Environmental Protection shall provide any training necessary to implement the provisions of subsection d. of this section for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, as determined necessary by the Chief Administrator of the New Jersey Motor Vehicle Commission.

e. The Department of Environmental Protection and the New Jersey Motor Vehicle Commission shall adopt jointly, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations concerning the installation of the crankcase technology required pursuant to this section and establishing the inspection requirements and procedures for verification of compliance with the crankcase technology requirement established pursuant to this section, the use of the compliance form in any inspection or as part of the inspection procedures and verification of compliance, any training necessary for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, and the extent of that training to be provided by the Department of Environmental Protection, and in what manner that training shall be provided.

f. If for any reason, the owner of the regulated school bus is unable to comply with the requirements specified in this section, the owner shall notify the department, as soon as practicable, of the inability to comply. The department shall resolve the situation with the owner as soon as practicable, and the department shall issue any necessary documentation and other information to the owner of the regulated school bus.

L.2005,c.219,s.6; amended 2006, c.94, s.1.

26:2C-8.32 Study to identify, quantify sources of fine particles in cabin of regulated school buses.

a. Within two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), the Department of Environmental Protection shall complete a study to identify and quantify the sources of fine particles present in the cabin of a regulated school bus. The study shall:

- (1) evaluate the relative contribution of emissions from both the crankcase and the tailpipe to in-cabin levels of fine particles; and
- (2) evaluate the feasibility of requiring, and the environmental and health benefits of the

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reduction of fine particle levels from school bus tailpipe emissions through the use of additional retrofit devices.

b. If the Department of Environmental Protection finds as a result of the study conducted pursuant to subsection a. of this section that technologically feasible reductions in tailpipe emissions would significantly reduce the health risks associated with exposure of children to fine particles in the cabin of a standard school bus, the department may require the use of additional best available retrofit technologies in or on regulated school buses. If the department makes such a finding pursuant to the study, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing:

(1) the best available retrofit technologies that regulated school buses shall be required to use, according to type, class, and other identifying vehicle information as designated by the department in these rules and regulations; and

(2) the requirements for submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan that are consistent with the requirements and provisions of section 9 and section 10 of P.L.2005, c.219 (C.26:2C-8.34 and C.26:2C-8.35) and the requirements for implementing the use of best available retrofit technologies for any owner who elects not to submit such a plan.

No use of additional best available retrofit technologies in or on regulated school buses may be required pursuant to this subsection for regulated school buses scheduled to be in service for less than two years on or after the date of notification pursuant to subsection d. of this section. No provision of the rules and regulations may require an owner of a regulated school bus to make a submittal to the department except as provided by this section.

c. No owner of a regulated school bus shall be required to install or use a retrofit device on a regulated school bus as required pursuant to the rules and regulations adopted pursuant to subsection b. of this section or pursuant to any part of a plan submitted pursuant to subsection e. of this section unless:

(1) the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund for that year; and

(2) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay for the cost of purchase and installation of the retrofit device required to be used by rule or regulation or by a provision of a plan submitted pursuant to subsection e. of this section in that given year.

Provided that the State Treasurer has issued the certification required under paragraph (1) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated school buses for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated school buses.

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d. The Department of Environmental Protection shall notify each owner of a regulated school bus of the adoption of the rules and regulations pursuant to subsection b. of this section and the provisions of those rules and regulations. In establishing additional requirements pursuant to subsection b. of this section, the department shall require the compliance of regulated school buses before the compliance of other vehicles and equipment required to use best available retrofit technologies pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.). The State Treasurer shall prioritize the use of dedicated moneys in the Diesel Risk Mitigation Fund to allow for regulated school bus compliance with the provisions of this section, and shall prioritize payments made from the fund for regulated school buses complying with these additional requirements.

e. If rules and regulations are adopted pursuant to subsection b. of this section, each owner of a regulated school bus shall submit to the Department of Environmental Protection:

- (1) an inventory of the diesel-powered school buses that are owned by the owner;
- (2) notice by the owner that the owner shall comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to subsection b. of this section, or that the owner cannot comply in that manner and is submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan; and
- (3) the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan being submitted in lieu of complying through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.), if the owner has elected to do so.

The owner shall make these submittals no later than 180 days after the effective date of the rules and regulations adopted pursuant to subsection b. of this section, or the date on or by which both certifications required pursuant to subsection c. of this section have been made, whichever is later.

f. No later than 180 days after the date of the submittals and notice pursuant to subsection e. of this section, the Department of Environmental Protection shall review, approve, and resolve any discrepancies concerning any submitted fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, and shall issue final approval of the submitted plan. Any supplements or modifications to the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan submitted pursuant to this subsection shall be made pursuant to section 10 of P.L.2005, c.219 (C.26:2C-8.35).

g. The department shall provide a one-page compliance form to each owner of a regulated school bus that submits a notice to comply pursuant to paragraph (2) of subsection e. of this section for each regulated school bus required to use best available retrofit technologies. The compliance form shall be similar to the compliance form issued pursuant to section 17 of P.L.2005, c.219 (C.26:2C-8.42) and shall be consistent with the provisions of subsection b. of

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that section. The department shall issue with the compliance form a notice of instructions describing the purpose of, and the procedures for completion of the compliance form, and the requirement to keep the compliance form with the regulated vehicle, or other vehicle included in a fleet averaging plan or modification thereto, for the life of the vehicle.

The owner of the regulated school bus shall complete the compliance form, retain a copy for the owner's records, and return it to the department as soon as practicable after the installation of, or commencement of the use of, the best available retrofit technologies required pursuant to the rules and regulations adopted pursuant to subsection b. of this section. The department shall review the compliance forms submitted and shall forward them to the State Treasurer, who shall reimburse each owner of a regulated school bus the cost of any retrofit device and the costs associated with the installation thereof, in accordance with the provisions of sections 28 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-8.53 through C.26:2C-8.56).

L.2005,c.219,s.7.

26:2C-8.33 Rules and regulations relative to idling school buses, consistency with "Air Pollution Control Act (1954)."

a. The rules and regulations adopted pursuant to paragraph (4) of subsection b. of section 3 of P.L.2005, c.219 (C.26:2C-8.28), shall be consistent with any rules and regulations adopted pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) concerning the idling of vehicles powered by diesel engines, shall be no less stringent than the restrictions on idling pursuant to department rules and regulations in effect on the date of enactment of P.L.2005, c.219 (C.26:2C-8.26 et al.), and shall provide for the same penalties to be enforced for school bus idling as are enforced for the idling of other motor vehicles pursuant to section 2 of P.L.1966, c.15 (C.39:3-70.2), except that:

(1) a warning shall be issued to the driver of the school bus operated in violation of these provisions, to the school district if the school district is not the owner of the school bus, and the principal or administrator of the school serviced by the school bus operated in violation of these provisions, for the first violation;

(2) for a first violation, a notice of violation shall be issued to, and the appropriate penalty imposed on, the owner of the school bus operated in violation of these provisions; and

(3) subsequent violations shall be enforced against the owner of the school bus operated in violation of these provisions, if other than the school district, and the school district serviced by the school bus operated in violation of these provisions.

No penalties may be assessed against any driver of any school bus that is operated in violation of the rules and regulations adopted pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

b. The Department of Environmental Protection shall consult with the Department of Education, individual school districts and school administrators concerning the issue of school bus idling, and develop and assist with the implementation of policies and procedures to achieve

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compliance with the rules and regulations adopted pursuant to paragraph (4) of subsection b. of section 3 of P.L.2005, c.219 (C.26:2C-8.28).

c. The Department of Law and Public Safety, in consultation with local law enforcement, the Department of Education, the Department of Environmental Protection, and the New Jersey Motor Vehicle Commission, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary to facilitate and ensure the enforcement of the rules and regulations adopted pursuant to paragraph (4) of subsection b. of section 3 of P.L.2005, c.219 (C.26:2C-8.28).

L.2005,c.219,s.8.

26:2C-8.34 Submissions to DEP by owner of regulated vehicle, equipment.

a. Except as otherwise provided for in this section, any owner of a regulated vehicle or regulated equipment shall submit to the Department of Environmental Protection:

- (1) an inventory of all on-road diesel vehicles and off-road diesel equipment owned, operated, or leased by the owner;
- (2) notice by the owner that the owner shall comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or that the owner cannot comply in that manner and is submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan;
- (3) the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan being submitted in lieu of complying through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the owner has elected to do so; and
- (4) an estimate of the cost of any retrofit device and any cost associated with the installation of that retrofit device, in accordance with the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

The department may disapprove any notice submitted pursuant to paragraph (2) of this subsection by an owner complying with the requirements as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the department determines that the costs or cost estimates, submitted pursuant to paragraph (4) of this subsection, for the best available retrofit technology described in the notice, are unreasonable based upon criteria including, but not limited to, prevailing market rates and acquisition by the State of comparable technology. If the department makes such a determination, the department shall enter into negotiations with the owner to resolve the discrepancy. For owners complying by submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan pursuant to this subsection, the department shall review any notice, plan, cost, or cost estimate in accordance with the provisions of section 10 of P.L.2005, c.219

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(C.26:2C-8.35).

b. Each owner of a regulated vehicle or regulated equipment shall make the submittals required pursuant to subsection a. in accordance with the following schedule:

(1) for regulated solid waste vehicles, no later than 180 days after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

(2) for public regulated commercial buses, no later than one year after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

(3) for private regulated commercial buses, no later than one year and 180 days after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28); and

(4) for regulated on-road diesel vehicles and regulated equipment other than regulated solid waste vehicles and regulated commercial buses, no later than four years after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

c. No owner of a private regulated commercial bus shall be required to make any submittal pursuant to subsection b. of this section until the owners of public regulated commercial buses have made their submittals required pursuant to that subsection, and no installation and use of a retrofit device on a private regulated commercial bus may be required earlier than 180 days after the owners of public regulated commercial buses have been required to install and have begun the use of retrofit devices on public regulated commercial buses.

d. The owner of regulated vehicles or regulated equipment who commences operation of a fleet after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) shall make the submittals required pursuant to subsection a. of this section within 180 days after the date on which they began operations, or the date provided in subsection b. of this section, whichever is later.

e. The owner of regulated vehicles or regulated equipment may coordinate or combine the development of a fleet retrofit plan with the development of a fleet retrofit plan of any other owner, or a group of owners, of regulated vehicles or regulated equipment, and with the guidance of the Department of Environmental Protection submit a combined fleet retrofit plan.

f. The fleet retrofit plan submitted pursuant to subsection a. of this section shall include a description by the owner of the best available retrofit technology and the specific regulated vehicle or piece of regulated equipment on which the specific best available retrofit technology would be used, as determined by the owner pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

g. If the owner of regulated vehicles or regulated equipment determines that the best available retrofit technology as required under the rules and regulations adopted pursuant to

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section 3 of P.L.2005, c.219 (C.26:2C-8.28) is not feasible for a specific regulated vehicle or pieces of regulated equipment, the owner may document this determination in the fleet retrofit plan and request the use of another level of best available retrofit technology to meet the requirement for that specific regulated vehicle or piece of regulated equipment, or provide documentation as to why the owner cannot use the best available retrofit technology that is required. The owner may also propose and negotiate an enforceable commitment to:

(1) retire the regulated vehicle or piece of regulated equipment and replace it with a vehicle or piece of equipment certified to fine particle emission levels at or below the emission levels that would have been achieved by the use of the required best available retrofit technology; or

(2) replace the engine of the vehicle or the equipment with an engine certified to that fine particle emissions level.

h. The owner of 75 or more regulated vehicles or pieces of regulated equipment, or any group of owners who elect to develop a combined fleet retrofit plan pursuant to subsection e. of this section under which 75 or more regulated vehicles or pieces of regulated equipment would be regulated, may propose to the Department of Environmental Protection a fleet averaging plan, in lieu of a fleet retrofit plan or a combined fleet retrofit plan, for the fleet or fleets affected. The owner or owners may propose a fleet averaging plan provided that the total net percent reductions in fine particle emissions under the proposed fleet averaging plan are equivalent to the estimated reductions in fine particle emissions that would have been achieved by the owner if a fleet retrofit plan were submitted and implemented for the regulated vehicles or regulated equipment, or both, or by the owners if the owners had submitted and implemented a combined fleet retrofit plan for their regulated vehicles or regulated equipment, or both, as calculated pursuant to the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). The owner or group of owners may propose achieving fine particle emissions reductions from any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment owned by the owner or group of owners, or the retirement of any of those vehicles or equipment, and shall submit the proposed fleet averaging plan to the department as required by the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

i. A fleet averaging plan proposed pursuant to subsection h. of this section that proposes the use of retrofit devices on any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment shall include: (1) a description by the owner of the best available retrofit technology and the specific vehicle or equipment on which the specific best available retrofit technology would be used, the specific vehicle or equipment to be retired, and how the required fine particle reductions shall be achieved through a combination of the use of best available retrofit technology on the specific vehicles or equipment; and (2) other measures or applications of best available retrofit technology consistent with the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

j. The Department of Environmental Protection shall give due consideration in the application of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan

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requirements to any efforts or actions by owners of regulated vehicles or regulated equipment who voluntarily retrofit, retire, or repower vehicles or equipment prior to the adoption of rules and regulations pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), and may modify any of the requirements of this section for such an owner in order to provide such due consideration.

k. The Department of Environmental Protection shall provide any technical guidance needed in preparing the fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans required pursuant to this section and any revisions, supplements, or modifications thereto required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

l. No owner of regulated vehicles or regulated equipment shall be required to install or use a retrofit device on a regulated vehicle or regulated equipment as required pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) or under a plan submitted pursuant to this section in any year unless the State Treasurer certifies for that year that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund and the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the retrofit devices required to be used by rule and regulation or under an approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan or supplement or modification thereto, as applicable, by an owner in that year.

Provided that the State Treasurer has issued the certification that the constitutionally dedicated moneys have been deposited in the fund for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices to be purchased for, and installed in, those regulated vehicles or pieces of regulated equipment.

L.2005,c.219,s.9; amended 2006, c.94, s.2.

26:2C-8.35 Approval of fleet retrofit plans.

a. The department shall review, and approve or disapprove all parts of any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan submitted pursuant to section 9 of P.L.2005, c.219 (C.26:2C-8.34). The department may approve or disapprove any fleet retrofit plan, combined fleet retrofit plan, or the fleet averaging plan in part, and:

(1) may direct the owner to comply with the approved part or parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan, as applicable, prior to final approval of other parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan; or

(2) in the case of a fleet averaging plan, may determine that the owner or the group of owners cannot comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) by implementing the proposed fleet averaging plan, and may require the owner to submit a fleet

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retrofit plan, or the group of owners of the fleets to submit a combined fleet retrofit plan or individual fleet retrofit plans.

Any determination made, or requirement established, pursuant to paragraph (2) of this subsection shall be made in writing and shall be provided in writing to each owner affected by the determination or requirement.

The department may disapprove any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, submitted pursuant to paragraph (3) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34), if the department determines that the costs or cost estimates, submitted pursuant to paragraph (4) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) for retrofit devices described in the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, as appropriate, are unreasonable based upon criteria including, but not limited to, prevailing market rates and acquisition by the State of comparable technology. If the department makes such a determination, the department shall enter into negotiations with the owner to resolve the discrepancy.

b. If the department exercises its authority under paragraph (2) of subsection a. of this section, the department shall issue a modified timetable for submittal of a fleet retrofit plan for the regulated vehicles or regulated equipment, a combined fleet retrofit plan for the group of owners, or individual fleet retrofit plans for the owners in the group. The department may require the submittal of these plans no earlier than 180 days after the date of the determination pursuant to paragraph (2) of subsection a. of this section, or the date on or by which both of the certifications required pursuant to subsection l. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) have been made, whichever is later. The department shall review, approve or disapprove any fleet retrofit plan or combined fleet retrofit plan submitted in accordance with this modified timetable.

c. Whenever the department disapproves a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or a part thereof, the department shall provide a detailed explanation to the owner indicating the deficiencies of the disapproved fleet retrofit plan, disapproved combined fleet retrofit plan, or the disapproved fleet averaging plan, or part thereof, and the recommendations of the department to correct the deficiencies.

d. During the review process or prior to final approval of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part thereof in question, the department may contact and enter into negotiations with the owner to resolve discrepancies between the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), the submitted fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, and any requests by the owner for alternatives pursuant to subsection g. of section 9 of P.L.2005, c.219 (C.26:2C-8.34).

e. The owner or a group of owners whose fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, is disapproved by the department shall make the recommended revisions to the disapproved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the disapproved part thereof, within 60 days after the receipt of the disapproval notification from the department, and shall submit to the department the final revised

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fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, or the final revised part thereof that had been disapproved and revised. If the department does not take further action within 30 days after receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, the final fleet averaging plan, or the final revised part that had been disapproved, the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part that had been disapproved and revised, shall be considered approved and in effect. If the department finds within 30 days after the receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, that the owner has not complied with the recommended revisions, the department may take further action to require compliance with this subsection, but the plan shall be in effect as of the date of the close of the 30-day period following the submittal of the final revised plan, or part thereof.

f. Upon the date of final approval of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, the owner shall be subject to the provisions of the fleet retrofit plan, combined fleet retrofit plan, fleet averaging plan, or that part thereof, and shall be required to comply with these provisions on or after the final approval date or the date on or by which both certifications required pursuant to subsection l. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) have been made, whichever is later.

L.2005,c.219,s.10; amended 2006, c.94, s.3.

26:2C-8.36 Anniversary date of plans, submissions required from owner.

a. The date on which all parts of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan have been approved and are in effect shall serve as the anniversary date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval for the purposes of this subsection. On each annual anniversary of the date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval, or 90 days after the date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval, or the approval of the most recent supplement or modification thereto, as applicable, whichever is later, each owner of regulated vehicles or regulated equipment shall submit a supplement to the fleet retrofit plan or combined fleet retrofit plan, or a modification of the fleet averaging plan, as applicable, indicating any changes to the fleet that have been made.

b. A supplement submitted pursuant to subsection a. of this section shall include:

(1) a description of any on-road diesel vehicles or off-road diesel equipment owned, operated, or leased by the owner added or removed from the fleet since the submission of the fleet retrofit plan or combined fleet retrofit plan, or the last supplement thereto; and

(2) for the regulated vehicles or regulated equipment added to the fleet, a description of the best available retrofit technology and the specific vehicle or piece of equipment on which the specific best available retrofit technology would be used.

c. A modification to a fleet averaging plan submitted pursuant to subsection a. of this section shall include:

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(1) a description of any on-road diesel vehicles or off-road diesel equipment owned, operated, or leased by the owner or removed from the fleet since the submission of the fleet averaging plan or the last modification, thereto;

(2) for the regulated vehicles or regulated equipment added to the fleet, a description of the best available retrofit technology and the specific vehicle or piece of equipment on which the specific best available retrofit technology would be used that was not described in the fleet averaging plan or the last modification thereto; and

(3) a description of how the required fine particle reductions shall be achieved through a combination of the use of best available retrofit technology on specific regulated vehicles and other on-road diesel vehicles, or on specific regulated equipment and other off-road diesel equipment, and other measures or applications of best available retrofit technology consistent with the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

d. The department shall review, and approve or disapprove all parts of the supplement or the modification no later than one year after its submittal date. The department may approve or disapprove any supplement or modification to any plan in part, and require the owner of the regulated vehicles or regulated equipment to comply with the approved part or parts of the supplement or modification prior to final approval of other parts of the supplement or the modification.

e. Whenever the department disapproves a supplement to a fleet retrofit plan, combined fleet retrofit plan, or a modification to a fleet averaging plan, or a part thereof, the department shall provide a detailed explanation to the owner or operator of the fleet indicating the deficiencies of the disapproved supplement or modification, or part thereof, and the recommendations of the department to correct the deficiencies. The owner or a group of owners who receive disapproval of a supplement to a fleet retrofit plan or combined fleet retrofit plan, or of a modification to a fleet averaging plan, or a part thereof, shall make the recommended revisions to the supplement or the modification within 60 days after the receipt of the disapproval notification from the department, and submit the final revised supplement or modification, or the revised part that had been disapproved, to the department. If the department does not take further action within 30 days after receipt of the final revised supplement or modification, or the revised part that had been disapproved, the revised supplement to the fleet retrofit plan or combined fleet retrofit plan, or modification to the fleet averaging plan, or the revised part that had been disapproved shall be considered approved and in effect. If the department finds within 30 days after the receipt of the final revised supplement or modification or the final revised part that had been disapproved, that the owner has not complied with the recommended revisions, the department may take further action to require compliance with this subsection, but the supplement or modification shall be in effect as of the date of the close of the 30-day period after the receipt of the final revised supplement or modification.

f. Upon the date of final approval of the applicable part, and the date the final supplement or modification is in effect, the owner shall be subject to the provisions of the fleet

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retrofit plan or combined fleet retrofit plan, and the supplement thereto, or the fleet averaging plan and the modification thereto, except as may otherwise be provided pursuant to subsection e. of section 10 of P.L.2005, c.219 (C.26:2C-8.35).

g. No owner of a regulated vehicle or regulated equipment shall be required to install or use a retrofit device on a regulated vehicle or piece of regulated equipment as required pursuant to a supplement to a fleet retrofit plan or combined fleet retrofit plan, or a modification to a fleet averaging plan or, any part of such a supplement or a modification, in any year unless the State Treasurer certifies for that year that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund, and the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the retrofit devices required to be used by an owner by rule or regulation or by the supplement to a fleet retrofit plan or combined fleet retrofit plan or the modification to a fleet averaging plan in that year.

Provided that the State Treasurer has issued the certification that the constitutionally dedicated moneys have been deposited in the fund for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices to be purchased for, and installed in, those regulated vehicles or pieces of regulated equipment.

L.2005,c.219,s.11.

26:2C-8.37 Inapplicability relative to vehicles, equipment meeting federal standard.

Notwithstanding the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, to the contrary, no best available retrofit technology shall be required by the department to be used on any regulated on-road diesel vehicle manufactured and certified to meet a federal standard of 0.01 grams per brake-horsepower-hour of fine particle emissions, or on any regulated off-road diesel equipment manufactured and certified to meet a federal standard of 0.015 grams per brake-horsepower-hour of fine particle emissions.

L.2005,c.219,s.12.

26:2C-8.38 Voluntary repowering, replacing, or rebuilding of equipment.

Notwithstanding the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, to the contrary, no owner of any on-road diesel vehicle or piece of off-road diesel equipment may be required by the department to repower any on-road diesel vehicle or piece of off-road diesel equipment, or to replace or rebuild an engine in any on-road diesel vehicle or piece of off-road diesel equipment, unless the owner has voluntarily agreed to do so. The owner of any on-road diesel vehicle or piece of off-road diesel equipment may repower the on-road diesel vehicle or piece of off-road diesel equipment, or replace or rebuild its engine, to comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.).

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L.2005,c.219,s.13.

26:2C-8.39 Record listing for each regulated vehicle, piece of equipment.

a. Each owner of regulated vehicles or regulated equipment shall keep, at the place of business of the owner a record listing for each regulated vehicle or piece of regulated equipment the following identifying information and records for the regulated vehicle or piece of regulated equipment: (1) the compliance form issued for each regulated vehicle or piece of regulated equipment provided pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42) or any other document for the verification of compliance that may be issued or required pursuant to section 20 of P.L.2005, c.219 (C.26:2C-8.45); (2) maintenance records for the emissions control system or best available retrofit technology; (3) the records of the two most recent calendar years of fuel purchases for each vehicle or piece of regulated equipment required to use modified fuel or fuel additives pursuant to rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or the approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or approved supplement or approved modification thereto, as applicable; (4) the original, approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, any exemption requests, and approvals or disapprovals of the requests, plans, supplements, or modifications, as applicable; and (5) any other documentation pertinent to fleet averaging plans that may be otherwise required under rules or regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). The Department of Environmental Protection shall have the authority to inspect these records upon request. The Department of Environmental Protection may call upon the Superintendent of State Police and the State Police to assist with inspections pursuant to this subsection if necessary.

b. The owner of the fleet shall keep on each regulated vehicle or piece of regulated equipment, and on each vehicle or piece of equipment that is required to use best available retrofit technologies pursuant to an approved fleet averaging plan, or modification thereto, the current, updated compliance form issued pursuant to section 6, section 7, section 16 or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41 or C.26:2C-8.42), and a copy thereof with the records required pursuant to subsection a. of this section.

L.2005,c.219,s.14.

26:2C-8.40 Labeling of retrofit devices.

Each retrofit device that is installed in the State shall be labeled with a legible and durable label affixed to the device. The label shall provide a unique identification number to be matched to the specific retrofit device and the specific vehicle required to use the retrofit device. No retrofit device may be sold or installed for use in the State unless it complies with the requirements of this section.

L.2005,c.219,s.15.

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26:2C-8.41 Compliance forms for regulated equipment.

a. The Department of Environmental Protection shall develop and issue to each owner of regulated equipment compliance forms for the regulated equipment no later than 180 days after the submittal of a notice to comply pursuant to paragraph (2) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34), or 180 days after the date of the final approval of the fleet plan, combined fleet plan, fleet averaging plan, or supplement or modification thereto, as applicable. The compliance form shall include a section for providing the cost of any retrofit device installed and any cost associated with the installation of the required best available retrofit technology for the regulated equipment.

b. As soon as practicable after the required best available retrofit technologies have been installed on the regulated equipment, the owner of regulated equipment shall complete the compliance form, retain a copy of the owner's records, and return it to the Department of Environmental Protection. Thereafter, a current copy of the completed compliance form shall be kept on each piece of regulated equipment at all times.

c. Each owner of regulated equipment seeking reimbursement for the cost of any retrofit device installed and any cost associated with the installation of the required best available retrofit technology for the regulated equipment shall submit a copy of the completed compliance form to the Department of Environmental Protection. The department shall review the submitted compliance form and forward it to the State Treasurer, who shall reimburse the owner the costs indicated on the completed compliance form.

L.2005,c.219,s.16.

26:2C-8.42 Issuance of one-page compliance forms.

a. No later than 180 days after the date on which the owner of regulated vehicles or regulated equipment submits a notice to comply pursuant to paragraph (2) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34), the date on which the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan is in effect pursuant to section 7 of P.L.2005, c.219 (C.26:2C-8.32), the date on which the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan is in effect pursuant to section 10 of P.L.2005, c.219 (C.26:2C-8.35), or the date on which any supplement to the fleet retrofit plan or the combined fleet retrofit plan, or modification to the fleet averaging plan is in effect pursuant to section 11 of P.L.2005, c.219 (C.26:2C-8.36), the department shall issue to the owner of a regulated vehicle or piece of regulated equipment a one-page compliance form for each regulated vehicle or piece of regulated equipment required to use best available retrofit technologies pursuant to the approved fleet retrofit plan or combined fleet retrofit plan, or the approved supplement thereto. In the case of an approved fleet averaging plan, the department shall also issue a one-page compliance form for each regulated vehicle, piece of regulated equipment, and other on-road diesel vehicle or piece of off-road diesel equipment that is required to use best available retrofit technologies pursuant to the approved fleet averaging plan, or the approved modification thereto.

b. The compliance form issued by the Department of Environmental Protection pursuant

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to subsection a. of this section shall be no longer than one page and shall have printed on the form: (1) the name and business address of the owner of the regulated vehicle or piece of regulated equipment; (2) the vehicle identification number for the regulated vehicle or the serial number for the piece of regulated equipment that is required to use best available retrofit technologies pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or the approved fleet retrofit plan, combined fleet retrofit plan, or the fleet averaging plan; (3) a description of the best available retrofit technologies that may be used by the specific regulated vehicle or piece of regulated equipment and the requirement under the approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan; (4) a description of the best available retrofit technology required for the vehicle or piece of equipment pursuant to the rules and regulations, the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, as the case may be; (5) an identified space for the label number for a required retrofit device to be entered into the form; (6) an identified space for the owner responsible for the submittal of the notice to comply by rules and regulations or the submittal and update of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan to certify that any required retrofit devices have been installed, and the date of that compliance; (7) an identified space for the examiner of the regulated vehicle to certify that the vehicle identification number that appears on the form corresponds to the vehicle on which the required retrofit device has been installed, and that the label identification number on the required retrofit device corresponds to the label identification number entered on the form of the regulated on-road diesel vehicle or other on-road diesel vehicle on which the required retrofit device has been installed; and (8) an identified space for the owner to record the cost of the retrofit device and its installation.

c. The Department of Environmental Protection shall issue with the forms sent to the owner of the fleet a notice of instructions describing the purpose of, and the procedures for completion of the compliance form, and the requirement to keep the compliance form with the regulated vehicle, or another vehicle included in a fleet averaging plan or modification thereto, for the life of the vehicle.

L.2005,c.219,s.17.

26:2C-8.43 Retaining form on vehicle, piece of equipment; record copies.

a. Upon receipt of the compliance form for a vehicle or piece of equipment required to use best available retrofit technology pursuant to department rules and regulations, an approved fleet plan, combined fleet plan, fleet averaging plan, or supplement or modification thereto, as applicable, the owner of the vehicle or piece of equipment shall retain the form on the vehicle or piece of equipment for which it was issued, and a copy of the current form in the business records of the owner, at all times.

b. As soon as practicable after the requirement to implement the use of best available retrofit technologies for a specific vehicle or piece of equipment as provided in department rules and regulations, the approved regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan, or supplement or modification thereto, as applicable, has been complied with, the owner shall complete the appropriate portion of the form provided pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-

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8.41, or C.26:2C-8.42). The owner, shall: (1) indicate the choice of best available retrofit technology that has been used to fulfill the requirement; (2) enter into the identified space on the compliance form the label identification number for any retrofit device that has been installed on the regulated vehicle or regulated equipment; (3) certify that the requirement on the form has been met for the regulated vehicle or piece of regulated equipment whose vehicle identification number or serial number, as applicable is printed on the form; and (4) provide and certify the date that the installation was done or compliance began on the compliance form.

c. For any regulated vehicle that is not required to be inspected under the periodic inspection program established pursuant to P.L.1995, c.157 (C.39:8-59 et seq.), the owner shall have the regulated vehicle inspected by a diesel emissions inspection center licensed pursuant to P.L.1995, c.157 (C.39:8-59 et seq.) for the presence of the required retrofit device and compliance with the requirement described on the compliance form issued pursuant to section 6, section 7, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, or C.26:2C-8.42), as soon as practicable after the requirements of subsection b. of this section have been met for the regulated vehicle.

d. For any regulated vehicle that is subject to inspection under the periodic inspection program pursuant to P.L. 1995, c.157 (C.39:8-59 et seq.), the owner, after complying with the provisions of subsection b. of this section, shall have the regulated vehicle inspected for compliance with the requirement printed on the form issued pursuant to section 6, section 7, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, or C.26:2C-8.42) at the next annual periodic inspection scheduled for the vehicle, or as soon as practicable after complying with the provisions of subsection b. of this section. No provision of this subsection shall be construed as requiring the owner to have any vehicle subject to a periodic inspection to have that vehicle registered at any scheduled periodic inspection.

e. A diesel emissions inspection center licensed pursuant to P.L.1995, c.157 (C.39:8-59 et seq.) shall inspect any regulated vehicle presented to it for inspection for compliance with the requirement on the form issued for the regulated vehicle pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42). The person performing the inspection shall verify the presence of the required retrofit device, the match of the label identification number on the form with the device in the vehicle, and shall certify that the requirement has been met based on the presence of the required retrofit device and the match of the label identification number on the form to the label identification number on the retrofit device on the vehicle, and the correct vehicle identification number on the form. No provision of this subsection shall be construed to require the diesel emissions inspection center to verify the functioning or the correct installation of the retrofit device, or to test for the level of emissions reduction attributed to the use of the retrofit device.

f. If the owner of the regulated vehicle is a licensed diesel inspection center or is otherwise authorized to self-inspect the vehicles owned by the owner, the owner may perform the inspection and provide the certification required pursuant to subsections d. and e. of this section.

g. Only one inspection per vehicle is required pursuant to this section.

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L.2005,c.219,s.18.

26:2C-8.44 MVC rules, regulations relative to one-time confirmation of compliance with plans.

a. No later than two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), the New Jersey Motor Vehicle Commission shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary for the provision of a one-time confirmation of compliance with approved regulated fleet retrofit plans, combined fleet retrofit plans, or fleet averaging plans, or supplements or modifications thereto, as applicable. As necessary, the New Jersey Motor Vehicle Commission shall provide for the inspection of regulated vehicles, including, but not limited to, the inspection of regulated vehicles that were not required to be inspected on the date of enactment of P.L.2005, c.219 (C.26:2C-8.26 et al.), and the verification of compliance and completion of the compliance form by examiners, mechanics, technicians, or other knowledgeable persons involved in the maintenance and repair of the regulated vehicles.

b. The commission shall include, in its inspection of a diesel commercial bus pursuant to P.L.1995, c.157 (C.39:8-59 et al.), an inspection of any regulated commercial bus required to install a retrofit device pursuant to a regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan, after the retrofit device has been installed, to determine that the installation of the required best available retrofit technology has occurred as required pursuant to the approved regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan for the diesel commercial bus being inspected, or shall provide for such an inspection at a separate time requested by the owner, operator, or lessee of the regulated fleet of which the diesel commercial bus is a part. This inspection is required to be performed only once and after the required retrofit device has been installed. The owner, operator, or lessee of the regulated fleet containing the diesel commercial buses shall notify the New Jersey Motor Vehicle Commission that the required installation has been done for the diesel commercial bus being inspected as required pursuant to this subsection.

c. The owner of a regulated vehicle subject to inspection pursuant to subsection a. or subsection b. of this section shall present to the person performing the inspection the form for the regulated vehicle issued pursuant to section 6, section 7, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, or C.26:2C-8.42). The person performing the inspection pursuant to subsection a. or subsection b. of this section shall check for the presence of the required retrofit device, the match of the label identification number in the form and or the device in the vehicle, and shall certify that the requirement has been met based on the presence of the required retrofit device and the match of the label identification number to the form for the vehicle with the vehicle identification number on the form.

d. The Department of Environmental Protection shall provide any training necessary to implement the provisions of this section for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, as determined necessary by the Chief Administrator of the New Jersey Motor Vehicle Commission.

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e. No provision of this section shall be construed to require the New Jersey Motor Vehicle Commission to verify the functioning of the retrofit device, or its correct installation, or to test the function of the retrofit device for any level of emissions reduction attributed to the use of the retrofit device.

L.2005,c.219,s.19.

26:2C-8.45 Alternative approach for reimbursement of cost for retrofit devices.

a. The provisions of section 6, section 7, section 14, sections 16 through 19, inclusive, and sections 29 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.39, C.26:2C-8.41 through C.26:2C-8.44, and C.26:2C-8.54 through C.26:2C-8.56) affecting the reimbursement of owners of regulated vehicles or regulated equipment for the costs associated with the purchase and installation of retrofit devices, to the contrary notwithstanding, the Department of Environmental Protection may develop an alternative approach for reimbursement of these costs to the owners if the department determines that an alternative approach is feasible, cost-effective, and efficient. The alternative approach may include, but shall not be limited to, directly reimbursing the entity performing the actual installation of the retrofit device in lieu of reimbursing the owner of the regulated vehicle or regulated equipment. If the department determines that an alternative approach is feasible, cost-effective, and efficient and chooses to implement the alternative approach, the department shall establish and implement the alternative approach pursuant to rules and regulations adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). No such rule or regulation may modify any procedure performed by, or any responsibility or requirement imposed on, the New Jersey Motor Vehicle Commission, its employees, or any persons licensed or contracted by the New Jersey Motor Vehicle Commission, unless the rule or regulation is adopted jointly by the New Jersey Motor Vehicle Commission and the Department of Environmental Protection pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. No provision of subsection a. of this section or any other rule or regulation adopted pursuant thereto, shall be construed to supersede or modify, the provisions of section 3, section 4, subsection a. or subsections d. through f., inclusive, of section 6, subsections a. through c. or subsections e. through f., inclusive, of section 7, sections 8 through 13, inclusive, subsection d. or e. of section 19, section 21, section 26, section 27, section 28, subsection a. of section 29, or subsection b. of section 30 of P.L.2005, c.219 (C.26:2C-8.28, C.26:2C-8.29, C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.33 through C.26:2C-8.38, C.26:2C-8.44, C.26:2C-8.46, C.26:2C-8.51, C.26:2C-8.52, C.26:2C-8.53, C.26:2C-8.54, or C.26:2C-8.55).

c. No entity performing the actual installation of a retrofit device who is reimbursed for the costs associated with the purchase and installation of retrofit devices pursuant to rules and regulations adopted pursuant to subsection a. of this section may impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of retrofit devices required pursuant to P.L.2005, c.219 (C.26:2C-8.26

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et al.). No State agency, department, or political subdivision thereof may impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of retrofit devices required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.) if entities performing the actual installation of a retrofit device are reimbursed for the costs pursuant to rules and regulations adopted pursuant to subsection a. of this section.

L.2005,c.219,s.20.

26:2C-8.46 Joint rules, regulations relative to training.

The Department of Environmental Protection and the New Jersey Motor Vehicle Commission shall adopt jointly, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations providing for the training with respect to emissions testing and inspection required for persons who inspect or reinspect a vehicle pursuant to the periodic inspection program or the roadside inspection program established pursuant to P.L.1995, c.157 (C.39:8-59 et al.), or who repair any vehicle because of its failure of emissions testing under the periodic inspection program or roadside inspection program, including, but not limited to, the extent of the training, standards with respect to emissions testing and inspection for the training and certification of mechanics employed for the purposes of inspecting vehicles under the periodic inspection program or the roadside inspection program, or for the repair of vehicles that fail inspections under the periodic inspection program and the roadside enforcement program, and the training to meet these standards, including but not limited to, the length, convenience and affordability to the trainee, and the cost, if any of that training.

L.2005,c.219,s.21.

26:2C-8.47 Consultation when adopting rules, regulations.

Except as may otherwise be provided in rules and regulations jointly adopted pursuant to subsection e. of section 6, and section 21 of P.L.2005, c.219 (C.26:2C-8.31 and C.26:2C-8.46), the New Jersey Motor Vehicle Commission shall consult with the Department of Environmental Protection and the Department of Law and Public Safety when adopting rules and regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper coordination between the periodic inspection program and the roadside enforcement program and the implementation and enforcement of the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

L.2005,c.219,s.22.

26:2C-8.48 Coordination of programs by DEP with MVC and DLPS.

Except as otherwise provided in rules and regulations jointly adopted pursuant to subsection e. of section 6, and section 21 of P.L.2005, c.219 (C.26:2C-8.31 and C.26:2C-8.46), the Department of Environmental Protection shall consult with the New Jersey Motor Vehicle Commission and the Department of Law and Public Safety when adopting rules and regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper coordination between the periodic inspection program and the roadside enforcement program and the implementation and

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enforcement of the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

L.2005,c.219,s.23.

26:2C-8.49 Coordination of programs by DLPS with DEP and MVC.

The Department of Law and Public Safety shall consult with the Department of Environmental Protection and the New Jersey Motor Vehicle Commission when adopting rules and regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper coordination between the periodic inspection program and the roadside enforcement program and the implementation and enforcement of the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

L.2005,c.219,s.24.

26:2C-8.50 Percentage of ultra-low sulfur diesel fuel required on-road.

a. (Deleted by amendment, P.L.2006, c.94).

b. No sooner than July 15, 2006, and following a public hearing held by the Department of Environmental Protection on the availability of ultra-low sulfur diesel fuel in the State for use in on-road diesel vehicles and off-road diesel equipment, the department shall determine and issue a written notice of its determination as to whether sufficient supplies of ultra-low sulfur diesel fuel are available in the State to require a minimum of 80 percent of all diesel fuel annually sold, distributed, or used in the State to be ultra-low sulfur diesel fuel for use in on-road diesel vehicles or off-road diesel equipment, or both, on and after January 15, 2007, without significant disruption of, or significant price increases in, the wholesale and retail fuel market. If the department determines that supplies would be sufficient, the department shall require a certain percentage, to be determined by the department, of all diesel fuel annually sold, distributed, or used in the State to be ultra-low sulfur diesel fuel for use in on-road diesel vehicles or off-road diesel equipment, or both, on or after the 180th day after the date on which the department issues a written determination that supplies would be sufficient, provided that this percentage shall be the highest percentage that can practicably be required without significant disruption of, or significant price increases in, the wholesale and retail fuel market, but shall be no less than 80 percent of all diesel fuel annually sold, distributed, or used in the State.

c. If the department determines that sufficient supplies are not available pursuant to subsection b. of this section, the requirement to sell, distribute, or use only ultra-low sulfur diesel fuel in the State shall take effect only 180 days after the department issues a written determination that the supplies are sufficient to sell, distribute, or use only ultra-low sulfur diesel fuel in the State.

d. The Department of Environmental Protection, in consultation with the Department of Law and Public Safety, the Department of Labor and Workforce Development, and the Attorney General, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this section.

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L.2005,c.219,s.25; amended 2006, c.94, s.4.

26:2C-8.51 Inapplicability relative to farm vehicles, equipment.

No provision of P.L.2005, c.219 (C.26:2C-8.26 et al.) shall be construed to apply to any vehicle or equipment used on, or in the course of the operation of, a farm or to any vehicle or equipment used for any agricultural purposes.

L.2005,c.219,s.26.

26:2C-8.52 Violations, penalties.

a. Whenever the Commissioner of Environmental Protection finds that a person has violated a provision of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, the commissioner may:

- (1) Levy a civil administrative penalty in accordance with subsection b. of this section;
- or
- (2) Bring an action for a civil penalty in accordance with subsection c. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies prescribed in this section or by any other applicable law.

b. The commissioner is authorized to assess a civil administrative penalty of not more than \$5,000 for each violation of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto. In adopting rules and regulations establishing the amount of any penalty to be assessed, the commissioner may take into account the type, seriousness, and duration of the violation and the economic benefits from the violation gained by the violator. No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service. The notice shall: (1) identify the section of the law, rule, regulation, approval, or authorization violated; (2) recite the facts alleged to constitute a violation; (3) state the amount of the civil penalties to be imposed; and (4) affirm the rights of the alleged violator to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative penalty is in addition to all other enforcement provisions in this act and in any other applicable law, rule, or regulation, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation.

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c. A person who violates any provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, or who fails to pay a civil administrative penalty in full pursuant to subsection b. of this section, shall be subject, upon order of a court, to a civil penalty for such violation of not more than \$5,000. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of actual economic benefit accruing to the violator from the violation. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in connection with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

d. Any person who knowingly, recklessly, or negligently makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under P.L.2005, c.219 (C.26:2C-8.26 et al.) shall be in violation of P.L.2005, c.219 (C.26:2C-8.26 et al.) and shall be subject to the penalties assessed pursuant to subsections b. and c. of this section.

L.2005,c.219,s.27.

26:2C-8.53 "Diesel Risk Mitigation Fund"; money credited, use.

a. There is established in the Department of the Treasury a special, nonlapsing fund to be known as the "Diesel Risk Mitigation Fund." The fund shall be administered by the State Treasurer and shall be credited with:

- (1) constitutionally dedicated moneys;
- (2) such moneys as are appropriated by the Legislature; and
- (3) any return on investment of moneys deposited in the fund.

b. Moneys in the fund may be used by the Department of the Treasury solely for:

- (1) reimbursements to owners of regulated vehicles or regulated equipment to reimburse the cost of required retrofit devices and the installation thereof;
- (2) the administrative costs incurred by the Department of Environmental Protection to implement the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) up to \$900,000 per year; and
- (3) the administrative costs incurred by the New Jersey Motor Vehicle Commission to implement the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) up to \$250,000 per year.

c. No moneys in the fund may be made available for any costs associated with requirements imposed by P.L.2005, c.219 (C.26:2C-8.26 et al.), unless the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the fund in that year.

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If the moneys provided for the administrative costs of the New Jersey Motor Vehicle Commission are not required by the commission in a given year because they exceed the amount of the administrative costs of the commission in that year, the State Treasurer shall provide those moneys unexpended for that purpose to the Department of Environmental Protection for administrative costs, provided that the administrative costs paid from the constitutionally dedicated moneys deposited in the fund do not exceed \$1,150,000.

d. Any owner of a regulated vehicle or piece of regulated equipment is eligible for reimbursement from the fund. Notwithstanding the provisions of the "Local Budget Law" (N.J.S.40A:4-1 et seq.) to the contrary, a county, municipality, or an authority as defined in section 3 of P.L.1983, c.313 (C.40A:5A-3) required to comply with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) may anticipate in its annual budget or any amendments or supplements thereto those sums to be reimbursed from the fund for the costs of retrofit devices and their installation that are required to be used in or on any regulated vehicle or piece of regulated equipment in a given year in which the county, municipality, or authority incurs the cost. For the purposes of subsection 1. of section 3 of P.L.1976, c.68 (C.40A:4-45.3) and subsection g. of section 4 of P.L.1976, c.68 (C.40A:4-45.4), the costs of retrofit devices and their installation shall be considered an amount to be received from State funds in reimbursement for local expenditures and therefore exempt from the limitation on local budgets imposed pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2).

L.2005,c.219,s.28.

26:2C-8.54 Allocation of moneys in fund, application for reimbursement.

a. Moneys in the fund shall be allocated and used to provide reimbursement to the owners of regulated vehicles or regulated equipment for 100% of the costs of the purchase and installation of the retrofit device pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.), other than fuel.

b. The owner or operator of a regulated vehicle or piece of regulated equipment seeking the reimbursement authorized in subsection a. of this section shall file an application on a form to be developed by the State Treasurer and the Department of Environmental Protection, with the department, with the documentation required by the department and the State Treasurer pursuant to section 30 of P.L.2005, c.219 (C.26:2C-8.55). Neither the State Treasurer nor the Department of Environmental Protection may charge an application fee.

c. Upon a determination that an application for reimbursement meets all established criteria for an award from the fund, the Department of Environmental Protection and the State Treasurer shall approve the application. Upon the department approval of an application for reimbursement from the fund, the State Treasurer shall award the reimbursement to an owner upon the availability of sufficient moneys in the fund. If moneys in the fund are not sufficient at any point to fund all applications for reimbursement that have been approved by the State Treasurer, the State Treasurer shall award reimbursement to approved owners based upon the date of approval of the application.

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L.2005,c.219,s.29.

26:2C-8.55 Rules, regulations relative to filing requirements for reimbursement.

a. The State Treasurer shall adopt, in consultation with the Department of Environmental Protection, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations:

(1) establishing the filing requirements for a complete application for reimbursement from the fund; and

(2) to require an owner:

(a) to submit documentation or other information demonstrating that the retrofit device has been purchased and installed on a regulated vehicle, which shall include the vehicle identification number of the vehicle, or on regulated equipment the serial number;

(b) to submit documentation of the actual costs incurred for the purchase of the retrofit device required to be installed, the nature and scope of work performed to install the retrofit device, and the actual costs incurred to install the technology;

(c) to submit a certification that the owner has not engaged in any of the conduct described in subsection a. of section 31 of P.L.2005, c.219 (C.26:2C-8.56);

(d) to submit a certification that the retrofit device installed on a regulated vehicle or regulated equipment is in conformance with rules and regulations of the Department of Environmental Protection; and

(e) to provide access at reasonable times to the regulated vehicles or regulated equipment to determine compliance with the terms and conditions of the reimbursement award.

b. In establishing requirements for applications for reimbursement, the State Treasurer:

(1) may not impose conditions that interfere with the everyday normal operations of an owner's business activities, except to the extent necessary to ensure the owner has complied with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.);

(2) shall strive to minimize the complexity and costs to owners of complying with such requirements; and

(3) shall expeditiously process all applications in accordance with a schedule established, in consultation with the Department of Environmental Protection, for the review and the taking of final action within 30 days after the receipt of the completed application.

L.2005,c.219,s.30.

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26:2C-8.56 Denial of application for reimbursement.

a. The State Treasurer may deny an application for reimbursement from the fund, and any reimbursement from the fund may be recoverable by the State Treasurer, upon a finding that:

(1) the owner of a regulated vehicle or regulated equipment failed to commence or complete the purchase or installation of best available retrofit technology on the vehicle or equipment for which an application for reimbursement was filed in accordance with the applicable rules and regulations; or

(2) the owner of a regulated vehicle or regulated equipment provided false information or withheld information on an application that would render the owner ineligible for reimbursement from the fund, that resulted in the owner receiving a larger reimbursement than the owner would otherwise be eligible, or that resulted in payments from the fund in excess of the actual costs incurred by the owner or the amount to which the owner is legally eligible.

b. Nothing in this section shall be construed to require the State Treasurer, the Department of Environmental Protection, or any other State agency or department, to undertake an investigation or make any findings concerning the conduct described in subsection a. of this section.

L.2005,c.219,s.31.

26:2C-8.40 Labeling of retrofit devices.

Each retrofit device that is installed in the State shall be labeled with a legible and durable label affixed to the device. The label shall provide a unique identification number to be matched to the specific retrofit device and the specific vehicle required to use the retrofit device. No retrofit device may be sold or installed for use in the State unless it complies with the requirements of this section.

L. 2005, c.219, s.15

The following is codified in Motor Vehicle Commission's Laws
Title 39: Motor Vehicles and Traffic Regulation

39:3-70.2 Air pollution; penalty

Any person who operates a motor vehicle or owns a motor vehicle, other than a school bus, which the person permits to idle in violation of rules and regulations, or to be operated upon the public highways of the State when the motor vehicle is emitting smoke or other air contaminants in excess of standards adopted by the Department of Environmental Protection pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) shall be liable to a penalty of not less than \$250 nor more than \$1,000 per day, per vehicle, which shall be enforced in accordance with the provisions of chapter 5 of Title 39 of the Revised Statutes and P.L.2005, c.219 (C.26:2C-8.26 et al.).

The owner of any school bus that is operated or is permitted to idle in violation of rules and regulations adopted pursuant to the Department of Environmental Protection pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) or any applicable rules and regulations adopted pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.) shall be liable for a penalty of not less than \$250 nor more than \$1,000 per day, per vehicle, which shall be enforced in accordance with the provisions of chapter 5 of Title 39 of the Revised Statutes, except that no penalty may be assessed against any driver of a school bus who is not the owner of the school bus.

The provisions of this section shall not apply to a motor vehicle idling in traffic, or a motor vehicle other than a school bus idling in a queue of motor vehicles, that are intermittently motionless and moving because the progress of the motor vehicles in the traffic or the queue has been stopped or slowed by the congestion of traffic on the roadway or other conditions over which the driver of the idling motor vehicle has no control.

L.1966, c.15, s.2; amended 2005, c.219, s.33; 2009, c.331, s.2.

39:8-67 Provisions of State Police Officers

The Superintendent of the State Police, in consultation with and subject to the approval of the Attorney General, shall provide State Police officers to assist the commission in conducting the roadside enforcement program and the pilot roadside enforcement program. The State Police officers shall have authority to direct diesel buses, heavy-duty diesel trucks, or other diesel-powered motor vehicles from the roadway for the purpose of inspection, and shall perform other police duties necessary for or helpful to the implementation of the programs. The State Police officers shall maintain records of these inspections and shall forward the information concerning the number of inspections, and the type of violations and the number of each type of violation to the Department of Environmental Protection.

L.1995,c.157,s.9; amended 2003, c.13, s.82; 2005, c.218, s.34.