ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–6124–1]

Optional Certification Streamlining Procedures for Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines for Original Equipment Manufacturers and for Aftermarket Conversion Manufacturers; Notice of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: In today's action, EPA is proposing to amend the current regulatory provisions regarding the certification of light-duty vehicles, light-duty trucks, and heavy-duty engines that meet the Clean-Fuel Vehicle (CFV) requirements. This proposed action would serve to ease the burden of certification for manufacturers of CFVs. EPA is also proposing to revise the definition for dedicated fuel systems to include CFVs with limited ability to operate on a conventional fuel, and is also proposing to amend current regulations to allow manufacturers of CFVs to group certain engine families together for certification purposes. In addition, EPA is proposing an exemption, for MY 1999, 2000 and 2001, from certification fees for dedicated gaseous-fueled vehicles and engines that certify to EPA's Tier 1 standards as well as for all vehicles and engines that certify to EPA's CFV, Low-Emission Vehicle (LEV), Ultra Low Emission Vehicle (ULEV), Inherently Low Emission Vehicle (ILEV), or Zero Emission Vehicle (ZEV) emission standards.

DATES: Any party who wishes to submit comments must do so by August 19, 1998 unless a hearing is requested. Any person can request EPA to hold a public hearing on this action, but such request must be received by August 19, 1998. If a hearing is requested, it will take place on September 18, 1998, and interested parties will have an additional 30 days after the hearing (until October 19, 1998) to submit comments on any information presented at the hearing. Because no hearing will occur, absent a request for one, interested parties should contact Clifford D. Tyree at the number listed below after August 19, 1998 to determine whether a hearing will take place.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Air Docket Section (6102), Attention: Docket No. A–97–27, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, or hand-delivered to the Air Docket at the above address, in Room M–1500, Waterside Mall. A copy of written comments should also be submitted to Clifford D. Tyree at the address below.

Materials relevant to this notice of proposed rule are contained in Docket No. A–97–27, located at the Air Docket, 401 M Street SW, Washington, DC 20460, and may be reviewed in Room M–1500 from 8:00 a.m. until 5:30 p.m. on business days. As provided in 40 CFR Part 2, EPA may charge a reasonable fee for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Clifford Tyree, Project Manager, U.S. EPA, National Vehicle and Fuel Emission Laboratory, Vehicle Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105–2425. Telephone: (734) 214–4310; FAX 734–214–4869. E-Mail, tyree.clifford@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this notice of proposed rulemaking are Original Equipment Manufacturers (OEMs) of Light-Duty Vehicles, Light-Duty Trucks (LDTs), and Heavy-Duty Engine (HDEs) manufacturers. In addition, aftermarket convertors of LDVs, LDTs, and HDEs will also be regulated. Entities include:

Category	Examples of regulated entities
Auto industry of light-duty vehicles, light-duty trucks, and heavy-duty engines.	Original Equipment Manufacturers (OEMs) and Aftermarket Converters.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this proposed action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory and other related documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. An electronic version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA-AIR/(either select desired date or use Search feature.)

2. http://www.epa.gov/OMSWWW/cff.htm

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Background [1]

EPA's emissions standards and requirements for clean-fuel vehicles (CFVs) are contained in 40 CFR Part 88. These regulations include several sets of exhaust emissions standards for clean-fuel vehicles (CFVs): Transitional Low-Emission Vehicle (TLEV) standards, Low-Emission Vehicle (LEV) standards, Inherently Low-Emission Vehicle (ILEV), Ultra Low-Emission Vehicle (ULEV) standards, and Zero-Emission Vehicle (ZEV) standards. The regulations also apply all standards and requirements in 40 CFR Part 86 to CFVs, except the Part 86 exhaust emissions standards for those pollutants for which Part 88 establishes standards. The CFV standards apply to all CFVs, including those that operate on gaseous-fuels like compressed natural gas (CNG) and liquefied petroleum gas (LPG).

Section 246 of the Clean Air Act, as amended in 1990 (''CAA'' or ''the Act''), requires states to adopt in their State Implementation Plans (SIP) a Clean-fuel Fleet Program (CFFP) for certain ozone and carbon monoxide nonattainment areas. The states' CFFPs must require that fleet operators with central fueling capability shall include a certain percentage of CFVs that meet LEV emissions standards in their vehicle purchases each year, and shall operate such vehicles on clean alternative-

[1] EPA has included in this notice a brief summary of the aftermarket conversion requirements and the Clean-Fuel Fleet program. Readers may consult EPA's current certification regulations in 40 CFR Parts 86 and EPA's clean fuel vehicle regulations in 40 CFR part 88, as well as the following notices of final rulemaking: Emissions Standards for Clean Fuel Vehicles and Engines (59 FR 50042, September 30, 1994) and Standards for Emissions from Natural Gas-fueled and Liquefied Petroleum Gas-fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversions (59 FR 48471, September 21, 1994), for additional background information.

fuels.[2] EPA is aware that fleet operators subject to CFFP requirements are concerned about sufficient availability of CFVs to meet such requirements. For the 1997 model year, one light-duty vehicle, two light-duty trucks, and five heavy-duty vehicle engine families have been certified to federal CFV standards.

The EPA's Office of Mobile Sources recently adopted a one-year delay in implementation of state CFFPs, due to concerns about sufficient CFV availability to meet fleet operator requirements.[3]

In today's action, EPA is proposing to amend certain provisions intended to encourage and facilitate the certification of CFVs by reducing the costs of certifying in three specific areas. These provisions are described in detail below.

II. Today's Proposal

A. Definition of Dedicated Vehicle

Current EPA regulations define a ''dual-fuel vehicle'' as a motor vehicle, or engine, engineered and designed to be operated on two different fuels, but not on a mixture of fuels.[4] A ''dedicated vehicle'' is defined as a vehicle or engine engineered and designed to be operated using a single fuel.[5]

There are specific requirements that apply to dual-fuel light-duty vehicles (LDVs)[6] and light light-duty trucks (LLDT)[7] certifying to the CFV emissions standards. A dual-fuel vehicle must comply with the applicable set of standards for each fuel on which it can operate. To qualify as CFVs for purposes of state CFFPs, dual-fuel vehicles must meet LEV (or more stringent) emissions standards on the clean alternative fuel and the TLEV non-methane organic gas (NMOG) emission standard on the conventional fuel.[8] On the conventional fuel, the vehicle must meet Tier 1, NMOG and HCHO emission standards and also comply with all other motor vehicle emissions control requirements contained in 40 CFR Part 86 (such as the cold temperature carbon monoxide standard (Cold CO), onboard diagnostic requirement (OBD), and certification short test (CST) requirements) that apply to comparable conventional gasoline vehicles.

For vehicles with a dedicated fuel system to be a feasible option for fleets, many fleet operators will need the flexibility to operate on conventional fuel in emergency situations, when central fueling is impossible. If the fleet operator is subject to the CFFP, and is operating in a nonattainment area covered by the CFFP, he must operate the vehicle on a fuel on which the vehicle meets the CFV emissions standards to comply with the CFFP requirements. If the vehicle is certified to the LEV emissions standards on both fuels, the fleet operator would have the option of using the conventional fuel in the covered nonattainment area. However, if the vehicle is certified to the LEV standards only on CNG or LPG, that option would not be available.

In light of the limited gaseous-fuel fueling stations in the nonattainment areas covered by a CFFP, fleet operators are concerned that the safety of vehicle operators and occupants could be at risk during inclement weather.[9] In addition, unforeseen traffic delays (or other unforeseen delays) may cause fleet vehicles to be stranded, resulting in higher costs for and reduced efficiency of the fleet. For these reasons, EPA has determined that it would be reasonable and appropriate to revise the definition of a dedicated vehicle to allow operation up to a limited mileage on a conventional fuel.

As described above, fleet operators subject to the CFFP must operate their CFV's on a ''clean alternative fuel,'' as defined in CAA Section 241(2). To ensure that CFVs that operate on gaseous fuels are a feasible option for fleet operators covered by the CFFP, EPA would certify as dedicated CFVs vehicles meeting the CFV dual-fuel standards with limited ability to operate on a conventional fuel, as described above. EPA's issuance of such certificates is authorized by the Agency's authority to adopt *de minimis* exemptions to statutory requirements, and is consistent with Congressional intent.

Section 246(b) of the CAA requires state CFFPs to provide that covered fleet operators must operate their clean-fuel vehicles on clean alternative fuels when operating in the covered nonattainment area. Clean alternative fuel, in turn, is defined as a fuel used in a CFV that meets applicable emissions standards and requirements when operating on such fuel. See § 241(2). Courts have recognized EPA's authority to provide exemptions from CAA requirements when the burdens of regulation yield a gain of trivial or no value. *Alabama Power* v. *Costle*, 636 F.2d.323 (D.C. Cir. 1979). EPA believes that prohibiting gaseous-fueled vehicles capable of limited operation on gasoline from qualifying as CFVs would unnecessarily increase the burden of compliance with state CFFPs, and would not result in any emissions benefits.

Allowing limited operation of such vehicles on gasoline in emergency situations would not result in any adverse emissions impacts. If a gaseous-fueled fleet vehicle is stranded within the nonattainment area due to lack of fuel, and cannot operate on gasoline, even for a limited number of miles, without violating the CFFP requirements, another vehicle would have to be dispatched to ''rescue'' the stranded vehicle and its occupants. The second vehicle may not be a CFV, especially if it is not owned by the covered fleet (e.g., if a tow truck was required to retrieve the stranded vehicle). This ''rescue operation'' will therefore result in emissions likely to be equivalent to, and perhaps in excess of, the incremental additional emissions resulting from the limited operation of the gaseous-fueled CFV on gasoline.

In general, EPA expects that CFVs meeting the revised definition of dedicated vehicle would meet the Tier 1 emission standards when operating on conventional fuel. EPA expects that Original Equipment Manufacturers (OEMs) will produce vehicles that meet the revised definition of dedicated vehicle and have limited ability to operate on a conventional fuel by limiting the conventional fuel use function of dual-fuel vehicles (or engines) previously certified to Tier 1 emissions standards on conventional fuel. Aftermarket conversion companies are likely to convert vehicles (or engines) previously certified to Tier 1 standards on a conventional fuel to operate on a gaseous fuel at least LEV emissions levels. If these vehicles are equipped with an emergency reserve tank with limited capacity for the conventional fuel, EPA expects that the vehicles' emissions on conventional fuel during emergency operation will be similar to the emissions of the vehicle prior to conversion (i.e., Tier 1 emissions levels). Therefore, EPA believes it would be appropriate for state CFFPs to allow fleet operators to purchase dedicated gaseous-fueled vehicles that have limited ability to operate on gasoline, and to operate for

[2] A clean alternative fuel is defined as a fuel used in a vehicle that meets the CFV standards when operating on such fuel. See CAA Section 241(2).

[3] 40 CFR 88.304–98, Direct Final Rule, 63 FR 20103, April 23, 1998.

[4] 40 CFR 88.102–94.

[5] 40 CFR 86.090–2.

[6] 40 CFR 86.082–2, A light-duty vehicle (LDV) means a passenger car or passenger car derivative capable of seating 12 passengers or less.

[7] 40 CFR 86.094–2, A light light-duty (LLDT) means any light-duty truck rated through 6,000 lbs. GVWR.

[8] Formaldehyde (HCHO) exhaust emission standards apply to any fuel used to meet CFV standards, including gasoline.

[9] The CFFP requires fleet operators to operate their CFVs on clean alternative fuels only when in the covered nonattainment area. Therefore, for dual-fuel CFVs, fleet operators may use either the clean alternative fuel or the conventional fuel outside the covered nonattainment area.

limited mileage on gasoline in emergency situations in the covered nonattainment area.

EPA regulations define the term ''centrally fueled'' as meaning a fleet, or that part of a fleet, consisting of vehicles that are fueled 100 percent of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator. See 40 CFR 88.302–94. The proposed *de minimis* exemption for limited operation on conventional fuel described above would not affect this definition of ''centrally fueled'', because the *de minimis* exemption would allow only limited operation in emergency circumstances. A fleet operator would still need to determine whether, in normal circumstances, its covered fleet vehicles are centrally fueled 100 percent of the time.

EPA considered two modifications to the definition of dedicated vehicle to allow limited operation on conventional fuel. EPA considered proposing to modify the definition of a dedicated fueled vehicle to allow vehicles to be equipped with a fuel tank that would allow a range of operation of 50 statute miles. This would require the replacement of the existing gasoline tank with a tank of approximately two-gallon capacity. However, the act of removing an existing fuel tank that has met the crash tests and other testing required by the National Highway Transportation Safety Administration (NHTSA)[10] could require another set of vehicle crash tests with any vehicle using a ''new'' fuel tank system, and the cost of conducting another set of vehicle crash tests may deter manufacturers from modifying vehicles in this manner.

An alternative modification EPA considered proposing is retention of the existing fuel tank and use of a timer to restrict fuel usage. The timer could allow a maximum of one hour of operation on gasoline followed by a period of time the vehicle could not operate on gasoline. Manufacturers would be required to program these time periods into one of the vehicle's computers. The choice of one hour of operation is roughly equivalent to the 50-mile range criterion, based on the combined fuel economy values and an assumed vehicle average speed of 50 miles-per-hour.

To provide maximum flexibility to manufacturers and fleet operators, EPA is proposing to amend definition of a dedicated vehicle to allow both of these approaches: clean fuel vehicles equipped with a timer that limits operation on gasoline to one hour at a time, and clean fuel vehicles equipped with a fuel tank with fuel capacity of no more than 50 miles of operation on gasoline, will be included in the definition of a dedicated vehicle. Because the use of conventional fuel is intended for emergency use only, and the operation on conventional fuel is expected to be an exception, no emission or fuel economy testing would be required on these vehicles with conventional fuel.

The proposed revision to the definition of dedicated fuel systems would apply only to light-duty vehicles and light-duty trucks, because EPA has not adopted heavy-duty flexible and dual fueled Clean-Fuel vehicle standards. See 59 FR 50050 (September 30, 1994).

B. Engine Family Criteria and Assigned Deterioration Factors

Manufacturers and aftermarket converters have expressed concerns to EPA regarding the overall burden of complying with EPA's certification regulations for vehicles converted to operate on a clean alternative fuel for the purpose of meeting EPA's CFV emissions standards. The burdens identified relate to the cost of certifying each engine family and the narrowness of the criteria under which exhaust emission control systems are classified into engine families.[11]

Because of the diversity in marketing requirements, a number of engine families, with limited sales, would be created under current regulations to meet consumer needs. Currently EPA provides for relief from full useful life deterioration factor (DF) requirement for engine families with a combined total sales of no more than 10,000 vehicles or engines.[12] In today's action EPA is proposing to adopt similar provisions, applicable thru MY 2001, for vehicles and engines certified to EPA's CFV emissions standards.

The costs identified by the OEM and aftermarket conversion manufacturers were the actual costs associated with certifying each engine family. Costs attributed to certifying each engine family are development costs, testing costs, and certification fees. Various aftermarket conversion entities have estimated the costs of generating DFs to be in excess of $1 million for *each* engine family. While EPA does not have data to corroborate these cost estimates, the Agency believes that the cost of generating DFs is significant, but expects it is well below $1 million per engine family. EPA's current regulations for small volume engine family certification allow manufacturers to use assigned DFs generated by EPA. *See* 40 CFR 86.096–24(e)(2) Manufacturers may also use Dfs they have generated using good engineering judgment. *See* 40 CFR 86.094–14(c)(7)(i)(C)(*2*)(*i*). In today's action, EPA is proposing to amend the regulations that clarify these options are also available for CFV small-volume engine families. In September, 1995, EPA issued a guidance letter to manufacturers containing assigned DFs for gaseous fueled vehicles. In general, EPA expects that manufacturer's use of these assigned DFs for gaseous fueled CFVs would qualify as DFs generated using good engineering judgment under the regulatory provision adopted today.

EPA is proposing to amend the provisions that allow grouping of certain CFV engine families into an engine family class. The criteria for such grouping is described below. EPA expects that this proposed action would serve to encourage production of CFVs for fleet operators to purchase and use to meet state CFFP purchase requirements by reducing the amount of testing needed for certification of CFVs. This would allow manufacturers to introduce a greater number of CFV models desired by fleet owners without incurring additional testing costs.

Fleet vehicles must be able to perform a wide variety of duties, such as meter-reading tasks, service repair, making deliveries, transporting passengers, etc. Therefore, for a manufacturer or aftermarket converter to be competitive in the clean fuel vehicle fleet market, multiple engine families need to be certified for different needs.

Currently, vehicle grouping for the purpose of certification is accomplished though the application of the ''engine family'' and ''emission control system'' definitions in the regulations. Today's proposal would establish a new definition for grouping engine families: engine family class. An engine family class would be defined as engines sharing the following common characteristics: (1) Meeting LEV, ILEV, ULEV, or ZEV emission standards in 40 CFR Part 88, (2) same car line name, (3) all engines have engine displacements within a range of 0.8L[13] less than the displacement of the engine used for certification testing, (4) same catalyst construction, (5) same type of precious metals used in the catalyst, and (6) same

[10] Reference NHTSA's rules found at 49 CFR Part 555.

[11] 40 CFR 86.096–24.

[12] 40 CFR 86.094–24(e)(2).

[13] *See* EPA Advisory Circular 17F, page 9, which can be found in the docket for this rulemaking action.

relative engine/catalyst size and loading rates.

EPA is proposing to amend the criteria for engine family classes to reduce the certification burden for CFVs and to combine vehicles which are likely to exhibit similar exhaust emission deterioration over their useful lives, based on the characteristics of current-technology vehicles that most significantly affect the deterioration of emission control over time. Each engine family class would be certified using separate emission compliance data and a separate certificate of conformity would be required for each engine family class.

The engine family concept was originally developed as a way to combine vehicles of similar emission deterioration rates. At that time (in the early 1970's), the use of catalytic converters was less prevalent and most emission reductions occurred though modifications to the engine operating characteristics. For these vehicles, all emission deterioration was due to increases in emissions coming directly out of the engine (called ''engine-out'' emissions). Consequently, the definition of engine family focused on engine-based parameters. Since that time, there have been many advances in exhaust emission control technology which have made the engine family concept less useful for the purposes of grouping vehicles together on the basis of emission deterioration.

In today's vehicles, most emission control is accomplished through catalytic conversion of the exhaust while the engine is controlled to operate within carefully controlled air/fuel ratios to ensure optimum catalyst efficiency. While manufacturers have demonstrated that essentially no engine-out deterioration is experienced in their current product, the mating of the catalyst with the engine is extremely important. Appropriate sizing of the catalyst to the engine is critical to achieve an appropriate catalyst residence time (the time the exhaust gases remain in the catalyst) so that the catalytic reaction has time to be completed. Adequate levels of precious metal loading and appropriate dispersion are necessary to provide the active sites for conversion and achieve the desired conversion rates. Also, the catalyst must be placed in a temperature environment that allows it to quickly come to operating temperature but does not expose it to damaging amounts of high temperature during in-use driving.

The proposed engine family class definition takes into account the changes in emission control technology by shifting the focus away from engine parameters to the ability of the overall engine and emission control system to meet LEV, or better, standards. This single requirement of focusing on a more stringent emission standard would require the matching of the catalyst to the engine. The Agency believes that the proposed engine family class definition would comprise an effective emission control program and result in significant environmental benefits by giving manufacturers additional incentives to produce and market a broader range of vehicles and engines that meet the CFV standards.

EPA is proposing to provide this newly created engine family class criteria through model year 2001, by which time EPA expects that manufacturers would have had several years to assess the market requirements and should be able to more accurately predict which vehicle models, out of approximately 400 engine families currently certified, fleet owners need and consumers favor. Manufacturers would then know which engine families to focus certification testing on, rather than certifying a variety of engine families. EPA currently intends to propose new certification procedures for all light-duty vehicles and light-duty trucks for application in model year 2000. If these expected actions are delayed, the applicability of the definition proposed in this notice could be extended in a subsequent rule.

EPA notes that the proposed requirement that all engines in an engine family class have the same type of catalyst precious metal loading would apply only to OEMs. EPA is aware that catalysts are built to the OEM's specifications, and that the actual amount and ratio of precious metals in the catalyst is often considered confidential business information that cannot be obtained by an aftermarket converter who purchases a vehicle manufactured by an OEM to convert it to operate on a clean alternative fuel. EPA believes that the remaining criteria for grouping engines into an engine family class are sufficient to ensure that vehicles and engines converted to operate on a clean alternative fuel have similar emissions characteristics and that it would be appropriate to group such vehicles and engines together. Because manufacturers can only group vehicles that are in the same car line, and have similar engine displacements, catalyst construction, etc., it is unlikely that vehicles or engines that share those common characteristics will have different catalyst precious metal loadings. In the event that EPA has reason to believe that, in spite of meeting the other criteria, an aftermarket converter is attempting to group engines with different precious metal loadings, EPA is proposing to reserve the right to limit engine family groupings by aftermarket conversion companies if the Agency has reason to believe that the proposed engine family grouping would result in an engine family class containing engine families that are so dissimilar that such grouping is not appropriate. Since the Agency's belief could be based on information that is protected by confidential business practices, EPA could not necessarily disclose this information to the aftermarket conversion company. Based on a review of engine families from previous model years, the Agency does not believe this scenario is likely to occur but has decided to propose such a provision due to the theoretical possibility of the scenario occurring in the future.

C. Fees

Today's action proposes to amend the current fee schedule in 40 CFR Part 86, Subpart J by proposing exemptions from certification fee requirements. The exemption (through MY 2001) is proposed for vehicles and engines using certified to LEV, ULEV, ILEV, or ZEV, emission standards in 40 CFR Part 88 under the small-volume certification procedures in 40 CFR 86.094–14. In addition, a fee exemption is provided through MY 2001 for dedicated gaseous fuel systems meeting Tier 1 emission standards.

The Act authorizes EPA to promulgate (and from time to time revise) regulations establishing fees to recover all reasonable costs to the Agency associated with (1) certification of new vehicles or engines under section 206(a) or under part C of Title II of the Act, (2) compliance monitoring and testing under section 206(b) or part C, and (3) in-use compliance monitoring and testing under section 207(c) of part C. Section 217 of the Act requires such fees to be consistent with the Independent Offices Appropriation Act (IOAA), 37 U.S.C. 9701 *et seq.*, and requires that the Agency's fee schedule be based on such factors as the Administrator finds appropriate, equitable, and nondiscriminatory (including the number of vehicles or engines produced under a certificate).

Pursuant to its authority under section 217, EPA established a fee schedule to recover costs associated with the activities described above. This fee schedule currently applies to light-duty vehicles, light-duty trucks, heavy-duty vehicles, heavy-duty engines, and motorcycles, regardless of the emissions standards to which such vehicles are

certified. Current EPA regulations provide for a partial fee waiver for certification requests where the full fee exceeds one percent of the aggregate projected retail sales price of vehicles that the certificate would cover. If EPA grants a waiver, the applicable fee would be equivalent to one percent of the aggregate projected retail sales price of the vehicles or engines covered by the certification request.

The first exemption proposed today is for vehicle technologies certifying to LEV, ULEV, ILEV, or ZEV emissions standards in 40 CFR 88.104–94 and 88.105–94. This proposed exemption is consistent with Section 217 of the CAA, and with the IOAA. Section 217 requires EPA's fee schedule to be based on factors that the Administrator finds are ''appropriate and equitable and nondiscriminatory.'' Section 217 also requires EPA's fee regulations to be consistent with the IOAA. The IOAA states that ''* * * [I]t is the sense of Congress that each service or thing of value provided by an agency * * * is to be self-sustaining to the extent possible.'' In addition, the IOAA authorizes agency heads to adopt regulations establishing a fee for such ''services or things of value'' provided by the agency. Such fees must be fair, and must be based on the following factors: (1) Cost to the government, (2) value of the service or thing to the recipient, (3) public policy or interest serviced, and (4) other relevant facts.

The proposed exemption from certification fees for vehicles and engines certified as LEVs, ILEVs, ULEVs, and ZEVs emission standards is consistent with the IOAA. The IOAA does not require agencies to be completely self-sustaining, but only ''to the extent possible.'' In establishing fees, it is appropriate for EPA to weigh its broad purpose under the CAA of protecting the nation's air quality against the sense of Congress that agencies should be self-sustaining to the extent possible. *See Aeronautical Radio* v. *Federal Communications Commission,* 335 F.2d. 304 (7th Cir., 1964). While EPA recognizes that the Agency would incur costs in issuing certificates for such vehicles, and in assuring compliance with the applicable emissions standards, the proposed fee exemption is consistent with Congressional intent to encourage the development and production of clean-fuel vehicles for state clean-fuel fleet programs, and with the broader long-term goal of encouraging the penetration of clean-fuel vehicles in the national vehicle market. These are valid public policy interests that may be considered as a factor in setting fees under the IOAA in a manner that furthers such interests.

The proposed fee exemption for Tier 1 alternative fuel vehicles is also consistent with Section 217 of the CAA and with the IOAA. As described above, the IOAA does not require agencies to be completely self-sustaining, but only to ''the fullest extent possible,'' and it is appropriate for EPA to weigh its broad purpose under the CAA of protecting air quality against the sense of Congress that agencies should be self-sustaining to the extent possible. While EPA recognizes that the Agency would incur costs in issuing certificates for such vehicles and in assuring compliance with the applicable emissions standards, the proposed fee exemption is consistent with EPA's broad purpose of protecting air quality. Although these vehicles would be certified to Tier 1 emissions standards, rather than to the more stringent CFV emissions standards, all fuel systems for a gaseous-fuel would have lower evaporative emissions than gasoline fueled vehicles because these fuel systems are ''closed'' fuel systems under pressure. These closed fuel systems are the only fuel systems thus far that have been able to demonstrated compliance with the lower evaporative emission standards required for ILEV evaporative emission compliance. Even though the operating fuel system on these vehicles and engines will have a fuel system that is similar to systems meeting ILEV evaporative standards, these vehicles could also have an emergency supply of conventional fuel and still qualify as dedicated vehicles if EPA finalized the proposed revisions to the definition of dedicated vehicle discussed in section C. 1. above. Lower evaporative emissions can still be expected from such vehicles because they will carry lower volumes of conventional fuel than do dedicated conventional fuel vehicles. In addition, there will be lower refueling losses because the conventual fuel is an emergency only fuel supply and will be replenished infrequently. Therefore, it would be appropriate and consistent with EPA's broad purpose of reducing emissions that result in air pollution problems for the Agency to waive certification fees for gaseous-fueled Tier 1 vehicles as a means to encourage manufacturers to produce such vehicles. Moreover, EPA expects that some CFVs purchased by fleet operators towards compliance with requirements of CFFPs will be gaseous-fueled CFVs, and encouraging production of gaseous-fueled Tier 1 vehicles would assist those fleet operators that choose gaseous-fueled CFVs by promoting and supporting the gaseous fuel fueling infrastructure.

The current fee structure is based on recovering EPA's cost for each engine family. Current regulations rules do allow for partial waiver of the full fee. This waiver requires the manufacturer to pay 1 percent of the retail value of the vehicle up to a full fee. The net result is for any engine family with expected annual sales of approximately 100 units, the manufacturers would be required to pay the full certification fee. For aftermarket conversions, however, the one percent of the retail value criterion is based on the sales price of the converted vehicle, and does not reflect the cost of procuring the pre-conversion vehicle or engine. The conversion process may add $5,000 to the vehicle's pre-conversion cost. The retail value of the converted vehicle may be anywhere from $10,000 for a LDV to $20,000 for a pickup truck. The fee the aftermarket conversion manufacturer pays is based on the total retail value of the vehicle, not just the value added. Therefore, if the retail value of the converted vehicle is $25,000 the fee under the current waiver provision would be 1 percent of $25,000, or $250. If the convertor expects to sell at least 100 converted vehicles, it would have to pay the full certification fee of $23,741.00 .

For the 1997 model year[14] EPA certified 12 engine families to LEV, ILEV, ULEV, and ZEV emission standards; three LDV's, four LDT's, and five HDE's. The total fees paid to EPA for these 12 engine families amount to less than $250,000. Since few gaseous-fueled engine families have been certified to Tier 1 emissions standards, EPA does not expect the cost of the fee waiver proposed for Tier 1 gaseous-fueled vehicles and engines would be significant. The cost of the proposed fees exemptions would not be passed on to other manufacturers.

In today's action, EPA is proposing a fee exemption for any engine family certified to Federal LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR Part 88. The proposed fee exemption, applicable through MY 2001, would be expected to result in a greater number of engine families and vehicles available for fleet operators to purchase and use to comply with the requirements of Clean-Fuel Fleet Programs. In addition, today's proposal is intended to reduce the overall burden of certifying clean-fuel vehicles and to provide additional incentive to both OEM and aftermarket converters to certify vehicles and engines that meet the CFV emission standards.

[14] As of May 30, 1997.

This proposed exemption would apply through MY 2001 because EPA expects that such incentive will not be needed after MY 2001 as the production and sales of CFVs by that time should be at a level such that the amount of fees paid to EPA can easily be amortized over the total sales. EPA would apply this exemption in an equitable, nondiscriminatory manner—any manufacturer of a small volume engine family certified to LEV, ULEV, ILEV, or ZEV emissions standards under 40 CFR Part 88 would be eligible to receive an exemption.

III. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether this proposed regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and, the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposed action is not a ''significant regulatory action'' within the meaning of the Executive Order, and is therefore not subject to OMB review. Today's action proposes to amend current regulations to streamline the certification process for manufacturers of Clean Fuel vehicles and dual fuel gaseous fueled vehicles and engines.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have significant impact on a substantial number of small entities because today's proposed action would not impose any new requirements on small entities. In fact, this proposal would reduce the costs of certification for all entities, including small entities, that manufacturers of CFVs, as well as reducing costs for all entities that convert conventional vehicles to vehicles that operate on gaseous and other fuels, including small entities that perform such actions. Therefore, I certify that this action will not have a significant economic impact on a number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA'') signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rule where the estimated costs to State, local, or tribal governments, in the aggregate, or to the private sector, will be $100 million or more in any one year. Under section 205, for any rule subject to section 202, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely impacted by the rule.

EPA has determined that this proposed rule does not trigger the requirements of UMRA. The proposed rule does not include a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not propose regulatory requirements that may significantly or uniquely affect small governments. Therefore, this proposed rule does not trigger the requirements of UMRA.

D. Reporting and Recordkeeping Requirement

Today's proposal does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* And has assigned OMB control number 2060–0104 (EPA ICR No. 0783).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instruction; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search for data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR document(s) may be obtained from Sandy Farmer, OPPE Regulatory Information Division; EPA; 401 M St., SW. (mail code 2137); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

E. Environmental and Economic Impacts

This proposal will have no adverse effects on air quality, since all current emissions standards and requirements would continue to apply to vehicles and engines affected by today's action. EPA believes that this proposed action would encourage manufacturers to develop and market vehicles and engines with innovative, new emissions control technology, ultimately resulting in broader market penetration of CFVs and clean alternative fuels.

By proposing to waive certification fees for qualifying vehicles, this proposed action would reduce the regulatory burden on industry without adversely affecting air quality.

F. Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that disproportionately affect

G. Public Participation

1. Comments and the Public Docket

EPA welcomes comments on all aspects of this proposed rulemaking. All comments, with the exception of proprietary information should be addressed to the EPA Air Docket Section, Docket No. A–97–27 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for

consideration should clearly separate such information from other comments by (1) labeling proprietary information ''Confidential business Information'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This would help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the notice of proposed rulemaking, then a non-confidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

2. Public Hearing

Any person can request EPA to hold a public hearing on this proposed action, but such request must be received by August 19, 1998. Because no hearing will occur, absent a request for one, interested parties should contact Clifford D. Tyree at the number listed below after August 19, 1998 to determine whether a hearing will take place.

IV. Statutory Authority

Authority for the actions set forth in this notice of proposed rulemaking is granted to the EPA by sections 202, 203, 206, 207, 217, 241, 242, 243, 244, 245, 246, 247, and 301(a) of the Clean Air Act as amended (15 U.S.C. 2001, 2002, 2003, 2005, 2006, 2013; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 8, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 86—[AMENDED]

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 86.090–2 of Subpart A is amended by revising the definition of ''Dedicated vehicle (or engine)'' to read as follows:

§ 86.090–2 Definitions.

* * * * *

Dedicated vehicle (or engine) means, any motor vehicle (or motor vehicle engine) engineered and designed to be operated using a single fuel. Flexible fuel vehicles and multi-fuel vehicles are not dedicated fuel vehicles. Through model year 2001, motor vehicles (or motor vehicle engines) capable of operating on a second fuel through use of one of the options listed in paragraphs (1) and (2) of this definition are dedicated vehicles (or engines):

(1) Vehicles or engines certified to Tier 1, LEV, ULEV, ILEV, or ZEV that are capable of operation on a conventional fuel for a maximum of one hour during a three-hour period.

(2) Vehicles or engines certified to Tier 1, LEV, ULEV, ILEV, or ZEV that are capable of operation on a conventional fuel no more than 50 miles on a conventional fuel limited either by fuel tank capacity or tamper-proof electronic software.

* * * * *

3. Section 86.096–24 of Subpart A is amended by revising paragraph (a)(2) introductory text and adding new paragraphs (c)(4), (c)(5), (e)(1), (i), and (j) to read as follows:

§ 86.096–24 Test vehicles and engines.

(a) * * *

(2) To be classed in the same engine family, engines must be identical in all the respects listed in paragraphs (a)(2)(i) through (x) of this section or, at the manufacturers option, as allowed in paragraphs (i) and (j) of this section.

* * * * *

(c) * * *

(4) *Light-duty vehicles and light-duty trucks applying for a certificate of conformity with Clean-Fuel vehicle emissions standards in 40 CFR part 88.* This paragraph (c)(4) applies to engines, systems, or components used to establish exhaust emission deterioration factors for light-duty vehicle and light-duty truck small volume engine families certified to LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR part 88.

(i) For light duty vehicles, the Administrator shall select the vehicles, engines, systems, or components to be used to determine exhaust emission deterioration factors for each engine family or engine family class control system combination using the criteria in paragraph (c)(1) of this section, or, alternatively, by selecting the vehicle with the largest projected sales volume in the engine family or engine family class.

(ii) For light duty trucks, the manufacturer shall select the vehicles, engines, systems, or components to be used to determine exhaust emission deterioration factors for each engine family or engine family class control system combination using the criteria in paragraph (c)(2) of this section, or alternatively, by selecting the vehicle with the largest projected sales volume in the engine family or engine family class.

(iii) For light duty vehicles, service accumulation procedures must comply with one of the following:

(A) 40 CFR 86.094–26 (a); or

(B) 40 CFR 86.094–14 (c)(7)(i)(C).

(iv) For light duty trucks, service accumulation procedures must comply with one of the following:

(A) 40 CFR 86.094–26 (b) and (d); or

(B) 40 CFR 86.094–14 (c)(7)(i)(C).

(5) *Heavy-duty engines applying for a certificate of conformity with Clean-fuel vehicle emissions standards in 40 CFR part 88.* This paragraph (c)(5) applies to engines, systems, or components used to establish exhaust emission deterioration factors for small volume heavy-duty engine families certified to LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR part 88.

(i) The manufacturer shall select the vehicles, engines, systems, or components to be used to determine exhaust emission deterioration factors for each engine family or engine family class control system combination using the criteria in paragraph (c)(3) of this section, or alternatively, by selecting the engine with the largest projected sales volume in the engine family or engine family class.

(ii) Service accumulation procedures must comply with one of the following:

(A) 40 CFR 86.094–26(c) and (d);

(B) 40 CFR 86.094–14 (c)(7)(i)(C); or

(C) The engine must be operated at maximum power and maximum fuel rate for 500 engine hours. Three tests, equally spaced, shall be used to extrapolate deterioration factors.

* * * * *

(e)(1) Any manufacturer may request to certify engine families, with combined total U.S. sales of vehicles and engines fewer than 10,000 units, for the model years 1999 through 2001, to the clean-fuel vehicle standards prescribed in 40 CFR 88.104–94 and

88.105–94, under the provisions of § 86.094–14, in addition to the vehicles certified under paragraph (e)(2) of this section.

* * * * *

(i) For light duty vehicles and light duty trucks, small volume engine families certified to LEV, ULEV, ILEV, or ZEV emissions standards in 40 CFR part 88 may be grouped into an engine family class, provided that:

(1) For original equipment manufacturers, the following criteria are met:

(i) Vehicles are all certified to the same emissions standards prescribed in 40 CFR 88.104–94.

(ii) The maximum range of engine displacement is less than or equal to 0.8 liters of the largest displacement in the class.

(iii) Same type of catalyst (e.g., beads or monolith).

(iv) Same precious metal composition of the catalyst by the type of principle active material(s) used (e.g., platinum based oxidation catalyst, palladium based oxidation catalyst, platinum and rhodium three-way catalyst, palladium and rhodium three-way catalyst).

(v) The ratios of [(catalysts volume/displacement) × (catalyst loading rate)] of all catalysts is within 25 percent or 0.2 g/liter of each other.

(2) For aftermarket conversions, the following criteria are met:

(i) Vehicles are all certified to the same emissions standards prescribed in 40 CFR 88.104–94.

(ii) The maximum range of engine displacement is less than or equal to 0.8 liters of the largest displacement in the class.

(iii) Same type of catalyst (e.g., beads or monolith).

(iv) All carlines or engine models were included on the certificate for the pre-conversion configuration.

(3) Vehicles certifying to more than one set of emission standards specified in this paragraph (i) may be grouped into a single engine family class, as provided in paragraphs (i)(1) and (i)(2) of this section. For example, a manufacturer may certify a vehicle to both ULEV and ILEV standards, or to both ZEV and ILEV standards.

(j) For heavy duty engines, small volume engine families certified to LEV, ULEV, or ZEV emissions standards in 40 CFR 88.105–94 may be grouped into an engine family class, provided that:

(1) For original equipment manufacturers, the following criteria are met:

(i) The engines meet the requirements of paragraphs (a)(2)(iv) through (a)(2)(x) of this section.

(ii) The maximum range of engine displacement is less than or equal to 0.8 liters of the largest displacement in the class.

(iii) Same type of catalyst (e.g., beads or monolith).

(iv) Same precious metal composition of the catalyst by the type of principle active material(s) used (e.g., platinum based oxidation catalyst, palladium based oxidation catalyst, platinum and rhodium three-way catalyst, palladium and rhodium three-way catalyst).

(v) The ratio of [(catalysts volume/displacement)] × [catalyst loading rate] of all combinations is within 25% or .2 g/liter.

(2) For aftermarket conversions, the following criteria are met:

(i) The maximum range of engine displacement is less than or equal to 0.8 liters of the largest displacement in the class.

(ii) Same type of catalyst (e.g., beads or monolith).

(iii) All carlines or engine models were included on the certificate for the pre-conversion configuration.

4. Section 86.099–2 is added to subpart A to read as follows:

§ 86.099–2 Definitions.

The definitions of § 86.098–2 continue to apply to 1998 and later model year vehicles. The definitions listed in this section apply beginning with the 1999 model year.

Engine Family Class means:

(1) A grouping of vehicles or engine families that meets the following criteria:

(i) Dedicated vehicles or engines that meet LEV, ILEV, ULEV, or ZEV emission standards in 40 CFR 88.104–94 or 88.105–94.

(ii) The maximum range of engine displacement is not more than 0.8L of the largest displacement tested in the class.

(iii) Same type of catalyst.

(iv) Same principle active precious metal.

(v) The ratios of [(catalysts volume/displacement) × (catalyst loading rate)] of all catalysts is within 25 percent or 0.2 g/liter of each other.

(vi) For aftermarket conversions, all carlines or engine models were included on the certificate for the pre-conversion configuration.

(2) This definition is applicable for model years 1999 through 2001.

5. Section 86.908–93 of Subpart J is amended by adding paragraph (d) to read as follows:

§ 86.908–93 Waivers and refunds.

* * * * *

(d)(1) For model years 1999 through 2001, the required fees under this subpart shall be waived for any light-duty vehicle, light-duty truck, or heavy-duty engine family that meets the following requirements:

(i) Is a dedicated vehicle or engine;

(ii) Is seeking certification to LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR part 88; and

(iii) Meets the small volume sales requirements of § 86.094–14(b) or § 86.094–24(e).

(2) If the manufacturer does not receive a certificate of conformity with the LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR part 88, the fee requirements of this section will apply. Before any certificate can be issued, the applicable fee must be paid.

[FR Doc. 98–18860 Filed 7–17–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 98–77; FCC 98–101]

Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this *Notice of Proposed Rulemaking (NPRM)*, the Commission commences a proceeding to reform access charge rules applicable to incumbent local exchange carriers (LECs) subject to rate-of-return regulation. The *NPRM* seeks comment on proposals to establish a transition to access charges that more closely reflect economic costs, with a goal of making our system of interstate access charges compatible with a competitive paradigm. Specifically, the Commission seeks comment on proposals to revise the switched access rate structure for rate-of-return LECs. The Commission also solicits comments on some additional issues relating to the regulation of interstate access services of rate-of-return LECs.

DATES: Comments are due on or before August 17, 1998, and reply comments are due on or before September 17, 1998. Written comments and reply comments by the public on the proposed information collections are due August 17 and September 17, 1998, respectively.

ADDRESSES: Federal Communications Commission, Secretary, Room 222, 1919 M Street N.W., Washington, DC 20554. In addition to filing comments with the