

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ANN ARBOR, MICHIGAN 48105

OFFICE OF
AIR AND RADIATION

August 28, 1998

Dear Stakeholder:

Attached to this memorandum is the final Clean Fuel Fleet Implementation Guidance. This document is intended to provide guidance to states and regulated entities in the implementation or start-up phase of the Clean Fuel Fleet program (CFFP) which will begin September 1, 1998. This final version is based on significant input received from an informal workgroup consisting of various affected stakeholder groups.

EPA has attempted to provide flexibility and address the concerns and issues raised given the Agency's charge of administrating the Clean Air Act (CAA) and improving air quality. We will continue to work with fleet operators, state agencies, vehicle and engine manufactures, fuel providers and other stakeholders to ensure that the implementation guidance continues to be relevant as the program gains momentum.

We consider this to be the final version of this document and are beginning broad distribution. We recognize that as implementation proceeds, new and/or different issues may arise and expect to issue additional guidance if and when it becomes necessary. Should you have any questions regarding these or other issues, please contact Sally Newstead at 734/214-4474.

Sincerely,

Original signed by Leila H. Cook
for
Gay MacGregor, Director
Regional and State Programs Division

**Clean Fuel Fleet Program
Implementation Guidance**
August, 1998

This guidance is intended as a resource for state air agencies and regulated entities that will be involved in the implementation of a Clean Fuel Fleet program (CFFP) pursuant to Section 246 of the Clean Air Act (hereafter, the Act). The areas currently covered by the program are Atlanta, GA; Baton Rouge, LA; Denver-Boulder, CO; Washington D.C. Metropolitan area; Milwaukee-Racine, WI; and Chicago-Gary-Lake County, IL/IN. At this time, two of the areas (Baton Rouge, LA and Washington D.C.) are reassessing air quality programs that could be used as substitute programs rather than implementing the CFFP; however, no formal proposals have been made and approved by the Agency at this time.

This document provides guidance to EPA regions, state agencies, fleet operators, and fuel providers, and provides further clarification of definitions relevant to implementation of the CFFP. EPA believes this guidance will help to ensure that the state CFFPs are implemented in an effective manner.

The Office of Mobile Sources held a Clean Fuel Fleet Stakeholders meeting on July 15, 1997 to discuss a one year delay of the CFFP. During this meeting, various stakeholder groups (fleet owner/operators, managers, and representatives) asked questions pertaining to several program elements and expressed a desire for consistent state programs. Among the issues discussed were the availability of clean fuel vehicles (CFVs), purchase compliance exemptions for fleets, a rounding protocol, and clarifications regarding definitions of certain terms (centrally fueled, contract refueling, capable of being centrally fueled, independent contractor and model year/ purchase year).

This document provides guidance to states and regulated entities concerning how EPA interprets various requirements of the CFFP provisions in the Clean Air Act and in EPA's regulations. This document does not impose legally binding requirements on states, EPA, or regulated entities, and may not apply in particular situations based on the circumstances. EPA and state decision makers retain the discretion to approach the CFF community to adopt approaches on a case-by-case basis that differ from this guidance where appropriate in order to address regional concerns as they may arise subject to the requirements of the Act and EPA's regulations. EPA may change this guidance in the future.

Who is Covered by the Clean-Fuel Fleet Program?

The following questions should aid in determining if your fleet is covered by the CFFP. This exercise is not designed to be exhaustive, but should improve ones understanding of whether a fleet is covered by the program.

1. Do any of your fleet vehicles operate at any time in a particular covered area?

No. Only fleets that have vehicles that operate in ozone or CO air quality non-attainment areas are required to comply with the CFF program. Therefore, you are not covered.

Yes. Go to (2) below.

2. How many of your fleet vehicles of all types operate in that covered area?

Less than 10? The fleet is not covered. When counting vehicles for the purpose of determining if a fleet is a covered fleet, all vehicles, regardless weight class, held in a fleet owned or operated, leased or otherwise controlled by a single person must be counted.

10 or more? Go to (3) below.

3. How many vehicles operating in that covered area are non-exempt? (Subtract the number of exempt vehicles from the number of vehicles of all types.)

Less than 10? Then the fleet is not covered. Exempt vehicles include motor vehicles held for lease or rental to the general public; motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests; law enforcement and other emergency vehicles; non-road vehicles (including farm and construction vehicles) and vehicles greater than 26,000 lbs. GVWR.

10 or more? Go to (4) below.

4. How many non-exempt vehicles are:

(a) Centrally fueled? "Centrally fueled" vehicles, are all vehicles, including those garaged at a personal residence when not in use, that are refueled 100% of the time at fueling facilities owned, operated or controlled by, or under contract with, the fleet operator.

(b) Capable of being centrally fueled? Vehicles "capable of being centrally fueled" are all vehicles, excluding those garaged at a personal residence when not in use, that could be centrally fueled 100% of the time at a central location(s); refer to the Fleet Definitions (40CFR §88.302-94) to see how to conduct the determination process.

Do (a) + (b) = 10 or more? If so, the sum is your potentially covered fleet size. A covered fleet vehicle is one for which clean fuel vehicle standards exist and which is in a covered fleet that is centrally fueled or capable of being centrally fueled.

5. Of these covered fleet vehicles from (4) above, how many ever operate in the covered area? 10 or more? This number of covered fleet vehicles (a + b) is your fleet size and has been defined as "can be centrally fueled". These vehicles are covered by the CFF program rules and regulations.

Vehicle Availability

A list of vehicles and engines certified to meet the CFF emission standards can be found at the following EPA website: www.epa.gov/OMSWWW/cff.htm. EPA will update this list as new vehicles and engines are certified to CFV standards and EPA will continue to work with vehicle manufacturers to provide fleet operators information on vehicles expected to be certified whenever possible. EPA recommends that states keep a current list available at their agencies, so that fleets can verify available vehicles. The MY99 CFFP requirements assume that there is a minimally sufficient number of CFVs available for fleet operators to meet applicable purchase requirements. EPA has worked with fleet operators, state agencies, vehicle and engine manufacturers to ensure increased availability of different types of CFVs and expects the range of offerings to further increase in the coming year as the program moves forward.

Clean-Fuel Fleet light duty standards are the same as for Low Emission Vehicles (LEVs); however, vehicles meeting the more stringent Inherently-Low Emission Vehicle (ILEV), Ultra-Low Emission Vehicle (ULEV) or Zero Emission Vehicle (ZEV) standards also qualify as CFVs. The numerical standards for each of these categories may be found in 40 CFR Part 88.104-94; heavy-duty standards for LEV, ILEV, ULEV and ZEV categories may be found in 40 CFR Part 88.105-94.

Compliance Exemptions

Under Section 246(a)(4) states are required to submit implementation plans taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, and other factors. EPA interprets this to allow states the authority to grant compliance exemptions on a narrow and limited basis in those cases where compliance with the program is not possible due to these factors or financial hardship beyond the control of the fleet operator. EPA's interpretation allowing this narrow and limited use of state discretion with regard to compliance exemptions is applicable only to Section 246(a)(4) and should not be applied to or set precedent for other Agency programs.

Although EPA expects that a sufficient number of CFF vehicles and engines will be certified and available for the Clean-Fuel Fleet program to begin in MY 99 (September 1, 1998 - August 31, 1999) fleet, it is possible that individual fleets will need certain types of CFVs that may not be available. For example, fleets whose business is making large deliveries may not be able to use small LDVs to conduct their normal business activities. Similarly, there may be a limited availability of right-hand drive

vehicles that could make compliance infeasible for the fleet operator. As described in EPA's rulemaking delaying the effective date of the CFFP purchase requirements to MY99, EPA believes that Congress intended that it be feasible for fleets to purchase and use CFVs to meet the CFFP purchase requirements. For this reason, EPA believes it is appropriate to interpret Section 246 (a)(4) as allowing states to grant compliance exemptions where a fleet's business needs dictate use of a particular type of vehicle that is not available as a CFV. States should set a responsible threshold for granting compliance exemptions which should include written documentation by the fleet operator that compliance is infeasible and the reasons why. Price thresholds may be set based on historical or standard industry practices, but must be documented in the compliance exemption request.

EPA encourages fleet operators to look toward the availability of purchase credits before applying for a compliance exemption; however, it is not recommended that the credit purchase be mandated if it is the only compliance option for fleets. In order for EPA to gather credit information, the standardized exemption requests should require the estimated cost of a CFV credit to be reported. The EPA will work with the state agencies to create a standard form for exemption requests.

With regard to fuel availability, states do not have authority under the Clean Air Act to grant compliance exemptions based solely on the lack of alternative fuel availability alone. The Agency recognizes that an alternative fuel infrastructure is essential to the success of the CFF program and has strived to address this issue by working with our stakeholders. The alternative fuel industry has also worked to create cost-effective products and services to provide alternative fuel solutions for both large and small (2 vehicles) fleets. Finally, Department of Energy grants and Congestion Mitigation and Air Quality Improvement Program grants are available for constructing CFF fueling facilities in covered areas. Additional information on these topics is available on the EPA website. It should also be noted that under the Act (Section 246(g)), Federal Facilities are required to make their alternative fuel refueling sites available to the public when such fuels are not available commercially. However, the CFF program is fuel neutral and, therefore, if gasoline fueled vehicles are available that meet the CFF emission standards they should be considered as a viable compliance option.

Finally, EPA believes the fleet operator's OEM preference alone, with regard to either fuel supplier or vehicle manufacturer, should not be an acceptable rationale for granting compliance exemptions because it would be inconsistent with Section 246. Such action would discourage those OEMs that have products available from continuing to produce CFVs or provide innovative fuel infrastructure solutions. The Agency believes allowing OEM preference as an acceptable basis for exemption may be viewed

as anti-competitive and, furthermore, would unfairly penalize those OEMs who have done the research and marketing to promote the success of the CFF program.

Exemption Process

The compliance exemption process should be monitored and administered by the State. The State should, therefore, have a system which performs the following functions.

- (A) Identifies each covered fleet operator
- (B) Provides a method to track and document the exemption status of each covered fleet operator.
- (C) Establishes the number of fleet vehicles in operation and their refueling pattern
- (D) Establishes the number of vehicles purchased and/or converted each year in each vehicle weight classification by each covered fleet operator.
- (E) Establishes the certified emission level of these new vehicle acquisitions as LEVs, ULEVs, ILEVs or ZEVs.
- (F) Provides a method to compare the number of CFVs purchased and/or converted each year in each vehicle weight classification by each covered fleet operator with the appropriate minimum program requirements.

It is recommended by the Agency that the exemption process include a formal written request submitted by the fleet operator using the standardized exemption form to the State with documentation demonstrating the necessity of a compliance exemption. The State should then review the request and notify the requestor of its decision. EPA's role will be limited to providing oversight to ensure the CFFP is implemented as uniformly as possible among the covered areas and within the legal authority of the Clean Air Act.

Definitions ¹

Model Year/Purchase Year

EPA defines "model year" for the purpose of fleet purchase requirements as September 1 through August 31. For each model year, states must ensure that fleet operators purchase (or lease) the number of clean-fuel vehicles, as a percentage of total

¹See 40 CFR 88.302-94 for regulatory definitions for terms in this section.

new vehicles purchased (or leased), required under the Act. According to this definition, for the purposes of compliance, fleets would compute their annual purchases (or leases) during the period from September 1 through August 31. This definition of model year coincides with the period in which most automobile manufacturers introduce their new annual models. This should facilitate compliance by allowing fleets to make their purchase plans regarding clean-fuel vehicles when they make their plans for purchasing new vehicles. A "new vehicle" does not mean that fleets must purchase a new model year vehicle; purchases of previously owned, Federally certified clean fuel vehicles that are new to the fleet during that model year will count towards that year's CFV purchase schedule. See 40 CFR 88.302-94 (definition of "a new covered fleet vehicle").

Any new vehicles ordered by a fleet operator between September 1 and August 31 are counted toward the purchase requirements of the same year, and are considered to be of the same model year as the January that falls between these dates. Vehicles purchased before the start of the program are not required to be CFVs, but if CFVs are purchased prior to the start of the program they may be used to generate purchase credits that can be used in future years to meet the new vehicle purchase requirements.

Example: For MY99 a covered fleet operator intends to purchase 10 new light-duty vehicles; therefore, 30% or three of these shall be required to be CFVs. A CFV purchased in October 1998 will count towards the fleet operators 1999 purchase requirement of three vehicles and he/she will still have to purchase two additional CFVs in the September 1, 1998 to August 31, 1999 window. The compliance determination would be made by August 31st of 1999. This example assumes that the fleet operators new vehicle purchase basis does not change from the original target of ten new vehicles. If this new vehicle target were to change due to business decisions, then the CFV purchase requirement would be adjusted up or down accordingly.

Demonstration of compliance should be based on when the vehicle was put in service, and not when the vehicle was ordered. However, vehicles ordered before September 1, 1998 are not required to be covered. States should develop a follow-up strategy to keep track of any order cancellations and to assure that the vehicle does become part of the fleet. However, if a purchase has been made and documented and the manufacturer has failed to deliver the vehicle(s), the state may take this into consideration in its exercise of enforcement discretion.

Centrally Fueled

EPA regulations define "centrally fueled" as 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 at a "location" that is under contract with the covered fleet operator. Any vehicle that under normal operations is garaged at a personal residence at night but that is, in fact, centrally fueled 100 percent of the time shall be considered to be centrally fueled. EPA defines "control" as a function of ownership rights in the entities. These ownership rights can take at least three forms: controlled stock, controlled management, or controlled facilities.

"Location" means any building, structure, facility, or installation, which

- (i) is owned or operated by a person, or is under the control of a person;
- (ii) is located on one or more contiguous properties and
- (iii) contains or could contain a fueling pump or pumps for the use of the vehicles owned or controlled by that person. See 40 CFR 88.302-94.

Furthermore, a fleet operator has control of a vehicle when, (1) the fleet operator plans or controls the vehicle's route, (2) the vehicle's operation has an economic impact on the fleet, or (3) has the authority to decide who can operate a vehicle, and the purposes for which it can be operated. Fleets whose drivers are independent contractors are subject to the CFFP if they function as an organized business fleet, e.g. picking up and delivering packages in a similar manner, using the same corporate name or identity, etc.

This definition is meant to encompass all of the facilities of the fleet operator in a single covered non-attainment area, in its entirety. Location is not meant to be interpreted narrowly, (e.g., as a single refueling pump). (58 FR 64683, December 9, 1993).

Capable of Being Centrally Fueled

EPA regulations define a fleet that is "capable of being centrally fueled" as a fleet, or that part of a fleet, consisting of vehicles that could be refueled 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. The fact that one or more vehicles in a fleet is/are not capable of being centrally fueled does not exempt an entire fleet from the program; those vehicles that are capable of being centrally fueled will count toward the 10-vehicle minimum fleet size threshold.

The determination of capable of being centrally fueled should be based on the refueling patterns for that portion of the fleet consisting of nonexempt vehicles that are not

centrally refueled 100 percent of the time, excluding those vehicles that are garaged at a personal residence at night. The preamble to EPA's Clean Fuel Fleet Program Definitions and General Provisions Final Rule (58 FR 64684, December 9, 1993), describes procedures states and fleets can use to determine if a fleet's refueling pattern is such that the fleet vehicles are capable of being centrally fueled. This determination requires fleets to develop a sample trip profile that is representative of normal travel patterns.

Whether a credit card of any type does or does not limit its use to a designated refueling location(s) would not be the single determining factor of capable or not capable of central refueling. In addition, use of a credit card alone would not indicate that fueling is occurring at a central location or set of locations. For example, the use of an ABC credit card does not constitute contract fueling if the card may be used at any station that accepts the ABC credit card. However, if the same ABC card can only be used at specific stations identified by address, this arrangement does constitute contract fueling. As stated in 59 FR 50068, September 30, 1994, "EPA recommends that states look at the actual fueling patterns used by fleet operators. When an individual fleet's fueling is limited to a single location or set of locations within the operational range of the vehicles, EPA believes this situation represents central fueling, regardless of the method of payment for the fuel".

Rounding Protocol

For calculating the number of vehicles in a fleet that are capable of being centrally fueled, fleets should round down to the lowest integer. (Ex: 7.75 or 7.25 is rounded to 7) This method of calculation is intended to avoid the situation where a fleet operator would need to purchase more CFV than are needed for trips within the operational range of the fleet's central refueling facility.

Credit Calculation

The methodology for the calculation of purchase credits is outlined in the March 3, 1993 rulemaking "Clean Fuel Fleet Credit Programs; Transportation Control Measure Exemptions, and Related Provisions" (40 CFR §88.304-94).

The calculation and recording of credits shall be performed by the State and is not the responsibility of the fleet operator. The Agency has chosen to allow States flexibility

in developing their administrative procedures; however, strongly encourages states that share covered non-attainment areas to work closely in adopting systems that permit the free trading of credits across state lines.

Exemption from HOV Lane Restriction

EPA has emphasized in the past that ILEVs are part of a federal regulatory initiative to encourage the production and use of advanced exhaust and evaporative emission control technology vehicles (58 Federal Register 11898). Therefore, the Agency interprets Section 246(h) of the Act to apply to all 22 of the CFF covered areas, regardless of whether they have opted-out of the CFF program.

The CFF regulations provide HOV access as an incentive for fleets to purchase ILEVs in the form of expanded Transportation Control Measure (TCM) exemptions in keeping with the overall air quality goals of the Act (See 40 CFR 88.313-93). These ILEV vehicles can be purchased as part of the fleet program for either compliance or credit purposes, with the owner gaining the additional incentives for any ILEVs in the fleet. Fleet operated ILEVs covered by the CFF program are exempt from single passenger HOV restrictions.

The Clean Fuel Fleet Program and the EPAct Program

The Energy Policy Act of 1992 is a law administered by the Department of Energy designed to decrease dependence on foreign oil supplies and increase the use of alternative fuels by encouraging the conversion of vehicles to run on alternative fuels. The CFFP was adopted as part of the 1990 Clean Air Act (CAA) amendments and was designed to improve air quality and introduce clean burning fuels into the market. The CFFP is fuel neutral in that it does not require the use of a specific fuel, only that the appropriate emissions standards are met. It is possible that fleet operators may have to meet the requirements of one or both of these programs depending on an area's attainment status and population. Therefore, it is important to understand the basic elements of each program. The following list highlights similarities and differences between the two programs. There is a DOE alternative fuels hotline number (800-423-1363) where more information about the EPACT program can be obtained.

- Covered Areas:
 - EPACT -- Consolidated Metropolitan Statistical Areas (CMSA) of 250,000 or more (There are approximately 125 such areas.)
 - CAA -- CMSAs of 250,000 or more and classified as serious, severe, or extreme for ozone, or having a CO design value > 16.0 ppm. (There were 22 such areas covered by the 1990 CAA.)
- Covered Fleets
 - EPACT -- minimum of 20 vehicles locally and 50 nationally
 - CAA -- 10 or more vehicles capable of being centrally fueled
- Covered Vehicles
 - EPACT -- up to 8,500 lb. GVWR
 - CAA -- light-duty up to 8,500 lb. GVWR and heavy-duty from 8,500 up to 26,000 lb. GVWR
- Fleet Types
 - EPACT -- Only federal, state, and fuel providers. Municipal and private fleets can be added by DOE through the rulemaking but this has not been done, as yet.
 - CAA -- All federal, state, municipal, fuel providers, and private fleets.

There are exemptions to these coverage requirements for both programs. The following vehicle categories are exempted from both EPACT and the CFF programs. However, it should be noted that these categories are not necessarily defined the same by the EPACT and CFF programs. Therefore, one should verify these coverage exemptions with the state before making a purchase decision.

- Those held for lease or rental to the general public
 - Those held for sale by dealers, including those used for demonstrations
 - Law enforcement
 - Emergency
 - Non-road, e.g. used for farming and construction
 - Military, classified as necessary for national security
- Incentives
 - EPACT -- Credits can be bought and sold between any of the 125,000 affected CMSAs. Tax deductions and other state and local cash programs may also be available.

CAA -- Emissions credits as determined by EPA regulations may be used in State Implementation Plans (SIPs). This requires the state to track and administer a credit program for use in their SIP; however, these credits are only tradeable or usable within a specific non-attainment area. Purchase credits are available for fleets and mobile emissions reduction credits (MERCs) are available for state inventories.

- Covered Vehicles Accounting

EPACT -- Vehicles running on dual fuel are counted, although EPACT does not require that the vehicle be operated on the alternative fuel. (e.g. a CNG/gasoline vehicle that is always run on gasoline is counted as an EPACT fleet vehicle).

CAA -- Vehicles can meet LEV or more stringent standards on any fuel, but the fleet operator must use that fuel in the covered area. A dual-fuel vehicle may be counted as a CFV as long as it is certified to LEV or better standards on at least one fuel and meets Transitional Low Emission Vehicle (TLEV) standards on the other fuel. However, regardless of TLEV certification, the CFV must be operated on clean fuel (the fuel on which the vehicle meets LEV standards) when in the covered area.

National Low Emission Vehicle (NLEV) and the Clean-Fuel Fleet Program

On June 6, 1997 EPA published the Final Rule for the NLEV program (Federal Register Vol. 62, No. 109, 31193). This program was motivated primarily by the Ozone Transport Commission's efforts to reduce motor vehicle emissions either by adoption of the California LEV program throughout the Ozone Transport Region (OTR) or by the adoption of the NLEV program. The NLEV program was created as a voluntary program for auto manufacturers to provide LEV technology to the OTR and other states. NLEV will spur the introduction of LEVs into the marketplace and provide air quality benefits on a national level by introducing cleaner running LEVs prior to MY04. However, the NLEV program is a federal program that is not legally enforceable by states outside of the OTR. OTR states will, however, submit SIP revisions that represent a state commitment. This does not apply to other states. Also, there is no heavy-duty component in the NLEV program.

Under the NLEV program, manufacturers would certify light-duty vehicles and trucks to LEV standards. Under Section 241 of the Act, these vehicles would only qualify toward CFF purchase requirements if the vehicles were operated on the same fuel (or a fuel shown

to yield at least equivalent emissions) on which they were certified. (This statement is true for all certified vehicles, not just those in the NLEV program. Hence, CA-only vehicles could be used to meet CFF purchase requirements if CA Reformulated Gasoline (RFG) were available in the area. Also, the determination with regard to "equivalent emissions" will be made by the EPA on a vehicle by vehicle basis. Only those fuels recognized by EPA as providing equivalent emission benefits when compared to certification fuels may be used.)

Because non-OTR states will not submit enforceable SIP revisions related to the NLEV program, NLEV is not an acceptable substitute for the CFFP. However, OTR states may use NLEV as a substitute for the CFFP because the OTR states will submit enforceable SIP revisions related to the NLEV program, where NLEV is shown to achieve comparable long-term reductions.