

[10/31/97 Draft working document of a Direct Final Rule]

ENVIRONMENTAL PROTECTION AGENCY

CFR Part 40 86

[AMS-FRL-****-**]

40 CFR Part 86 Expanded Engine Family Definition, Fee Exemption, and Revised Definition for Dedicated Fuel System for Vehicles and Engines Meeting Low-Emission Vehicle (LEV), Inherently-Low Emission Vehicle (ILEV), Ultra-Low Emission Vehicle, or Zero Emission Vehicle Exhaust Emission Standards

AGENCY: Environmental Protection Agency (EPA)

ACTION: Direct Final Rule

SUMMARY: In today's action, EPA promulgates certain provisions regarding certification of light-duty vehicles, light-duty trucks, and heavy-duty engines that meet the Clean-Fuel Vehicle (CFV) requirements that serve to ease the burden of certification for manufacturers of CFVs. EPA is revising the definition for dedicated fuel systems to include CFVs with limited ability to operate on a conventional fuel, and is adopting provisions to allow manufacturers of CFVs to group certain engine families together for certification purposes. In addition, today's rule provides for an exemption from certification fees for vehicles and engines that certify to EPA's Low-Emission Vehicle (LEV), Ultra Low Emission Vehicle (ULEV), Inherently Low Emission Vehicle (ILEV), or Zero Emission Vehicle (ZEV) emission requirements.

EFFECTIVE DATE: This direct final rule is effective on (INSERT DATE 60 DAYS FROM PUBLICATION DATE) unless notice is received by (INSERT DATE 30 DAYS FROM PUBLICATION DATE) that

any person wishes to submit adverse comments and/or request a hearing. Should EPA receive such notice, EPA will publish a subsequent document in the **Federal Register** withdrawing this direct final rule. Any party who sends EPA notice of intent to submit adverse comments must in turn submit the adverse comments by (INSERT DATE 60 DAYS FROM PUBLICATION DATE), unless a hearing is requested.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Air Docket Section (6102), Attention: Docket No. A-91-24, 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 final 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 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. 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: (313) 668-4310; FAX 313-741-7869. E-Mail, tyree.clifford@epamail.epa.gov.

SUPPLEMENTAL INFORMATION

I. Regulated Entities

Entities potentially regulated by this direct final rule 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 action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

II. Obtaining electronic copies of documents

The preamble, regulatory language, and regulatory support document are also available electronically from the EPA Internet Web site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except your existing cost of Internet connectivity or the cost of the phone call to TTN. Users can access and download files on their first call using a personal computer per the following information. The official Federal Register version is made available on the day of publication on the primary Internet sites listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below and on the TTN BBS.

Internet (Web)

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

<http://www.epa.gov/OMSWWW/>

(look in What's New or under the specific rulemaking topic)

TTN BBS: 919-541-5742
(1200-14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Helpline: 919-541-5384
Off-line: Mondays from 8:00 a.m. to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS -Mobile Sources Information
(Alerts display a chronological list of recent documents)
<K> Rulemaking & Reporting

At this point, choose the topic (e.g., Fuels) and subtopic (e.g., Reformulated Gasoline) of the rulemaking, and the system will list all available files in the chosen category in date order with brief descriptions. To download a file, type the letter "D" and hit your Enter key. Then select a transfer

III. Legal Authority and Background

Authority

Authority for the actions set forth in this direct final rule is granted to the EPA by §§ 202, 203, 206, 207, 217, 241, 242, 243, 244, 245, 246, 247, 249, 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, 7552, and 7601(a))

B. Background

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 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-fuels¹. 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 issued guidance regarding a one-year delay in implementation of state CFFPs, due to concerns about sufficient CFV availability to meet fleet operator requirements, and intends to propose such a delay in the near future. This guidance document can be found in the docket for this rulemaking.

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

¹ 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).

detail below.

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 fuels². A "dedicated vehicle" is defined as a vehicle or engine engineered and designed to be operated using a single fuel³.

There are specific requirements that apply to dual fuel light duty vehicles (LDVs)⁴ and light light-duty trucks (LLDT)⁵ 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. In addition to the exhaust emissions standards that apply to operation on each fuel, a dual-fuel vehicle must 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)⁶, and certification short test (CST) requirements) that apply to comparable conventional gasoline vehicles. To qualify as CFVs for purposes of state CFFPs, dual-fuel vehicles must meet LEV emissions standards on the clean alternative fuel and the TLEV non-methane organic gas

² 40 CFR 88.102-94

³ 40 CFR 86.090-2

⁴ 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. A light-duty vehicle (LDV) means a passenger car or passenger car derivative capable of seating 12 passengers or less.

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

⁶

(NMOG) emission standard on the conventional fuel.⁷

For vehicles with a dedicated fuel system to be a feasible option for fleets, many fleet operators will need the flexibility to operate on 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 LEV 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. 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 is 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 will certify as dedicated CFVs vehicles meeting the CFV dual fuel standards with limited ability to operate on a conventional fuel, as describe 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

⁷ Formaldehyde (HCHO) exhaust emission standards apply to any fuel used to meet CFV standards, including gasoline.

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 adopted today will 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 is 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 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 *de minimis* exemption for limited operation on conventional fuel described above does not affect this definition of "centrally fueled", because the *de minimis* exemption allows 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 modifying 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)⁸ 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 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 amending the 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.

b. Broaden Engine Family Criteria

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 as engine families.⁹

⁸ Reference NHTSA's rules found at 49 CFR 555.

⁹ 40 CFR 86.096-24

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.

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.

EPA is adopting 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 action will 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 will allow manufacturers to introduce a greater number of **CFV** models desired by fleet owners without incurring additional testing costs.

Currently, vehicle grouping for the purpose of certification is accomplished through the application of the "engine family" and "emission control system" definitions in the regulations. Today's action establishes a new definition for grouping engine families: engine family class. An engine family class is 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 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 relative engine/catalyst size and loading rates.

EPA is adopting these 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 must be certified using separate emission compliance data and a separate certificate of conformity will 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 through 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 engine family class in today's action 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 requires the basic catalyst formulation and the matching of the catalyst to the engine. The Agency believes that the engine family class definition will 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 providing this newly created engine family class criteria through model year 2000, by which time EPA expects that manufacturers will 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. 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 this rule may be extended in a subsequent rule.

EPA notes that the requirement that all engines in an engine family class have the same type of catalyst precious metal loading applies 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 is appropriate to group such vehicles and engines together, because they can only include vehicles in the same car line, 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. And moreover, in the event that we have reason to believe that, in spite of meeting the other criteria, an aftermarket converter is attempting to group engines with different precious metal loadings, we would not issue a certificate.

However, EPA reserves 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 this information may be protected by confidential business practices EPA could not necessarily disclose this information to the aftermarket conversion company. Based on reviewing previous model year engine families, the Agency does not believe this scenario is likely to occur but has decided to retain the option due to the theoretical possibility of the scenario occurring.

c. Fees

Today's action also amends the current fee schedule 40 CFR Part 86, Subpart J by adding provisions allowing for exemptions from certification fee requirements. The exemption (thru MY 2000) is for vehicles and engines 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

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 § 206(a) or under part C of Title II of the Act, (2) compliance monitoring and testing under § 206(b) or part C, and (3) in-use compliance monitoring and testing under § 207(c) of part C. Section 217 of the Act require 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 § 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 will be equivalent to one percent of the aggregate projected retail sales price of the vehicles or engines covered by the certification request.

The exemption adopted today is for existing vehicles technologies certifying to LEV, ULEV, ILEV, or ZEV emissions standards in 40 CFR 88.104-94 and 88.105-94 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 exemption from certification fees for LEVs, ILEVs, ULEVs, and ZEVs certifying to standards in 40 CFR Part 88, 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 will incur costs in issuing certificates for such vehicles, and in assuring compliance with the applicable emissions standards, the 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 current fee structure is based on recovering EPA's cost for each engine family. These fee rules do allow for a 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 a for any engine family with expected annual sales of approximately 100 units, will 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 dollars 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 year¹⁰ 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 \$250,000. The cost of the fees exemption will not be passed on to other manufacturers .

In today's action, EPA is providing a fee exemption for any engine family certified to Federal LEV emissions standard, or above. The fee exemption, applicable through MY 2000, is 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 action 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.

This exemption will expire in MY 2001 because EPA expects that such incentive will not be needed after MY 2000 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 will apply this exemption in an equitable, nondiscriminatory manner -- any manufacturer of a small volume engine family certifying to LEV, ULEV, ILEV, or ZEV emissions standards under 40 CFR Part 88 will be eligible to receive an exemption .

d. Public Participation and Effective Date

EPA is publishing this rule without a prior proposal because EPA views these amendments as noncontroversial and anticipates no adverse comments. However, in the event that adverse or critical comments are filed, EPA has prepared a Notice of Proposed Rulemaking (NPRM) proposing the same amendments. This NPRM is contained in a separate document in this **Federal Register** publication. The direct final action will be effective [INSERT DATE 60 DAYS FROM

¹⁰ As of May 30, 1997

PUBLICATION DATE] unless adverse or critical comments are received by [INSERT DATE 30 DAYS FROM PUBLICATION DATE]. If EPA receives adverse or critical comments on the revisions discussed in this section, the revisions receiving adverse comment will be withdrawn before the effective date. In case of the withdrawal of all or part of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a subsequent final rule based on the accompanying proposed rule. EPA will not implement a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that the rule will be effective [INSERT DATE 60 DAYS FROM PUBLICATION DATE].

All comments should be directed to EPA Air Docket, Docket No. A-97-27. The official comment period will last for 30 days following publication of this direct final rule.

Commenters wanting to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above and not the public docket.

Information covered by such 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 EPA receives it, we may make it available to the public without further notice to the commenter.

II. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether this 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 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 gives EPA greater flexibility in administering the certification process for manufacturers of clean-fueled vehicles. This flexibility will allow EPA to exempt, for a maximum of five (5) years, some direct cost to the manufacturers.

B. Reporting and Recordkeeping Requirement

Today's action 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.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

Today's action does not impose any new requirements on small entities. In fact, this rule will provide reduce the costs of certification for entities that convert conventional vehicles to vehicles that operate on gaseous and other fuels, including small entities that perform such actions.

D. Submission to Congress

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in

today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. 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 rule does not trigger the requirements of UMRA. The 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 establish regulatory requirements that may significantly or uniquely affect small governments. Therefore, this rule does not trigger the requirements of UMRA.

F. Environmental and Economic Impacts

The prime criterion for any exemption will be the potential for exhaust emission reduction. Therefore, this action will have no adverse effects on air quality, since all current emissions standards and requirements would continue to apply to vehicles and engines for which we grant a fee exemption. EPA believes that this action will encourage manufacturers to develop and market vehicles and engines with innovative, new emissions control technology.

By waiving certification fees for qualifying vehicles, this action reduces the regulatory burden on industry without adversely affecting air quality.

List of Subjects

40 CFR Part 86

Environmental Protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Alternative-fuel, Clean-Fuel fleet, Reporting and recordkeeping requirements.

Dated:[Insert date]

Carol M. Browner,
Administrator.

1. Section 86.090-2 of Subpart A is amended by revising the definition of "dedicated vehicle" and adding the definition of "engine family class" to read as follows:

§86.090-2 Definitions.

* * * * *

Dedicated vehicle (or engine) means:

(a) Any motor vehicle (or motor vehicle engine) engineered and designed to be operated using a single fuel.

(b) Motor vehicles (or motor vehicle engines) capable of operation on a second fuel for a maximum of one hour during any three-hour period or, alternatively, with a total fuel capacity that allows for an operational range of 50 miles on conventional will be considered a dedicated fuel system.

(c) Flexible fuel vehicles and multi-fuel vehicles are not dedicated fuel systems.

Engine Family Class means a grouping of vehicles or engine families that meets the following criteria:

(a) meets LEV, ILEV, ULEV, or ZEV emission standards in 40

CFR 88.104-94 or 88.105-94 on all fuels

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

(c) Same type of catalyst.

(d) Same principle active precious metal.

(e) The ratio of catalyts volume/displacement * catalyst loading rate of all combinations is within 25 percent or 0.2 g/liter.

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

* * * * *

2. Section 86.096-24 of Subpart A is amended by revising paragraph (a)(2) and new paragraphs (b)(1)(xii), (b)(2)(vi), (i), and (j) are added to read as follows:

§86.096-24 Test vehicles and engines.

(a) * * *
 (1) * * *

(2)(i) 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 as allowed in paragraphs (i), (j), and (k) of this section.

(ii) At the manufacturers option, paragraphs (b)(1)(xiii), (b)(2)(vi), (c)(4), (i) and (j) of this section shall apply through model year 2000 for vehicles (or engines) applying for certification to emission standards of LEV, ILEV, ULEV, or ZEV emission standards in §88.104-94 or §88.105-94.

* * * * *

(b) * * *

(1) * * *

(xii) * * *

(xiii) For certification as a LEV, ILEV, ULEV, or ZEV under 40 CFR part 88, the following emission data vehicle requirements shall apply:

(A) The emission data vehicle shall be selected as described in paragraph (b)(1)(i) of this section.

(B) The Administrator may select an additional test vehicle as described in paragraph (b)(1)(ii) of this section.

* * * * *

(2) * * *

(v) * * *

(vi) For certification as a LEV, ILEV, ULEV, or ZEV engine under 40 CFR Part 88, the following emission data vehicle requirements shall apply:

(A) The emission data engine shall be selected as described in paragraph (b)(2)(iii) of this section.

(B) The Administrator may select an additional test engine as described in paragraph (b)(2)(iii)(B) of this section.

* * * * *

(c) * * *

(3) * * *

(4) *Light-duty vehicles and light-duty trucks applying for a certificate of conformity with 40 CFR Part 88*

emissions standards. This paragraph applies to engines, systems, or components used to establish exhaust emission deterioration factors for light-duty vehicle and light-duty truck engine family classes under paragraph (i) or (k) of this section .

(i) The vehicle selected for service accumulation shall be the vehicle with the largest projected sales volume in the engine family class .

(ii) Service accumulation procedures must comply with:

(A) §§ 86.094-(c), and 86.094-26(a)(4) or,

(B) Enclosure 9 of EPA's "Dear Manufacturer Letter" dated September 27, 1995, and extrapolated to full useful life or,

(C) Enclosure 1, 2 or 3 of EPA's "Dear Manufacturer Letter" dated September 27, 1995.

(D) This incorporation by reference was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

(E) Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of these materials may be obtained from Barclay's Law Publishers, 400 Oyster Point Boulevard, P.O. Box 3066, San Francisco, CA 94080, phone (415) 244-6611.

(5) *Heavy-duty engines applying for a certificate of conformity with 40 CFR Part 88 emissions standards.* This paragraph applies to engines, systems, or components used to establish exhaust emission deterioration factors for heavy-duty engine family classes .

(i) The engine selected for service accumulation shall be the engine with the largest projected sales volume

in the engine family class.

(ii) For service accumulation, 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. Alternatively, service accumulation must comply with one of the following procedures:

(A) §§ 86.094-24(c)(3), 86.094-26(c) or, enclosure 4 of EPA's "Dear Manufacturer Letter" dated September 27,

* * * * *

(I) Light-duty vehicles and light-duty trucks which meet the requirements of paragraph (i)(1) of this section may be grouped into an engine family class as provided in paragraphs (i)(2) and (i)(3) of this section.

(1) Only vehicles certifying to LEV, ILEV, ULEV, or ZEV standards in §88.104-94 may be grouped into an engine family class .

(2) original equipment manufacturers may group vehicles meeting the criteria in paragraphs (a)(2)(iv) thru (x) in a single engine family class if 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) 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).

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

(3) aftermarket conversions , may be grouped into a single engine family class if 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.

(iv) Aftermarket conversions may not be grouped into a single engine family class if EPA determines that the aftermarket conversions do not meet the criteria in paragraphs (i)(2)(iii) or (i)(2)(iv) of this section.

(j) Heavy-duty vehicles and engines meeting the eligibility requirements of paragraph (j)(1) of this section may be grouped into an engine family class if the following criteria are met:

(1) Only vehicles and engines certifying to LEV, ULEV, or ZEV standards in §88.105-94 may be grouped into an engine family class .

(2) original equipment manufacturers may include all engines meeting the criteria in paragraphs (a)(2)(iv) thru (x) and (3), into a single engine family class if 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) 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).

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

(3) aftermarket conversions may be included in an engine family class if 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.

3. Section 86.908-93 of Subpart A is amended by adding paragraphs (d) and (e) to read as follows:

§86.908-93 Waivers, refunds, and exemptions.

* * * * *

(d)(1) For model years 1998 through 2000, the Administrator may grant an exemption from the required fee of this section for any light-duty vehicle, light-duty truck, or heavy-duty engine that:

(a) Is seeking certification to LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR Part 88 on all fuels the engine is designed and engineered to use and,

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

(2) If the manufacturer does not receive a certificate of conformity to 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.