

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****49 CFR Part 624**

[Docket No. FTA-2001-9877]

RIN 2132-AA64

Clean Fuels Formula Grant Program**AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA-21) was enacted requiring the Federal Transit Administration (FTA) to establish a new grant program entitled the Clean Fuels Formula Grant Program. This proposed rule establishes the procedures potential recipients must use to apply for this new program.

The FY 1999, FY 2000, and FY 2001 appropriations bills did not make funding available for this program. FTA is publishing this proposed rulemaking in anticipation that funds may be available in FY 2002 or future Federal fiscal years.

DATES: Comment on this proposed rule must be received by October 12, 2001.

ADDRESS: Written comments must refer to the docket number that appears above and be submitted to the United States Department of Transportation; Central Dockets Office, PL-401; 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for inspection at the above address from 10 a.m. to 5 p.m., E.T. Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will date-stamp the post card and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: For program issues: Nancy Grubb, Office of Resource Management and State Programs, (202) 366-2053; for program evaluation issues, Abbe Marner, Office of Planning, (202)366-4317; and Christina Gikakis, Office of Research, Demonstration, and Innovation, FTA, (202) 366-2637. For legal issues: Scheryl Portee, Office of Chief Counsel, FTA, (202) 366-1936 (telephone) or (202) 366-3809 (fax). Electronic access to this and other rules may be obtained through the FTA World Wide Web home page at <http://www.fta.dot.gov/library/legal/frootoc.htm>. Comments may be reviewed via the internet at <http://dms.dot.gov>.

SUPPLEMENTARY INFORMATION:**Electronic Access**

Electronic access to this and other documents is available through FTA's home page on the World Wide Web, at <http://www.fta.dot.gov>.

The comment period for this rulemaking is 45 days. A shorter comment period is needed because this program may be funded in FY 2002. FTA believes that this period will allow all interested parties enough time to file their comments; however, late filed comments will be considered to the extent practicable.

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, via the Docket Management System (DMS) on the DOT home page, at <http://dms.dot.gov>. The DMS is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page, at <http://www.nara.gov/fedreg>, and the GPO database, at <http://www.access.gpo.gov/nara>.

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I. Background

The Clean Fuels Formula Grant Program is a new transit grant program contained in section 3008 of the Transportation Equity Act for the 21st Century (TEA-21) as amended, Pub. L. 105-178, (codified at 49 U.S.C. 5308). This program has a two-fold purpose. First, the program is intended to assist nonattainment and maintenance areas in achieving or maintaining air quality attainment status. Second, the program seeks to support emerging clean fuel and advanced propulsion technologies for transit buses and to create markets for these technologies. As the legislation establishes the basic parameters of the program, the focus of this rulemaking is application procedures. While the program is a formula program, the amount of funds available to individual grantees cannot be calculated in advance of the receipt of applications. The formula is applied to the universe of eligible applications subsequent to

receiving and screening all applications in each Federal fiscal year.

The formula provides two-thirds of the funds to urban areas over one million in population and one-third of the funds to urban areas less than one million in population. The specifics of the formula are explained later in this notice. In addition, TEA-21 provides weighting factors based on the severity of nonattainment for ozone and carbon monoxide (CO). These weighting factors are also explained later in the text. TEA-21 provides authorization levels of up to \$200,000,000 per year and guaranteed levels at \$100,000,000 per year, but actual amounts available are subject to annual appropriations. FTA will make the annual funding level for this program available in the annual **Federal Register** notice that announces each fiscal year's appropriations and allocations. However, in DOT's FYs 1999, 2000, and 2001 no funds were made available to the program. Rather, Congress, in the FYs 1999, 2000, and 2001 appropriations acts, directed that the funds made available for the Clean Fuels Formula Grant Program under "Formula Grants" be transferred and merged with funds made available for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities under "FTA Capital Investment Grants." In addition, Congress mandated that the funding available for this program pursuant to 49 U.S.C. 5309(m)(3)(C) did not apply to funds made available in the DOT's FY 2001 Appropriation Act, Public Law 106-346. See The Military Construction Appropriations Act, 2001, section 1108, Public Law 106-554.

Section 5308 of title 49, U.S.C., defines eligibility and provides both minimum and maximum percentages of funds for certain clean fuel technologies. All of these provisions are described in this proposed rulemaking.

With respect to the second purpose of promoting new clean fuel technologies for transit buses, section 3015(d) of TEA-21 also authorized a new Joint Partnership Program for Deployment of Innovation (JPP), which was announced in a separate **Federal Register** notice on October 2, 1998. Projects determined eligible for funding under the Clean Fuels Formula Grant Program, meeting the requirements of section 3015(d) and FTA's JPP guidelines, may also be considered for inclusion under that program.

With respect to the weighting factors for severity of nonattainment, it appears that Congressional intent was to use the same weighting that had been developed for the Congestion Mitigation

and Air Quality Improvement (CMAQ) Program under the Intermodal Surface Transportation Efficiency Act (ISTEA). However, it appears that errors were made in section 5308 regarding the carbon monoxide (CO) nonattainment classification terms. To properly apply the weighting factors for "severity of nonattainment," FTA is making certain interpretations concerning the statutory language in section 5308(d)(2). The statute uses the nonattainment classification terms "marginal," "moderate," "serious," "severe," and "extreme" for both ozone and carbon monoxide. However, the Clean Air Act Amendments of 1990 only use the terms "moderate" and "serious" to classify CO nonattainment areas. Thus, FTA will use those two classifications for CO and disregard the other CO classifications and associated weighting factors.

The CMAQ weighting factors for ozone and CO nonattainment areas are laid out in 23 U.S.C. 104(b). Both ozone and CO areas are also given weighting factors in 49 U.S.C. 5308(d)(2)(A). Section 5308(d)(2)(B) provides additional weighting to CO areas. FTA believes that the drafters of this legislation did not intend double weighting for CO nonattainment areas. Thus, FTA will use the higher of the weighting factors for ozone and CO in section 5308(d)(2)(A), and then apply the additional adjustment of 1.2 in areas classified as both nonattainment for CO and either nonattainment or maintenance for ozone as described in section 5308(d)(2)(B). Section 5308(d)(2)(A) indicates that the number of clean fuel vehicles will be a multiplier; however, FTA believes that the multiplier should be the number of buses in the bus fleet as laid out in section 5308(d)(1).

TEA-21 provides limitations on the use of funds and the maximum amount of grants. In general, the amount of a grant to a designated recipient for an eligible project shall not exceed the lesser of: (1) \$15,000,000 in areas with a population under 1,000,000 or \$25,000,000 in areas with a population of at least 1,000,000; or (2) 80 percent of the eligible project's total project cost. Additionally, at least five percent of the total program funding must be used for the purchase of hybrid electric or battery-powered buses or construction of facilities designed to service those buses. No more than 35 percent of the amount made available each fiscal year may be available to fund clean diesel buses. No more than five percent of the amount made available each fiscal year may be available to fund retrofitting or replacement of the engines of buses that do not meet the clean air standards of

the Environmental Protection Agency (EPA).

TEA-21 requires that FTA issue a rule describing the application procedures it proposes to use to implement this new grant program. The purpose of this rulemaking is to comply with that requirement.

II. Government Performance and Results Act of 1993

The Government Performance and Results Act (GPRA) was enacted in 1993 to provide the establishment of strategic planning and performance measurement in the Federal Government. It is primarily intended to improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.

In order to carry out its statutory program responsibilities under GPRA, FTA intends to evaluate the effectiveness of the Clean Fuels Formula Grant Program in meeting its objectives to reduce transit bus emissions and support emerging markets for clean fuel technologies. A comprehensive and accurate evaluation of the program's effectiveness to reduce transit bus emissions would require actual in-use emissions data of the clean fuel buses. However, due to lack of funding for this activity, FTA will not be able to conduct emissions tests on individual vehicles to obtain such information. One possible approach to assess the program's effectiveness in reducing transit bus emissions would be to report the number and type of buses purchased with Clean Fuels Formula Program funds, and estimate the reduction in emissions based on representative emissions from similar vehicles, recognizing this data may differ from actual in-use emission data. Information on the number of buses, type of vehicles purchased, including type of propulsion systems, and whether the vehicles are for service expansion or replacement, must be entered into FTA's electronic grant management system, *i.e.*, TEAM. FTA believes assumptions about the emissions of the vehicles being replaced will have to be made. Other approaches may be applicable. FTA is interested in receiving comments on possible evaluation strategies.

FTA is proposing to measure the impact on supporting new and emerging markets for advanced propulsion technologies by reporting the number and type of advanced propulsion vehicles purchased with Clean Fuel Formula Program funds and reporting on new infrastructure funded with the Clean Fuels Formula Program funds.

Information on the number of advanced propulsion vehicles purchased with Clean Fuel Formula Program funds and the new infrastructure funded with the Clean Fuels Formula Program funds must be entered into TEAM.

III. Today's Proposed Rule

This rule describes the application process FTA proposes to use to implement the Clean Fuels Formula Grant Program. This rulemaking is required in section 5308(c)(1).

IV. Section-by-Section Analysis

A. Eligible Applicant. (§ 624.1)

An eligible applicant is a state or local governmental authority providing mass transportation service in either: (1) ozone and carbon monoxide nonattainment areas which have the specific classifications established by section 103 of the 1990 Clean Air Act Amendments, Public Law 101-549 [amended 42 U.S.C. 7511-7511(f)], or (2) ozone and CO "maintenance" areas which, before they were redesignated to attainment by the EPA, had these same classifications. The nonattainment classifications for ozone are: "marginal," "moderate," "serious," "severe," and "extreme." The nonattainment classifications for CO are: "moderate" and "serious." It is clear that the program is limited to these nonattainment and maintenance areas from the way the classification terms are embedded in the program's apportionment formula as air quality weighting factors. These weighting factors are patterned after the factors used in the CMAQ Program in Title 23, U.S.C., before changes by TEA-21, and the sole purpose of that program is to assist areas in attaining and maintaining the National Ambient Air Quality Standards, principally for ozone and CO.

It should be noted that EPA uses some additional classification terms besides the ones listed above for certain other nonattainment areas. Some examples are: "incomplete data" for some ozone areas and "not classified" for some CO areas. These classification terms are not used in the Clean Fuels apportionment formula; therefore, areas with these classifications are not eligible for funding under this program. This is consistent with the Department of Transportation's approach with respect to the CMAQ Program.

EPA's lists of nonattainment and maintenance areas do not change much from year to year. Changes may involve reclassifications of existing nonattainment areas as well as

redesignations to attainment (*i.e.*, achieving maintenance area status). The changes occur throughout the year. The pre-application worksheet for this program requires potential recipients to report their current status as a nonattainment or a maintenance area for ozone and/or CO. FTA will use this information as a starting point but will rely on the most up-to-date information available from EPA regarding designations and classifications for use in the apportionment formula. In summary, only nonattainment or maintenance areas that have, or previously had, the classifications identified above are eligible for this program.

B. Eligible Activities (§ 624.3)

This section describes the eligible activities as contained in 49 U.S.C. 5308. FTA believes that Congress intended section 5308 to include vans in revenue service as well as buses. Other eligible activities include the purchase or lease of clean fuel buses and facilities, repowering or retrofitting buses to operate on clean fuels and the improvement of existing facilities to accommodate clean fuel buses. (The legislation defines clean fuel buses as those powered by compressed natural gas, liquefied natural gas, biodiesel fuels, batteries, alcohol-based fuels, hybrid electric, fuel cell and clean diesel, and other low or zero emissions technology, and which the EPA has certified sufficiently reduce harmful emissions. Because liquefied petroleum gas (*i.e.*, propane) qualifies as a low or zero emission technology, FTA interprets section 5308 to include propane as an eligible fuel.)

C. Application Process (§ 624.5)

This section describes the application process for the Clean Fuels Formula Grant Program. The grant requirements for 49 U.S.C. 5309, the Capital Investment Grants and Loans Program (Capital Program) apply. These requirements are contained in FTA Circular 9300.1, which is available from the FTA regional offices and on the FTA home page (<http://www.fta.dot.gov>). The Federal share shall not exceed 80 percent for this program. While the procedures in the circular do not include a pre-application process, FTA will institute a pre-application process for this program. This pre-application will be considered an application for the purpose of determining the universe of eligible applicants to apply the formula and will provide the information necessary for FTA to calculate apportionment of the funds, based on the formula contained in the legislation.

1. Pre-Application

In order to accommodate the need to submit an application without knowing the amount of funds available to individual applicants, FTA intends to request the submission of pre-applications for this program in the **Federal Register** notice announcing annual apportionments and allocations when funding has been appropriated by Congress. The pre-application consists of a Letter of Interest and a Pre-application Worksheet as described below:

a. *Letter of Interest*: This letter should serve as the cover letter for the Pre-application Worksheet, expressing interest in submitting an application. It should describe the overall clean fuel technology program of the agency, including the technology selected; describe the necessary infrastructure to support the program; and the long-range objectives of the program including the eventual size of the clean fuel fleet. It should summarize the eligible activities for which the agency is applying and the amount of funds that the agency is seeking.

b. *Pre-application Worksheet*. This worksheet is contained in Appendix A to this Notice. The purpose of the worksheet is to provide all of the data necessary for FTA to calculate the apportionment. Instructions for completing the Pre-application Worksheet are included in Appendix A. Data needed to make the formula apportionment should be included in the pre-application worksheet. The data include the size of the bus fleet and the bus passenger miles of the applicant. Data from the National Transit Database (NTD) will be used to make the formula apportionment, and applicants that report to the NTD should provide this information in the pre-application worksheet. Due to the time required to collect and produce the NTD data, there is a lag time of two years. For example, fiscal year 2002 apportionments will be based on 2000 data. In order to provide for consistency of data, all applicants should use 2000 data for fiscal year 2002 program apportionments, even though they may report to the NTD. Applicants outside urbanized areas, who are not required to report to NTD, shall provide the same information based on their records for the current calendar year.

Pre-applications must be submitted to the FTA regional office no later than January 1 of each fiscal year. The regional office will review the pre-applications for eligibility and for completeness of information needed to apply the formula. The regional offices

will provide the information from pre-applications to FTA headquarters. FTA headquarters will apply the formula and provide information to the regional offices on the amount of funds available to each applicant. The regional office will notify the applicant in writing as to the amount of funds available for the submission of the final application. The letter will also contain results of the eligibility review. If, for any reason, the whole application were found to be ineligible, the regional office would notify the applicant as soon as possible. If portions of the application were found ineligible, the letter providing information on the availability of funds would also contain this information. Once the applicant has been notified of the amount of funds available and advised of the eligibility of its application, it may proceed to complete and file the final application. The final application must be submitted electronically if the applicant is using FTA's electronic application process, *i.e.*, TEAM.

For urbanized areas, programming of the clean fuels projects in the Metropolitan Transportation Improvement Program (MTIP) and Statewide Transportation Improvement Program (STIP) may be completed following notification by the FTA regional office of the amount of funds available under the formula and results of the eligibility review.

D. Certification (§ 624.7)

This section discusses the certification called for in 49 U.S.C. 5308. Section 5308(c)(2) requires that there be a certification with each Clean Fuels Formula Program application, which states that vehicles purchased with a grant under this section will be operated by the grantee using only clean fuels. Rather than be included in the application, this certification will be contained in the annual FTA **Federal Register** notice of assurances and certifications. This is consistent with one-stop filing of all required certifications and assurances. Transit operators planning to apply for a Clean Fuels Formula grant should indicate compliance with this certification when submitting the annual certifications and assurances to FTA.

E. Formula (§ 624.9)

This section includes the formula as contained in 49 U.S.C. 5308. It appears that the congressional intent was to transfer the CMAQ statutory language into the new Clean Fuels Formula Program. However, it appears that errors were made in the Clean Fuels Formula language, as it is not completely

consistent with the provisions of the CMAQ program.

The CMAQ weighting factors for ozone nonattainment and CO areas are laid out in 23 U.S.C. 104(b). Both ozone and CO areas are also given weighting factors in 49 U.S.C. 5308(d)(2)(A). Section 5308(d)(2)(B) provides additional weighting to CO areas. FTA believes the drafters of this legislation did not intend the double weighting of CO nonattainment area. Thus, FTA will use the higher of the weighting factors for ozone and CO in section 5308(d)(2)(A), and then apply the additional adjustment of 1.2 in areas classified as both nonattainment for CO and either nonattainment or maintenance for ozone as described in section 5308(d)(2)(B).

F. Reporting (§ 624.11)

FTA supports the development and deployment of clean fuel and advanced propulsion technologies for transit buses. FTA is interested in collecting relevant information on the operations and performance of these clean fuel technology buses in revenue service to help assess the reliability, benefits, and costs of these technologies compared to conventional vehicle technologies. Accordingly, FTA intends to require Clean Fuels Formula grantees receiving funds for projects to purchase or lease buses powered by advanced propulsion technologies (e.g., battery electric, hybrid electric, and fuel cell powered vehicles) to provide information to FTA on the operations, performance, and maintenance of those vehicles. Reporting would be required each quarter for the first three years of the useful life of the vehicle. Data on the operation of the vehicle past this period would be voluntary. Transit agencies acquiring alternative fuel buses (e.g., compressed natural gas (CNG), liquefied natural gas (LNG), liquefied petroleum gas (LPG), etc.) under the Clean Fuels Formula Grant Program are encouraged to provide FTA similar information, on a voluntary basis. The information will be used to evaluate the operating costs of clean fuel and advanced propulsion technology vehicles compared to conventional vehicles, and provide more accurate information to transit agencies for future clean fuel and advanced propulsion vehicle purchases. Information such as vehicle miles traveled, fuel costs, vehicle fuel/energy consumption and oil consumption, road calls or breakdowns resulting from clean fuel and advanced propulsion technology systems, and maintenance costs associated with these systems will be collected from the transit agencies. It is FTA's belief that operators may

collect such information as part of normal management practices. FTA encourages transit agencies acquiring buses under this grant program to establish a control set of comparable, conventional diesel buses to form the baseline for comparison with the clean fuel or advanced propulsion technology buses, and to collect and submit data to FTA for this control set of buses, on a voluntary basis. Upon award notification, grantees will be informed of the data collection requirements for the grant.

Appendix A: Pre-application Worksheet. The Pre-application Worksheet is included in this notice of proposed rulemaking.

V. Request for Comments on Particular Issues

The basic framework of this program is established by legislation. We specifically request comment on the implementation guidance, especially application requirements and possible evaluation approaches. This program is a formula program, but the amount of funds available for each applicant cannot be determined prior to receiving and reviewing application information from potential grantees. As a result, procedures different from FTA's other formula assistance programs are needed to accommodate this situation. Comments are solicited on FTA's proposed approach to structuring the application process, given that under this particular grant program, FTA cannot determine the funding amounts available to individual grantees until after the total number of eligible applicants is known and the specific funding ceilings (e.g., 35 percent clean diesel) have been applied.

FTA is proposing that the 49 U.S.C. 5309, Capital Investment Grants and Loans Program requirements apply. These requirements are contained in FTA Circular 9300.1, which is available from the FTA regional offices. It is also available on the FTA Home Page (www.fta.dot.gov). In order to lessen the administrative burden on applicants, FTA is proposing a pre-application process. Pre-applications must be submitted by January 1 of each year.

These pre-applications will permit FTA to identify the pool of eligible applicants and apply the statutory funding formula. Once the amount of funds that could be available to each grantee is determined, the grantee may complete the programming process and submit its application to FTA. FTA will submit the completed application to the Department of Labor for the labor certification required by 49 U.S.C. 5333(b). Applications may be modified

to reflect the limitation on uses. Since the pre-application will be a basis for the formula apportionment, any modifications to the application must be approved by FTA. Comments on the pre-application process are requested.

Since the amount of available funds cannot be determined at the time of the pre-application, FTA is proposing to require that the programming of Clean Fuels Formula funds in the MTIP and STIP be completed after February 1 when FTA apportions the funds. This would ensure that fiscal constraint is maintained and simplifies the paperwork and time required to accomplish the programming. Comment on this procedure is requested.

In addition, FTA is proposing to impose reporting requirements for those transit agencies acquiring advanced propulsion technology buses with Clean Fuels Formula Grant funds. (See § 624.11.) Information to be collected includes operations, performance and maintenance data on the vehicles to help assess the reliability, benefits, and costs of these technologies compared to conventional vehicle technologies. Under current FTA grant programs, such reporting is not required. Comments on this proposed reporting requirement are requested.

FTA is also requesting suggestions on the program evaluation. Information on sources of emissions data is sought. Additionally, suggestions as to how evaluation approaches and evaluation methodology are solicited.

VI. Regulatory Process Matters

A. Executive Order 12866

FTA has evaluated the industry costs and benefits of the clean fuels formula grant program and has determined that it is not a significant rule under E.O. 12866 because it involves grant application procedures and will not cost more than \$100 million annually.

B. Departmental Significance

This rule is a significant regulation as defined by the Department's Regulatory Policies and Procedures. Although the regulation involves grant application procedures, it is expected to generate substantial public interest.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, FTA has evaluated the effects of this rule on small entities. This rule will not have a significant effect on a substantial number of small entities because it merely establishes application procedures for the Clean Fuels Formula Grant Program.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act. The Office of Management and Budget (OMB) has approved FTA's new information collection request. The affected public would be mass transit operators that apply for Federal funds under this program. Once this NPRM becomes a final rule, any burden associated with it would be added to the current information collection package, Clean Fuels Formula Grant Program, OMB approval number 2132-0560. Comments are being solicited on the paperwork requirements, particularly the proposed reporting requirement. Comments should address: whether the proposed collection of information is necessary for the proper performance of the FTA grant process; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the applicants, including the use of automated collection techniques (e.g., filing applications via facsimile (fax), electronic mail or other forms of information technology). The Government Paperwork Elimination Act (GPEA) of 1998 requires all Federal agencies to have an electronic means of reporting to the government as an alternative to reporting on paper by October 2003. Because of logistical difficulties, all means of electronic filing are not immediately available. However, concurrent with the continued development of this rulemaking action, FTA intends to develop the authentication infrastructure to receive worksheets through additional electronic means, such as web-based forms and electronic file transfer by October 2003.

E. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment because it sets forth application procedures for a discretionary grant program.

F. National Environmental Policy Act

This program will have a positive impact on the environment. It promotes the alternative use of clean fuels in vehicles used for mass transportation.

G. Energy Act Implications

Mass transit has a positive impact on energy consumption as it promotes an

alternative to the single occupant vehicle.

H. Unfunded Mandates Reform Act

This program is a voluntary grant program and will not result in the expenditure by state, local and tribal governments, in the aggregate, of \$100,000,000 or more in any one year.

List of Subjects in 49 CFR Part 624

Grant Programs—Transportation, Mass transportation, Reporting and record keeping requirements.

Accordingly, for the reasons cited above, the FTA proposes to amend title 49 of the CFR by adding a new part 624, as set forth below:

PART 624—CLEAN FUELS FORMULA GRANT PROGRAM

Sec.

- 624.1 Eligible applicant.
 - 624.3 Eligible activities.
 - 624.5 Application process.
 - 624.7 Certification.
 - 624.9 Formula.
 - 624.11 Reporting.
- Appendix A to Part 624—Pre-Application Worksheet

Authority: 49 U.S.C. 5308; 49 CFR 1.51.

§ 624.1 Eligible applicant.

(a) An eligible applicant is a state or local governmental authority providing mass transportation service in either:

- (1) Ozone and carbon monoxide nonattainment areas that have the specific classifications established by the 1990 Clean Air Act Amendments (Public Law 101-549), or
- (2) Ozone and carbon monoxide (CO) "maintenance" areas that, before they were redesignated to attainment by the Environmental Protection Agency (EPA), had these same classifications.

(b) The nonattainment classifications for ozone are "marginal," "moderate," "serious," "severe," and "extreme." The nonattainment classifications for CO are "moderate" and "serious."

§ 624.3 Eligible activities.

(a) Eligible activities include the purchase or lease of clean fuel buses and facilities, repowering or retrofitting buses to operate on clean fuels, and the improvement of existing facilities to accommodate clean fuel buses.

(b) The term clean fuel vehicle means a vehicle that—

- (1) Is powered by—
 - (i) Compressed natural gas;
 - (ii) Liquefied natural gas;
 - (iii) Biodiesel fuels;
 - (iv) Batteries;
 - (v) Alcohol-based fuels;
 - (vi) Hybrid electric;
 - (vii) Fuel cells; or

(viii) Clean diesel, to the extent allowed under this section; or

(2) The Administrator of the Environmental Protection Agency has certified sufficiently reduces harmful emissions.

(c) Eligible projects are the following:

(1) Purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure, and vans for use in revenue service. The purchase or lease of non-revenue vehicles is not an eligible project.

(2) Constructing or leasing clean fuel bus facilities or electrical recharging facilities and related equipment. Facilities and related equipment for clean diesel buses are not eligible.

(3) Improving existing mass transportation facilities to accommodate clean fuel buses.

(4) Repowering pre-1993 engines with clean fuel technology that meets the current urban bus emission standards. Repowering means the removal of an engine from a bus followed by the installation of another engine and applies to engines that are replaced with new, previously unused engines, as well as those exchanged from an inventory of rebuilt engines.

(5) Retrofitting or rebuilding pre-1993 engines if before half life (*i.e.*, prior to six years of bus life) to rebuild; retrofit means use of the latest after-market technology such as "upgrade kits," or after-treatment device(s) that treat the exhaust after it has left the engine, such as catalytic converters and particulate filters.

(6) At the discretion of FTA, projects relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology vehicles that achieve emissions reductions equivalent or superior to existing clean fuel or hybrid electric technologies.

§ 624.5 Application process.

(a) Pre-applications must be submitted to the appropriate FTA regional office no later than January 1 of each fiscal year. Subject to the availability of funds, FTA will apportion the funds based on the formula and the pool of applicants, no later than February 1 of each year. Once the applicant has been notified of the apportionment of funds and the eligibility of its application, it should proceed to complete and file the final application. The final application must be submitted electronically if the grantee is using the electronic application process (*i.e.*, TEAM).

(b) The pre-application consists of a Letter of Interest and a Pre-application Worksheet described as follows:

(1) Letter of interest. This letter serves as the cover letter for the Pre-application Worksheet, expressing interest in submitting an application. It describes the overall clean fuel technology program of the agency, including the technology selected, describes the necessary infrastructure to support the program and the long-range objectives of the program including the eventual size of the clean fuel fleet. It summarizes the eligible activities for which the agency is applying and the amount of funds that the agency is seeking.

(2) Pre-application Worksheet. Applicants must use the Worksheet found in Appendix A to this part.

§ 624.7 Certification.

The applicant must use the certification contained in the Annual Notice of Assurances and Certifications published in the **Federal Register** each October.

§ 624.9 Formula.

The Clean Fuels Formula funds will be apportioned according to the following formula:

(a) *Areas with 1,000,000 population and above.* Two thirds of the funds available each fiscal year shall be apportioned to applicants with eligible projects in urban areas with a population of 1,000,000 and above. Of this, 50 percent shall be apportioned so that each applicant receives a grant in an amount equal to the ratio between:

(1) The number of vehicles in the bus fleet of the eligible project, weighted by the severity of nonattainment for the area in which the eligible project is located; and

(2) The total number of vehicles in the bus fleets of all eligible projects in areas with a population of 1,000,000 and above, weighted by the severity of nonattainment for all areas in which those eligible projects are located as provided in paragraphs (c) and (d) of this section. The remaining 50 percent shall be apportioned such that each designated recipient receives a grant in an amount equal to the ratio between:

(i) The number of bus passenger miles of the eligible project of the designated recipient, weighted by the severity of nonattainment of the area in which the eligible project is located as provided in paragraphs (c) and (d) of this section;

(ii) The total number of bus passenger miles of all eligible projects in areas with a population of 1,000,000 and above, weighted by the severity of nonattainment of all areas in which those eligible projects are located as provided in paragraphs (c) and (d) of this section.

(b) *Areas under 1,000,000 population.* The formula for areas under 1,000,000 in population is the same as paragraph (a) of this section, except the formula removes the pool of eligible projects in areas with a population of 1,000,000 and above and replaces it with the pool of eligible projects in areas with populations under 1,000,000.

(c) *Weighting factors.* (1) The weighting factor for ozone shall be determined based on the following factors:

(i) 1.0 if, at the time of the apportionment, the area is a maintenance area for ozone;

(ii) 1.1 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area;

(iii) 1.2 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area;

(iv) 1.3 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area;

(v) 1.4 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area;

(vi) 1.5 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area;

(2) The weighting factor for CO shall be determined based on the following factors:

(i) 1.0 if, at the time of the apportionment, the area is a maintenance area for carbon monoxide;

(ii) 1.2 if, at the time of the apportionment, the area is classified as a moderate carbon monoxide nonattainment area;

(iii) 1.3 if, at the time of the apportionment, the area is classified as a serious carbon monoxide nonattainment area.

(3) The number of buses in the fleet and the bus passenger miles shall be multiplied by the higher of the ozone or CO factors.

(d) *Additional adjustment.* The number of buses in the fleet and the bus passenger miles shall be further multiplied by a factor of 1.2 if the area is both nonattainment for CO and either nonattainment or maintenance for ozone.

(e) *Limitation on uses.* (1) Not less than 5 percent of the amount made available by or appropriated under 49 U.S.C. 5338 in each fiscal year to carry out this section shall be available for any eligible projects for which an application is received from a designated recipient for the purchase or construction of hybrid electric or battery-powered buses or facilities specifically designed to service those buses.

(2) Not more than 35 percent of the amount made available by or appropriated under 49 U.S.C. 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.

(3) Not more than 5 percent of the amount made available by or appropriated under 49 U.S.C. 5338 in each fiscal year to carry out this section may be made available to fund 21 retrofitting or replacement of the engines of buses that do not meet the clean air standards of the Environmental Protection Agency, as in effect on the date on which the application for such retrofitting or replacement is submitted under § 624.5.

§ 624.11 Reporting.

(a) Recipients of financial assistance under 49 U.S.C. 5308 who purchase or lease hybrid electric, battery electric and fuel cell vehicles must report to the appropriate FTA regional office on a quarterly basis for the first three years of the useful life of the vehicle with the following information:

(1) Vehicle miles traveled;

(2) Fuel/energy costs;

(3) Vehicle fuel/energy consumption and oil consumption;

(4) Number of road calls or breakdowns resulting from clean fuel and advanced propulsion technology systems, and

(5) Maintenance costs associated with the clean fuels or advanced propulsion system.

(b) Recipients of financial assistance under 49 U.S.C. 5308 who purchase or lease compressed natural gas (CNG), liquefied natural gas (LNG), and liquefied petroleum gas (LPG) vehicles may report the information described in paragraph (a) of this section, but this reporting is voluntary.

(c) Recipients of financial assistance under 49 U.S.C. 5308 who purchase or lease clean diesel vehicles should not report information beyond the normal FTA quarterly reporting requirements.

Appendix A to Part 624: Pre-Application Worksheet

The following are instructions for completing the pre-application worksheet:

(1) *Requesting Agency.* Fill in the name of the applicant. The applicant must be a state or local governmental authority providing mass transportation service.

(2) *UZA (or Urban Area).* List the name of the urbanized area if the applicant is located in an urbanized area. Otherwise, indicate the name of the city or town.

(3) *Nonattainment or Maintenance Area Name.* List the name of the nonattainment or maintenance area in which your agency provides service.

(4) *Classification for Ozone.* List the current EPA nonattainment classification for

your service area. (The classification must be of the following terms: marginal, moderate, serious, severe, or extreme.)

(5) *Classification for Carbon Monoxide.* List the current EPA nonattainment classification for your service area. (The classification must be either moderate or serious.)

I. Proposed Activity

(1) *New Bus Purchase/Lease.* Enter the number of vans or buses by fuel category in the pre-application. For hybrid electric vehicles, include fuel types. Indicate whether the structure is lightweight composite or traditional structure and weight. Enter the total and Federal amount for each fuel type.

(2) *Construct/Lease New Clean Fuel Facility and Related Equipment.* Indicate the Federal and total amount for a clean fuels facility, related equipment or electrical recharging facility. Enter any descriptive or explanatory information on the lines for additional information, including what fuel type is being accommodated. Facilities to accommodate clean diesel are not eligible.

(3) Indicate the Federal amount and total amount for improvements to existing facilities to accommodate clean fuel buses. Enter any descriptive or explanatory information on the line for additional items, including what fuel type is being accommodated.

(4) Indicate the Federal amount and total amount for repowering/replacing pre-1993 engines with engines that meet current emissions standards when installed. Please include a separate entry for each fuel type. For the purposes of this program, repowering/replacement means the removal of an engine from the bus followed by the installation of another engine. This applies to engines that are replaced with new, previously unused engines, as well as those exchanged from an inventory of rebuilt engines.

(5) Enter a quantity, Federal amount, and total amount by fuel type for retrofit/rebuild of pre-1993 engines to comply with latest EPA-certified emissions standards. For the purposes of this program, "retrofit" means

the use of the latest after-market technology such as "upgrade kits," or after-treatment device(s) that treat the exhaust after it has left the engine, such as catalytic converters or particulate filters. "Before the half-life rebuild" means that the retrofitting would need to occur before the bus is six years old. Since this provision applies to pre-1993 engines, this provision is of limited time availability.

(6) This section should describe any proposed clean fuel project not included in categories (1) through (5). Since any project not included in those categories requires approval at the discretion of FTA, projects included here should also be described in the letter of interest. Include the Federal amount and total.

(7) *Summary.* Indicate the Totals for the Federal and Total Amounts requested for all projects listed in this Section I.

II. Data

This section contains the active bus fleet and annual bus passenger miles information that is required to run the Clean Fuels formula.

(1) Enter the number of buses in the active fixed route fleet. For this purpose, "bus" includes articulated motor bus, Class A bus (>35 seats), Class B bus (25-35 seats), Class C bus (<25 seats), double-decked bus, school bus, and electric trolley bus. Use 2000 data. For UZAs that have already submitted information for the 2000 National Transit Database (NTD), add the data from column H of Form 408 for the following vehicle types: AB, BA, BB, BC, DD, SB, and TB. (These vehicle types are defined in reporter's guidance for the NTD.)

(2) Enter the fixed route annual bus passenger miles for year 2000. This may include motor bus (see types in paragraph 1) or trolley bus. For UZAs that have submitted 2000 NTD data, add the information from column I of line 25 of Form 406 for the modes MB and TB.

III. Projects Subject to Minimum/Maximum Apportionments

This section provides a dollar total for the areas that are affected by either maximum or

minimum constraints. These constraints apply to the entire program and not to individual applicants. However, in order to comply with these constraints, FTA must know how much each applicant is applying for in each of these areas.

(1) Enter the total Federal dollar amount for the purchase/lease of clean diesel vehicles.

(2) Enter the total Federal dollar amount for project elements that fall into the category of purchasing hybrid electric or battery-powered buses or constructing facilities designed to service them.

(3) Enter the total Federal dollar amount for project elements that fall into the category of retrofitting or replacing bus engines that do not meet the clean air standards of the EPA.

Note: Because of the uncertainty of how many grantees will apply, the actual amount that a grantee receives in an apportionment may be different from the amount requested in the application that was submitted. Furthermore, because clean diesel and retrofit/replacement of bus engines are subject to maximum constraints, the amounts specifically apportioned for those purposes may not resemble the proportionality of the application. For example, suppose Grantee A's application included \$500,000 for clean diesel and \$100,000 for a compressed natural gas bus. If the 35 percent ceiling for clean diesel is exceeded by the total applications, Grantee A may only be allowed \$50,000 to be used specifically for clean diesel because of the ceiling. The remainder of the funds apportioned to Grantee A (say, \$300,000) would have to be used in areas without a maximum constraint, *i.e.*, in areas other than clean diesel or retrofit/replacement of bus engines if applied for.

IV. Certification

The chief executive officer or the general manager of the transit agency should sign this certification.

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Appendix A to Part 624 - CLEAN FUELS FORMULA PROGRAM Pre-Application Worksheet

Agency Name _____

Non-Attainment or Maintenance Area Name _____

UZA (or Urban Area) _____

Classification For Ozone _____

Classification For Carbon Monoxide _____

I. PROPOSED ACTIVITY

1) New Bus Purchase/Lease

Fuel Type	Quantity	Composite or Traditional	Federal Amount	Total Amount
CNG			\$	\$
LNG			\$	\$
Biodiesel			\$	\$
Batteries			\$	\$
Alcohol-based			\$	\$
Hybrid elec.			\$	\$
Fuel cell			\$	\$
Clean diesel			\$	\$
Other (Specify) _____			\$	\$

2) Construct/Lease New Clean Fuel Facility & Related Equipment
(Indicate The Federal and Total Amounts For Each Category)

	Federal Amount	Total Amount
Electrical Recharging Facility	\$	\$
Clean Fuels Facility (Specify fuel type _____)	\$	\$
Related Equipment	\$	\$

Description _____

3) Improvements To Existing Facilities To Accommodate Clean Fuel Buses

	Federal Amount	Total Amount
Facility Improvements (Specify fuel type _____)	\$	\$

Description _____

4) Re-power/Replace Pre-1993 Engines With Engines That Meet Emissions Standards When Installed In The Respective Vehicle. (Separate Entry For Each Fuel Type)

Fuel Type	Quantity	Federal Amount	Total Amount
CNG		\$	\$
LNG		\$	\$
Biodiesel		\$	\$
Batteries		\$	\$
Alcohol-based		\$	\$
Hybrid elec.		\$	\$
Fuel cell		\$	\$
Clean diesel		\$	\$
Other (Specify)		\$	\$

5) Retrofit/Rebuild Pre-1993 Engines To Comply With Latest Emissions Standards

Fuel Type	Quantity	Federal Amount	Total Amount
CNG		\$	\$
LNG		\$	\$
Biodiesel		\$	\$
Batteries		\$	\$
Alcohol-based		\$	\$
Hybrid elec.		\$	\$
Fuel cell		\$	\$
Clean diesel		\$	\$
Other (Specify)		\$	\$

6) Other

Description _____

Federal Amount \$ _____ Total Amount \$ _____

7) Summary

Total Requested For All Projects \$ _____

Federal Requested For All Projects \$ _____

II. DATA

- 1) Total Active 2000 Bus Fleet (number of buses) _____
(Motor Bus & Trolley Bus)
- 2) 2000 Bus Passenger Miles _____
(Motor Bus & Trolley Bus)

**III. FEDERAL DOLLAR AMOUNT FOR THE PROJECTS LISTED
ABOVE SUBJECT TO MINIMUM OR MAXIMUM APPORTIONMENTS**

Purchase/Lease Clean Diesel Buses	\$ <input type="text"/>
Hybrid Electrical or Battery Powered Buses/Facilities	\$ <input type="text"/>
Retrofit or Replace Engines That Meet EPA Clean Air Standards	\$ <input type="text"/>

IV. CERTIFICATION

I understand that the Clean Fuels Formula Grant Program funds will be apportioned based on the information in this pre-application worksheet. I certify that to the best of my knowledge the information contained on this pre-application worksheet is true and correct. In addition, I understand that since funds have been apportioned on the basis of the information contained in this worksheet, we are limited in our ability to make any revisions to the final application.

CEO or General Manager

Date

Issued on: August 22, 2001.

Jennifer L. Dorn,

*Administrator, Federal Transit
Administration.*

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