

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:** Final rule.

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 rule establishes the procedures eligible recipients must use to apply for this new program. Although the FY 1999, FY 2000, FY 2001 and FY 2002 appropriations bills did not make funding available for this program, legislation was enacted each of these fiscal years, which provided that the guaranteed funds for this new program be made available to the bus and bus facilities categories of the Capital Investment Grants and Loans program of 49 U.S.C. 5309. FTA is publishing this final rule to ensure application procedures are available should funding be made available for this program.

DATES: The effective date of this final rule is July 11, 2002.

ADDRESSES: Comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA-2001-9877 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

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/footoc.htm>. Comments may be reviewed via the Internet at <http://dms.dot.gov>.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On August 28, 2001, FTA published a notice of proposed rulemaking (NPRM) entitled "Clean Fuels Formula Grant Program" in the **Federal Register** (66 FR 45552). We received sixteen letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Clean Fuels Formula Grant Program is a 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. In addition, TEA-21 provides weighting factors based on the severity of nonattainment for ozone and carbon monoxide (CO).

TEA-21 provides authorization levels of up to \$200,000,000 per year and guaranteed levels at \$100,000,000 per year. However, in FYs 1999, 2000, 2001, and 2002 no funds were made available to the program. Rather, Congress, enacted legislation in each of these fiscal years, which provided that the \$100,000,000 in guaranteed funds for the Clean Fuels Formula Grant program be made available to the bus and bus facilities categories of the Capital Investment Grants and Loans program of 49 U.S.C. 5309.

FTA will make the funding levels for the Clean Fuels program available in the

annual **Federal Register** notice that announces each fiscal year's appropriations and allocations when funds are made available.

Section 5308 of title 49, United States Code, defines eligibility and provides both minimum and maximum percentages of funds for certain clean fuel technologies. 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.

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>.

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>.

Discussion of Comments and Changes

FTA received a total of sixteen comments to this rulemaking. We discuss the comments received and explain any changes made to the regulations in the following paragraphs. FTA considered all comments filed in a timely manner.

Each commenter expressed support for the rulemaking while offering recommendations to improve FTA's interpretation to implement this statutory program. A written copy of each comment is available at the DOT Docket Manager's Web site: <http://www.dms.dot.gov>

A. Comments Received

1. Bi-State Development Agency recommended that the incremental cost of biodiesel fuel should be included as an eligible project.

2. Georgia Regional Transportation Authority (GRTA) requested clarification on the role of the designated recipient and also believes that the program lends itself to congressional earmarking.

3. The Big Blue Bus (the Bus) expressed support for the simple format of the pre-application worksheet and the decentralized review process that allows applicants to work with their respective FTA Regional Office; however, the Bus recommends that all [project] eligibility issues should be resolved during the pre-application process.

4. Electric Vehicle Association of the Americas (EVAA) believes that although the pre-application process is streamlined and does not impose unduly burdensome paperwork requirements, it recommends that the final application either be waived or stream-lined with the elimination of significant portions that are already submitted with the pre-application. EVAA is also concerned with potential statutory Buy America requirements. Another recommendation by EVAA regarding data collection is for FTA to review and use policies, procedures and systems in ongoing FTA funded projects, such as the project administered by EVAA and the Electric Power Research Institute (EPRI), but establishing a separate database for the information collected for the Clean Fuels program. To evaluate the success of the Clean Fuels Program, EVAA recommends that actual vehicle miles traveled should also be collected to assist with determining the program's impact on air quality in a particular area.

5. The Texas Department of Transportation (TxDOT) indicated that this program might cause FTA to discourage the use of 49 U.S.C. 5308 funds for the conversion of newer conventionally fueled transit vehicles. TxDOT also recommended that liquefied petroleum gas (LPG) be added to the rule. Regarding the pre-application worksheet, TxDOT recommends clarification of the information that new agencies will be required to submit since these agencies

will not have the benefit of two years of historical data submitted in the National Transit Database (NTD).

6. The Metropolitan Transit Authority of Harris County, Texas (METRO) recommended that FTA also consider a project's contribution to emissions reductions during the selection process. METRO also recommended that projects be evaluated on merit without regard to the type of fuel a project will use. Although METRO agrees that FTA should compile basic inventory and operational data over a three-year reporting period, it recommends that annual reporting instead of quarterly reporting by transit agencies is more appropriate.

7. SunLine Transit Agency recommended that the Clean Fuels Program be limited to vehicles powered by alternatives to clean diesel, such as renewable energy or domestically produced clean natural gas, because the purchase of clean diesel buses is sufficiently funded by other programs. SunLine also recommended that clean diesel projects be subject to testing to ensure that traps are used on vehicles using this fuel. In addition, SunLine proposed these additional and priority-weighting factors; experience with earlier generation clean fuel vehicles/ infrastructure development, including technical training, priority for renewable energy development and use. SunLine also recommended that FTA pursue the addition of particulate matter nonattainment to the CMAQ statutory language for this program. In regard to the reporting requirements, SunLine recommends that all projects be required to report on vehicle operations, performance and maintenance so that head-to-head comparisons can be made. SunLine also encourages FTA to provide funds directly to grantees and not allocate funds through air districts or similar state agencies.

8. The Los Angeles County Metropolitan Transportation Authority (METRO) recommended the following revisions to enhance the program. METRO believes that FTA would have all necessary information to estimate the amount of funds potentially available for regions prior to the January pre-application deadline date; therefore, this information should be released to all applicants prior to the January deadline date. METRO also requested that FTA clarify how the weighting for carbon monoxide nonattainment areas will occur. METRO believes that the definition of eligible applicants is inconsistent with the statutory language of section 5308 (a)(2). METRO recommends that FTA provide a definition for "clean diesel" fuels and

that retrofitted engines must use particulate traps that have been certified by the State or other appropriate regulatory agency(ies). In regard to the application process, METRO recommended that FTA require the most recent audited National Transit Data NTD since at any given time previously collected NTD data may be three years old. METRO also recommended that the apportioning formula be amended to factor in the difference in size and technology of various transit vehicles.

9. Laketran, the regional transit authority for Lake County Ohio, recommended that the rule be revised to include the incremental cost of clean fuels such as Purinox.

10. The San Francisco Municipal Railway (Muni) noted that the legislation for the Clean Fuels Program is only authorized for one more year and questioned the efficacy of issuing a final rule at this time. Muni noted that the level of funding is insufficient as an incentive for transit operators to launch program's in untested technologies; therefore, the program is more likely to supplement existing clean fuel efforts, such as its alternative fuels program, hence FTA should develop less burdensome reporting requirements. In regard to the apportionment formula, MUNI recommended that FTA consider alternative measures such as bus passengers per revenue hour of service to assist in determining eligible projects in areas with populations over 1 million.

11. The American Public Transportation Association (APTA) recommended that additional incremental cost of purchasing clean fuel be eligible for funding under the program. APTA also recommended that FTA Regional Offices be given greater flexibility during the pre-application period to provide guidance to the transit agencies earlier in the process. Although APTA recognizes FTA's need to collect data from the successful applicants, it believes that information already reported in the TEAM system should be sufficient to evaluate the program's effectiveness. APTA also recommends that FTA amend its proposed mandatory reporting and make it voluntary or in the alternative permit the cost of the reporting requirements as an eligible grant activity.

12. The Missouri Soybean Association recommended that the incremental cost of biodiesel fuels be included as an eligible project cost.

13. The Orange County Transportation Authority (OCTA) noted that for purposes of consistency with 49 U.S.C. 5308, section 624.3(b)(1) of the

proposed rule should include the following: "(ix) other low or zero emissions technology". OCTA also recommended that the proposed regulation should include a subsection identifying the maximum grant amount available to any designated recipient based on the population of the project area.

14. The National Biodiesel Board (NBB) recommended that FTA identify eligible biodiesel projects in the final application procedures, suggesting that this will allow applicants to know that certain biodiesel projects can qualify for funding. NBB also recommended that the incremental cost of biodiesel blends be included as an eligible project cost in the final application procedures. As to the pre-application and evaluation process, NBB recommended that the amount of biodiesel fuel along with the number of buses that would be fueled by biodiesel be included in the pre-application worksheet.

15. The Natural Gas Vehicle Coalition (NGVC) believes that grants should only be awarded to transit agencies that use vehicles that exceed Federal and California performance levels; hence, FTA should provide clear definitions of the "sufficient" emissions reductions necessary to qualify for program funds. NGVC also stated that FTA should provide additional guidance on what is considered "clean diesel", since an industry definition doesn't exist. Regarding data collection criteria, NGVC recommended that FTA require successful applicants to establish control buses and report data on the control buses and those funded under the program.

16. The Chicago Transit Authority (CTA) supports the establishment of the Clean Fuels Grant Program; however, it disagrees with FTA's interpretation of the statutory weighting factors. CTA takes exception to the proposed section 624.9(d), which provides for an additional adjustment to the bus passenger miles and bus counts for areas with both ozone and carbon monoxide. CTA believes the proposed formula provides a disproportionately larger amount of funds to a smaller number of urbanized areas that qualify for the extra weight factor. CTA recommended that FTA define the criteria that will be used to fund an eligible development project. Regarding the Letters of Interest in section 624.5(b)(1), CTA concurred with FTA's proposed rule. CTA also recommended that FTA require mandatory reporting from all successful applicants.

B. FTA Response

A. § 624.1 *Eligible Applicant*. As noted in the NPRM (66 FR 4552) section 624.1 notes that eligible applicants are state or local governmental authorities (designated recipients) that provide mass transportation services. A commenter recommended that FTA amend this section to reflect the language of the clean fuels statute. FTA agrees, section 624.1 of the final rule is amended to reflect the statute, which states in part that designated recipients are the same as noted in title 49, United States Code (U.S.C.), section 5307(a). (See 49 U.S.C. 5308(a)(2)). The role of the designated recipient is discussed in section 5307 Circular FTA C 9030.1C.

As was recommended by one commenter, the statute requires FTA to provide funds to the designated recipient instead of air districts. As with many FTA programs, the regional offices will provide direct assistance and guidance regarding the application process, once funds are appropriated for this program.

B. § 624.3 *Eligible Activities*. Title 49, U.S.C., section 5308 sets forth the criteria that FTA must use for determining eligible activities. Some comments indicated that additional criteria not found in the statute should also be considered. FTA is not permitted to expand the selection criteria beyond that found in the statute. For similar reasons, FTA may not restrict vehicles that use clean diesel as an eligible activity as recommended by a commenter.

However, we agree with those comments that indicated that the clean fuel definition in section 624.3 should include other low or zero emissions technology as noted in the statute. The final rule will include this provision. (See 49 U.S.C. 5308(a)(1)(A)(ix)).

(i) *Alternative Fuel Cost*. FTA received a number of comments stating that the incremental cost of bio-diesel and other alternative fuels should be an eligible expense under this program. Proponents believe that many of these fuels are readily usable in existing diesel engines without requiring modifications to these engines. Similar comments were made regarding Purinox, an emulsified diesel fuel. FTA agrees that many of these fuels may assist in emission reductions; however, it is important to note that fuel purchases are not defined as eligible projects under the clean fuels statute (see 49 U.S.C. 5308(a)).

The Clean Fuels Program funds the purchase or lease of buses and related facilities, but does not cover the incremental cost of fuel; therefore, FTA

is not permitted to fund this cost under this program. However, the purchase or lease of vehicles using these fuel technologies may be eligible for funding under the program.

(ii) For purposes of this program, FTA will use the Environmental Protection Agency (EPA) emissions standards and certification for determining clean diesel vehicle eligibility. We also clarify that "after-market treatment technology" refers only to those products that are EPA certified.

C. § 624.5 *Pre-application-*

Application. As noted in the preamble of the NPRM, FTA cannot determine the available funding amounts for applicants until after the total number of eligible applicants has been determined and the specific formula funding ceilings have been applied. The pre-application process will provide the necessary data to make these determinations; therefore, a two-step process is required.

FTA's regional offices will provide assistance to pre-applicants regarding the eligibility of projects during the pre-application process. Operators not required to submit NTD data should provide data from two years prior (e.g., if applying in FY 2003, provide data from 2001). Those applicants without two or more years of service will be required to submit data from the previous years. Since the pre-application and worksheet only provides baseline information regarding the pool of potential applicants and proposed projects, a final application will be required once the funding allotment has been determined based on the formula. However, FTA is committed to streamlining the application process as much as possible with the use of electronic filing.

D. § 624.9 *Formula.* As noted in the NPRM, FTA determined that the statutory intent of the formula is to reflect the Congestion Mitigation and Air Quality Improvement (CMAQ) program; hence, FTA has narrowly interpreted the statute to be consistent with the provisions of CMAQ. FTA is not permitted to consider other factors that were not within the statute (e.g., size and technology). Neither is FTA permitted to disregard other requirements noted in the statute.

One commenter indicated that FTA's statutory interpretation, which provides for additional weighting for carbon monoxide nonattainment advantages a smaller number of urbanized areas. However, we note that the statute provides for additional adjustment for areas that are nonattained for ozone and carbon monoxide. (See 49 U.S.C. 5308 (d)(2)(b)). FTA does not believe that the

additional weight factor will provide for a disproportionately larger amount of funds to a smaller number of urbanized areas. We note that other variables such as bus passenger miles and number of buses are also factored in the formula.

Regarding clarification on how the weighting for CO nonattainment areas will occur, applicants will be asked on the pre-application worksheet to identify the county or counties in which they provide transit service. If they serve a county which contains all or part of a nonattainment (or maintenance) area, they are eligible under this program. Prior to apportioning the funds, FTA will obtain from EPA an up-to-date list of classified ozone and CO nonattainment and maintenance areas. This list, known as the Greenbook, is available on the Internet at: www.epa.gov/oar/oaqps/greenbk/index.html. We note that ozone nonattainment areas, in particular, cover large geographic areas. They commonly include an urbanized area at the center and suburban and rural area on the periphery. Within the apportionment formula, there is a basic breakdown for apportioning the program funds between urban areas greater than one million population and urban areas less than one million population. It is possible, then, for transit agencies operating in the same nonattainment area to be placed in different categories under the apportionment formula based on the population of the jurisdiction they serve.

As recommended, section 624.9 of the final rule will reflect the maximum grant amount available to a designated recipient. (See 49 U.S.C. 5308(d)(3)).

E. § 624.11 *Reporting.* FTA received a number of comments on the issue of data collection and reporting requirements. As noted in the NPRM, FTA is interested in collecting relevant information on the operations and performance of clean fuel technology buses in revenue service to help assess the reliability, benefits, and costs of these technologies compared to conventional vehicles.

Although FTA considered modifying the submission of reports, we maintain that quarterly reporting provides the best opportunity for FTA and other interested parties to spot trends that would not be apparent with annual or bi-annual reporting. FTA does not believe that quarterly reporting on data elements that are typically collected by a transit agency would impose an undue burden. However, FTA is reviewing APTA's recommendation that any incremental cost associated with mandatory reporting be included as part of the capital expense for purposes of

funding. We note that if this expense is included it will not increase the aggregate amount of formula funds.

FTA has chosen to focus specifically on more advanced technologies (e.g., battery electric, hybrid electric, and fuel cell powered vehicles) since the least amount of transit data is currently available for these technologies. FTA believes that a significant amount of data is currently available for vehicles that use alternative fuels; therefore, only projects to purchase or lease buses powered by advanced propulsion technologies will have mandatory reporting requirements; all others will be on a voluntary basis. However, FTA will attempt to minimize these requirements by using existing electronic reporting procedures. Further guidance on reporting procedures will be issued as this program is implemented.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. We expect the economic impact of the final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We reached this conclusion based on the fact this final rule provides grant application procedures for designated recipients that are interested in applying for Federal funds to acquire buses that use clean fuel technology.

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

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.

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. Any burden associated with this rule would be added to the current information collection package, Clean Fuels Formula Grant Program, OMB approval number 2132-0560. Comments solicited during the NPRM indicated that any cost associated with the paperwork requirements, should be considered a capital expense. FTA has determined that collection of information is necessary for the proper performance of the FTA grant process, and any cost associated with this rule is minimal; however, FTA is reviewing the recommendation to include any incremental data collection cost in the grant. FTA will also minimize the burden of the collection of information on the applicants, through 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, 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.

Federalism

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.

Environment

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

Energy Effects

Mass transit has a positive impact on energy consumption as it promotes an alternative to the single occupant vehicle.

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 recordkeeping requirements.

Accordingly, for the reasons cited above, the FTA amends 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 designated recipient (designated recipient has the same meaning as in 49 U.S.C. 5307(a)(2)) in either an:

(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;
 - (viii) Clean diesel, to the extent allowed under this section; or
 - (ix) Other low or zero emissions technology; and
- (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 (e.g., 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 devices 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 as 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.

(a) *Areas with population 1,000,000 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 applicant, weighted by the severity of nonattainment for the area in which the eligible applicant is located; and

(2) The total number of vehicles in the bus fleets of all eligible applicants 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 designated recipient, weighted by the severity of nonattainment of the area in which the eligible applicant is located as provided in paragraphs (c) and (d) of this section.

(ii) The total number of bus passenger miles of all eligible applicants in areas with a population of 1,000,000 and above, weighted by the severity of nonattainment of all areas in which those eligible applicants 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 applicants in areas with a population of 1,000,000 and above and replaces it with the pool of eligible applicants 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 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.

Note to § 624.9. Maximum grant amount. The amount of a grant made to a designated recipient under this section shall not exceed the lesser of—for an eligible project in an area with a population of less than 1,000,000, \$15,000,000,—and for an eligible project in an area with a population of at least 1,000,000, \$25,000,000; or 80 percent of the total cost of the eligible project. Any amounts that would otherwise be apportioned to a designated recipient under this Note that exceed the amount described in this Note shall be reapportioned among other designated recipients in accordance with this section.

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

§ 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 designated recipient.

(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 the categories above. Since any project not included above 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 motorbus, 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 NTD data that was reported 2 years prior (*e.g.*, if applying in FY 2003, use data from FY 2001). For UZAs that have already submitted information to the 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 2 years prior (*e.g.*, if applying in FY 2003, use data from FY 2001). This may include motorbus (see types above) or trolley bus. For UZAs that have submitted 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.

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 Year 20__ Bus Fleet (number of buses) _____
(Motor Bus & Trolley Bus)

2) Year 20__ 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: June 4, 2002.

Jennifer L. Dorn,
*Administrator, Federal Transit
Administration.*

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