

Guidance for Fulfilling the Clean Fuel Fleets Requirement of the Clean Air Act

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Section 1: Introduction

1.1 WHAT IS THE PURPOSE OF THIS GUIDANCE?

The Environmental Protection Agency (EPA) is providing this guidance to clarify the Clean Air Act (CAA) requirement for Clean Fuel Fleets Programs (CFFP) and provide options for states to consider when submitting state implementation plans (SIPs) for EPA approval. The clean-fuel vehicle program requirements apply to ozone nonattainment areas classified as Serious, Severe, or Extreme, as discussed later in this document. This new guidance provides several options for states to either continue to rely upon their existing CFFP, to add new components to these programs, or to rely on recent EPA regulations to satisfy the Clean Fuel Fleets requirement.

EPA previously released guidance on the implementation of CFFPs in August 1998 entitled, *Clean Fuel Fleet Program Implementation Guidance*, EPA420-R-98-011¹ (1998 Guidance). The 1998 Guidance includes detailed interpretations and recommendations, such as describing eligible fleets and compliance exemptions, which were necessary for states and fleet operators implementing the program in 1998.

Today's new guidance reaffirms and supplements the 1998 Guidance with new compliance options for states with ozone nonattainment areas required to develop SIPs for the Clean Fuel Fleets requirement. Specifically, EPA is releasing this guidance now to assist state and local air agencies in developing Clean Fuel Fleets SIPs to satisfy requirements for Serious and above areas for the 2008 and 2015 ozone national ambient air quality standards (NAAQS).²

Due to EPA's promulgation of revised clean fuel fleets regulations (discussed below), developing Clean Fuel Fleets SIPs can be much simpler than described in the 1998 Guidance. Under this new guidance, public health continues to be protected through cleaner vehicle and engine technology in fleets across the United States. A state could choose to develop its Clean Fuel Fleets SIP to include a new CFFP or revise a previously approved CFFP so that it achieves more emission reductions than the program required by the CAA. Such a program could require the purchase of zero emission or near zero emission vehicles for covered fleets. This approach would result in fleets with lower total fleet emissions than otherwise required by the CFFP regulations. The implementation of a CFFP may also be important where there are communities, including those with environmental justice concerns, which are located in areas where fleet operations are centered and where harmful motor vehicle emissions would be concentrated, such as bus terminals and freight distribution centers.³

¹ See <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1009ZL8.PDF?Dockey=P1009ZL8.PDF>.

² Ground level ozone is not emitted directly into the air by vehicles but is created by chemical reactions between oxides of nitrogen (NOx) and volatile organic compounds (VOC) in the presence of sunlight.

³ Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (2/16/94) focuses federal attention on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all

The 1998 Guidance provides information on fleet eligibility, compliance exemptions, clean vehicle availability, and credit calculation. If a state chooses to newly implement a CFFP, to continue implementation of a CFFP, or to implement a CFFP that achieves emission reductions beyond the CAA requirements, it should be familiar with the requirements and recommendations in those documents. The latest emissions model and planning assumptions should be used if any emission reductions are calculated for inclusion in a SIP, consistent with applicable requirements and guidance.

1.2 BACKGROUND ON THE CLEAN FUEL FLEETS REQUIREMENT

The Clean Fuel Fleets requirement was adopted as part of the 1990 CAA Amendments and was designed to improve air quality and introduce clean burning fuels into the market. The Clean Fuel Fleets requirement is fuel neutral in that it does not require the use of a specific fuel, only that the appropriate emissions standards are met. CAA sections 243 and 245 include numerical emissions standards for the Clean Fuel Fleets light- and heavy-duty vehicles that were intended to encourage innovation, encourage the purchase of cleaner fleet vehicles and reduce emissions for fleets⁴ of motor vehicles in ozone nonattainment areas classified as Serious, Severe, or Extreme as compared to conventionally fueled vehicles available at the time. CAA section 246(f) includes provisions regarding credits for Clean Fuel Fleets under a SIP program.

CAA section 182(c)(4) requires states with ozone nonattainment areas classified as Serious or above with 1980 populations greater than 250,000 submit a SIP revision to either “include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter” or to provide “a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter.” These requirements continue to apply to ozone nonattainment areas classified as Serious or above for the 2008 and 2015 ozone NAAQS, including areas that are reclassified as Serious or above for these ozone NAAQS. According to CAA section 182(c)(4), areas that are initially classified as Serious or above for an ozone NAAQS must either submit a SIP revision for a CFFP within 42 months after the effective date of the designation and classification or submit a SIP revision for a substitute program within 24 months after the effective date of the designation and classification. For areas that were classified as Marginal or Moderate and then were reclassified as Serious or above, the due date for the SIP revision that addresses the Clean Fuel Fleets requirement or substitute program will be established in the rule that reclassifies the area as Serious or above. The full text of CAA section 182(c)(4) is included in Appendix A of this guidance.

CAA sections 241(5) [Definition of a Covered Fleet] and 246(b) [Phase-in Requirements] require that CFFPs apply to fleets of 10 or more vehicles that are capable of being centrally

communities. For more information about EPA’s work related to environmental justice, see <https://www.epa.gov/environmentaljustice>.

⁴ CAA sections 241(5) “Definition of a Covered Fleet” and 246(b) “Phase-in Requirements” require that CFFPs apply to fleets of 10 or more vehicles that are capable of being centrally fueled.

fueled. This requirement is for the fleet owner to purchase a certain percentage of clean-fueled vehicles each year based on the total number of new vehicles that are purchased in that year.

As mentioned above, CAA sections 243 and 245 include emissions standards for light-duty and heavy-duty clean-fuel vehicles while section 246(f) includes provisions regarding credits under a SIP program. As originally adopted in the 1990 CAA Amendments, the Clean Fuel Fleets emissions standards were substantially more stringent than the regulatory emissions standards that applied to vehicles and engines generally at that time. Since EPA began implementing the light-duty Tier 3 emissions standards (40 CFR part 86, subpart S) and the heavy-duty emissions standards (40 CFR part 1036), the 1990 CAA Amendments' clean-fuel vehicle emissions standards are either less stringent than or equivalent to the standards that apply to vehicles and engines today. Motor vehicles and engines certified by the California Air Resources Board (CARB) under its Low Emission Vehicle Program (LEV III) are also certified under 40 CFR part 86, subpart S or 40 CFR part 1036 and are qualifying vehicles under the CFFP. However, because the Clean Fuel Fleets requirement continues to apply under the CAA in certain ozone nonattainment areas, states with Serious or above ozone nonattainment areas must continue to address the requirement in their SIPs.

1.3 CURRENT EPA REGULATIONS FOR CLEAN FUEL FLEETS

On June 29, 2021, EPA revised the Clean Fuel Fleets requirements in 40 CFR part 88 (86 FR 34308).⁵ The revised Clean Fuel Fleets regulations are discussed in Section III.B.1 of the final rule.

As EPA discussed in that final rule, with the implementation of EPA's Tier 3 light-duty vehicle standards and the continued implementation of the current heavy-duty vehicle standards, the CAA's Clean Fuel Fleets emission standards are either less stringent than or equivalent to the standards that apply to light- and heavy-duty vehicles and engines generally. Recognizing this distinction, EPA revised the Clean Fuel Fleets regulations in 40 CFR part 88 to include a compliance option where vehicles and engines certified to current standards under 40 CFR part 86 and part 1036 would be deemed to comply with the Clean Fuel Fleets standards as Ultra Low-Emission Vehicles. This approach enables states to address the Clean Fuel Fleets requirement by describing in a SIP that any new light- or heavy-duty vehicle purchased today (i.e., meets EPA's standards or CARB's current LEV III standards) is certified to an emission standard that is more stringent than the CAA's clean-fuel vehicle emissions standards. Therefore, a specific program requiring the purchase of clean-fuel vehicles is no longer necessary in Clean Fuel Fleets SIP submissions, although states continue to have the option of either implementing an existing or developing a new state or local CFFP. See Section 2 of this guidance for further information on the options for developing SIPs to meet the statutory Clean Fuel Fleets requirement.

⁵ More information on the final rule is available at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/improvements-heavy-duty-engine-and-vehicle-test-0>.

1.4 DOES THIS GUIDANCE CREATE NEW REQUIREMENTS?

This guidance does not create any new requirements and the discussion in this document is intended solely as guidance. The statutory provisions and EPA regulations described in this document contain legally binding requirements. This document is not a regulation itself, nor does it change or substitute for those provisions and regulations. Thus, it does not impose legally binding requirements on EPA, states, or the regulated community. EPA retains the discretion to adopt approaches on a case-by-case basis that may differ from this guidance, but still comply with the statute and regulations. Any decisions regarding a particular SIP will be made based on the statute and regulations. This guidance may be revised periodically without an opportunity for public comment.

1.5 WHO CAN I CONTACT FOR MORE INFORMATION?

For specific Clean Fuel Fleets questions concerning a particular ozone nonattainment area, states should contact their EPA Regional Office. You can find a list of EPA Regional Office contacts at <https://www.epa.gov/transportation-air-pollution-and-climate-change/office-transportation-and-air-quality-contacts> in Section 16.2, last page.

Additional information regarding state and local transportation air quality planning resources can be found on EPA's website at: <https://www.epa.gov/state-and-local-transportation>.

Technical questions about this guidance may be directed to Mark Coryell, coryell.mark@epa.gov.

Section 2: What Options Do States Have to Comply with the Clean Fuel Fleets Requirement?

This section of the guidance describes four options for developing a Clean Fuel Fleets SIP for states with an ozone nonattainment area classified or reclassified as Serious or above for a given ozone NAAQS. Each state should decide what works best for meeting the CAA requirement depending on conditions unique to each situation, such as when a state is currently implementing a CFFP under a SIP for a previous ozone NAAQS. EPA recommends states discuss their plans with their EPA Regional Office as it develops a Clean Fuel Fleets SIP revision.

A SIP revision that addresses the Clean Fuel Fleets requirement must be developed in accordance with applicable CAA SIP requirements, which includes an opportunity for the public to provide comments on a state's proposed SIP. This requirement for a public process applies regardless of what type of SIP is being developed, i.e., whether it is a new CFFP or a certification that an existing CFFP or substitute measure continues to be implemented.⁶

2.1 THE STATE MAY SUBMIT A CERTIFICATION SIP REVISION.

This is an option for a state that currently has an approved CFFP or substitute measure(s) that it is continuing to implement, and the state does not plan to make any changes to the program or substitute measure(s).

The state may choose to submit a SIP revision that certifies that a previously approved CFFP or substitute measure(s) continues to be implemented and satisfies the Clean Fuel Fleets requirement for the relevant ozone NAAQS. Certification SIPs are discussed in the preamble to the SIP requirements rule for the 2015 ozone NAAQS ("*Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements*"). See 83 FR 63001-2, December 6, 2018, for more information on certification SIPs.

2.2 THE STATE MAY SUBMIT A SIP REVISION THAT DEMONSTRATES THAT A CLEAN FUEL FLEETS PROGRAM IN AN EXISTING APPROVED SIP WILL NOT RESULT IN ADDITIONAL EMISSION REDUCTIONS.

This is an option for a state that has decided not to continue to implement a previously approved SIP's CFFP or substitute measure(s), whether the program or substitute measure(s) was implemented previously or not.

As discussed above, EPA's current Clean Fuel Fleets regulations in 40 CFR part 88 provide a compliance option where vehicles and engines certified to current standards under 40 CFR part 86 and part 1036 are deemed to also meet the Clean Fuel Fleets standards as ultra low-emission

⁶ In addition, when a state makes a revision to any SIP, CAA section 110(l) applies.

vehicles.⁷ Therefore, a state could submit a SIP revision explaining that, based on EPA's June 29, 2021, final rule, the purchase of any new light- or heavy-duty vehicle by a fleet owner would provide emission reductions equivalent to or greater than a new vehicle that would have been certified to the CAA's ultra-low clean-fuel vehicle emission standards. Such a SIP revision, if approved, would satisfy the CAA requirement for a CFFP.

2.3 THE STATE MAY SUBMIT A SIP REVISION THAT IMPLEMENTS A NEW OR REVISED CLEAN FUEL FLEETS PROGRAM.

This is an option for a state interested in implementing a new SIP or continuing to implement the approach in a previously approved SIP with a Clean Fuel Fleets program and in exceeding the emission reduction potential of the program envisioned in the CAA.

As discussed above, all new light- and heavy-duty vehicles are certified to EPA's current emission standards that are at least as stringent as the clean-fuel vehicle standards for light- and heavy-duty vehicles in CAA sections 243 and 245. Therefore, any vehicle purchased today by a fleet owner would satisfy the CAA's clean-fuel vehicle requirements. However, a state could choose to develop its Clean Fuel Fleets SIP to include a new CFFP or revise a previously approved program so that it achieves more emission reductions than the CFFP required by the CAA. Such a program could require the purchase of zero emission or near zero emission vehicles that would meet or be even lower in emissions than today's current vehicle fleets. The implementation of a Clean Fuel Fleets program may also be important to address state or local air quality goals beyond CAA requirements, such as increasing the number of cleaner vehicles in communities located in areas with heavy fleet operations (e.g., bus terminals and freight distribution centers), including nearby communities with environmental justice concerns.

2.4 THE STATE MAY SUBMIT A SIP REVISION FOR A SUBSTITUTE MEASURE(S) INSTEAD OF THE CLEAN FUEL FLEETS MEASURE.

This is an option for a state that has decided not to implement a CFFP, has no CFFP that EPA has approved into the SIP, and would prefer to implement a substitute measure(s) to provide some emissions reductions rather than submitting a SIP demonstration that a Clean Fuels Fleets program would not provide additional emissions reductions (i.e., the second option described in Section 2.2 of this guidance).

According to CAA section 182(c)(4), the substitute measure(s) must achieve long-term reductions in ozone precursor emissions equal to those achieved through the CFFP. A state could submit a SIP revision implementing a substitute measure(s) that achieves emissions reductions that are equal or greater than those achieved by implementing a CFFP, keeping in mind that any new light- or heavy-duty vehicle purchased by a fleet owner today is deemed to

⁷ See 40 CFR 88.1.(b)(1).

also meet the CAA emissions standards for ultra-low emission Clean Fuel Fleets vehicles. As long as the substitute measure(s) provided even a small amount of long-term emissions reductions, it would satisfy the CAA requirements for a substitute measure. As suggested above in Section 2.3, a substitute measure could require the purchase of zero emission or near zero emission vehicles for covered fleets. This approach would result in lower total fleet emissions than required by the CFFP regulations.

Appendix A: Clean Air Act Section 182(c)(4) Clean Fuel Fleets Requirement

(4) Clean-fuel vehicle programs

(A) Except to the extent that substitute provisions have been approved by the Administrator under subparagraph (B), the State shall submit to the Administrator, within 42 months of November 15, 1990, a revision to the applicable implementation plan for each area described under part C of subchapter II of this chapter to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of subchapter II of this chapter) economic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area that opts into the clean fuel-vehicle program as provided in part C of subchapter II of this chapter.

(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of subchapter II of this chapter, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under this chapter for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of November 15, 1990. The Administrator shall approve or disapprove any such revision within 30 months of November 15, 1990. The Administrator shall publish the revision submitted by a State in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in sections 553 through 557 of title 5 (related to notice and comment). Where the Administrator approves such revision for any area, the State need not submit the revision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the revision as a substitute.

(C) If the Administrator determines, under section 7509 of this title, that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 7509 of this title, the State may not receive credit, in any demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in part C of subchapter II of this chapter.