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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

RIN 1904-AB66

Alternative Fuel Transportation Program; Alternative Compliance

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today publishes a final rule to implement section 514 of the Energy Policy Act of 1992, as amended by section 703 of the Energy Policy Act of 2005, which allows States and alternative fuel providers to petition for a waiver of the alternative fueled vehicle (AFV) acquisition requirements. Today's final rule requires that for a State or alternative fuel provider to be granted a waiver, the State entity or alternative fuel provider must request a waiver to demonstrate that in lieu of complying with the applicable AFV acquisition requirement for a model year, it will take other actions to reduce its annual petroleum motor fuel consumption by an amount equal to 100 percent alternative fuel use in all of the fleet's AFVs, including AFVs that the State entity or alternative fuel provider would have been required to acquire if there was no waiver.

DATES: *Effective Date:* The final rule is effective April 19, 2007.

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I. Introduction and Background

Title V of the Energy Policy Act of 1992 (Pub. L. 102-486; the Act) established requirements for covered alternative fuel providers ("covered persons") and States to acquire set percentages of AFVs. (42 U.S.C. 13251(a) and 13257(o)) As of 1999, 90 percent of light-duty motor vehicles acquired by a covered person must be AFVs. As of 2000, 75 percent of light-duty motor vehicles acquired for a State fleet¹ must be AFVs. Section 508

¹ Section 301 of the Act defines "fleet" as "a group of 20 or more light-duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a governmental entity or other person who owns, operates, leases, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

- (A) motor vehicles held for lease or rental to the general public;
- (B) motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;
- (C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;
- (D) law enforcement motor vehicles;
- (E) emergency motor vehicles;
- (F) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

provides for the use of credits in complying with the AFV requirements. (42 U.S.C. 13258) Title V also provides for an exemption process from the AFV requirements. (42 U.S.C. 13251(a)(5) and 13257(i)) As directed by the Act, DOE issued regulations, 10 CFR part 490—Alternative Fuel Transportation Program, to implement the AFV provisions. (61 FR 10622; March 14, 1996).

On August 8, 2005, the Energy Policy Act of 2005, (Pub. L. 109-58; EPACT 2005) was signed into law. In part, EPACT 2005 provides additional flexibility for States and covered persons subject to AFV acquisition requirements under 10 CFR part 490. Specifically, section 703 of EPACT 2005 adds an alternative compliance program (entitled "Alternative Compliance") under section 514 of title V of the Act. (42 U.S.C. 13263a) Section 514 authorizes DOE to grant to covered persons and States a waiver from the AFV acquisition requirements under section 501 (42 U.S.C. 13251) and section 507(o) (42 U.S.C. 13257(o)), respectively. The statute provides that any State or covered person may apply for an alternative compliance waiver, and that DOE must grant the waiver if the State or covered person demonstrates that its fleet will reduce annual petroleum consumption by an amount equal to the amount of petroleum it would reduce if the fleet's cumulative inventory of AFVs operated 100 percent of the time on alternative fuel (42 U.S.C. 13263a(a) and (b)). (Under the AFV requirements, States are not required to operate AFVs on alternative fuel and covered persons are required to operate their AFVs on alternative fuel only when it is available. (42 U.S.C. 13251(a)(4)) In addition, the State or covered person requesting a waiver must be in compliance with all applicable vehicle emission standards established by the Environmental Protection Agency under the Clean Air Act.

On June 23, 2006, DOE issued a notice of proposed rulemaking (NPR) to establish procedures for the submission of, and action on, applications for alternative compliance waivers submitted by States and covered persons subject to AFV acquisition requirements under part 490, 71 FR 36034, June 23, 2006. In the NPR, DOE proposed to add a new subpart I to part 490, which would include provisions

(G) nonroad vehicles, including farm and construction motor vehicles; or

(H) motor vehicles which under normal operations are garaged at personal residences at night[.]

regarding the timing of waiver requests and responses by DOE, waiver documentation and application requirements, annual reporting of petroleum reductions, use of credits to offset petroleum reduction shortfalls, rollover of excess petroleum reduction to future years, enforcement for violations, and record retention.

In addition, using its rulemaking authority under title V and section 644 of the DOE Organization Act (42 U.S.C. 7254), DOE proposed that States or covered persons may use vehicles that are not part of the "fleet," such as medium- and heavy-duty vehicles, and excluded light-duty motor vehicles (LDVs), to meet their petroleum reduction requirement. Under the same authority, DOE sought to address a discrepancy in the statutory language between the treatment of States that have section 508 credits versus those that do not. As such, DOE proposed that both States that have section 508 credits and States that do not have section 508 credits would be required to achieve comparable annual petroleum reduction.

II. Public Comments

DOE received nine sets of written comments from the public. DOE also held a public hearing at DOE headquarters in Washington, DC on July 12, 2006, where the NOPR was discussed and oral comments were received from four industry associations and two fuel provider utility companies subject to 10 CFR Part 490.

Written comments were received from the National Rural Electric Cooperative Association; the California Electric Transportation Coalition; the National Biodiesel Board; Florida Power and Light, a covered fuel provider utility; Southern California Edison, a covered fuel provider utility; the California Natural Gas Vehicle Coalition; NGV America, a natural gas vehicle association; the National Association of Fleet Administrators; and El Paso Electric, a covered fuel provider utility.

Generally, the oral and written comments were supportive of the proposed rulemaking because of the increased flexibility for covered fleets and increased emphasis on petroleum reduction. Commenters, however, provided a variety of suggestions for incorporation into the final rule including comments on how to determine a State's or covered person's cumulative inventory of AFVs, the petroleum reductions eligible for consideration under the alternative compliance program, and the information required for a complete waiver application. The specific issues

raised by commenters are addressed in the discussion below.

III. Discussion of the Final Rule

A. Eligibility for Alternative Compliance Waiver

Under section 514(a) of the Act, any covered person subject to AFV acquisition requirements of section 501 and any State subject to AFV acquisition requirements in 507(o) may petition the Secretary of Energy for a waiver from those requirements. (42 U.S.C. 13263a(a)) Section 514(b)(1)(A) of the Act provides DOE *shall* grant a waiver for a covered person if the covered person demonstrates a reduction in petroleum consumption equal to the reduction that would result under 100 percent cumulative compliance with the fuel use required in section 501 of the Act. (42 U.S.C. 13263a(b)(1)(A)) Section 514(b)(1)(B) of the Act provides that DOE shall grant a waiver for a State entity granted credits under section 508, if that State demonstrates a reduction in petroleum motor fuel consumption equal to the amount of petroleum the fleet's² cumulative inventory of AFVs would reduce if the AFVs operated 100 percent of the time on alternative fuel. (42 U.S.C. 13263(b)(1)(B)) In addition, the party seeking a waiver must be in compliance with all applicable vehicle emission standards established by the Environmental Protection Agency under the Clean Air Act.

Relying on rulemaking authority under title V of the Act and section 644 of the DOE Organization Act (42 U.S.C. 7254), DOE proposed that State fleets, regardless of whether they earned section 508 credits, would be eligible for a waiver if they demonstrated a reduction in petroleum motor fuel consumption equal to the amount of petroleum the fleet's cumulative inventory of required AFV acquisitions would reduce if those required acquisitions operated 100 percent of the time on alternative fuel. The proposed regulation would treat States equally regardless of whether a State was granted credits.

DOE did not receive any comments regarding which entities would be eligible to apply for a waiver. As such, today's final rule permits covered persons, States that have been issued credits, and States that have not been issued credits to apply for a waiver and meet the same requirements.

² The term "fleet" is defined in title V of the Act to include only covered LDVs (42 U.S.C. 13211(9)).

B. Petroleum Reduction Calculation

1. Cumulative Inventory

Consistent with section 514, the proposed rule required both covered persons and State entities to reduce petroleum fuel consumption by an amount equal to the petroleum the fleet's cumulative inventory of AFVs, including required AFV acquisitions in waiver years, would reduce if those vehicles operated 100 percent of the time on alternative fuel. Under the proposal, a fleet's cumulative inventory is equal to the number of previously required AFVs actually in the current fleet, plus the number of AFVs acquisitions that would be required if a waiver were not granted. The inclusion of AFV acquisitions in waiver years when calculating the necessary petroleum reduction is consistent with the statute's purpose of providing States and covered persons compliance flexibility in exchange for achieving the maximum level of petroleum fuel reduction.

If AFV requirements for waiver years were not included in the cumulative AFV count, a waiver in successive years would have rapidly diminishing petroleum reduction requirements, because a fleet granted successive waivers would have fewer and fewer AFVs in its fleet as vehicles are retired. Fewer AFVs in the fleet would result in a lower required petroleum reduction. This result would be unreasonable in light of the petroleum replacement goal of the statute.

DOE received two sets of supportive comments on its interpretation of "cumulative." A fuel provider association, however, objected to the proposed rule with regard to what is counted toward a State or covered person's baseline for petroleum reduction. The commenter recommended that "cumulative" should mean all the AFVs that a covered person or State would have had in its fleet if it had purchased all the AFVs it was required to purchase—without consideration of previously used vehicle credits or exemptions granted. Otherwise, the commenter stated, a covered person or State that has not previously relied on credits or exemptions would be required to achieve a fuel reduction greater than a comparable covered person or State that previously relied on credits or exemptions.

Consideration of all AFVs, including those requirements addressed through credits and exemptions, is overly restrictive. In employing credits and exemptions, States and covered persons were relying upon part 490. States and

covered persons typically rely on credits or exemptions because it is extremely difficult or impossible for them to comply through AFV purchases. If AFV requirements that were previously satisfied through credits or exemptions were included in the waiver calculation, the waiver option would likely be prohibitive for these States and covered persons. The advantage of compliance under the waiver program is that States and covered persons are typically required to reduce petroleum consumption by a greater amount than would occur through compliance with credits or exemptions. Additionally, going forward the alternative compliance option should lead to greater petroleum reduction in fleets that previously relied on exemptions and credits because alternative compliance takes into account AFV purchase requirements waived under the program. Moreover, under a waiver, fleets will not be eligible for exemptions and credits are limited. DOE, therefore, is adopting the eligibility provisions and baseline calculation provision as proposed.

One fleet association requested DOE be more specific about the AFVs required to be used in calculating a fleet's petroleum reduction baseline. Specifically, it requested wording that specifies that the AFVs to be counted are those "acquired for EPA compliance and included in a prior Annual AFV Acquisition Report for State and Alternative Fuel Provider Fleets (Form DOE/FCVT/101)." DOE recognizes that some fleets may have purchased AFVs outside of the AFV requirements. To address this issue the final rule specifies inclusion of previously required AFVs in a fleet's inventory during the model year for which a waiver is being requested (section 490.803(a)(1)), and AFVs that would have been required in the model year for which a waiver is requested and in previous model years in which a waiver was granted (section 490.803(a)(2)).

2. Calculation Procedure

As proposed, and as adopted today, calculation of the necessary petroleum reduction is essentially a three step procedure. To calculate the petroleum reduction necessary to obtain a waiver, the State or covered person first calculates the amount of alternative fuel necessary to operate existing required AFVs in a fleet's inventory, assuming operation on alternative fuel 100 percent of the time. Second, the State or covered person calculates the additional amount of fuel that would have been used by AFVs under the requirements

for which a waiver is currently being requested plus, calculate any additional amount that would have been used if any previous waivers were not granted. The State or covered person then adds the first and second calculations together. Third, the State or covered person subtracts the fuel use attributed to any existing required AFVs and LDVs acquired in lieu of AFVs under a waiver that are being retired. Again, all calculations are based on alternative fuel use 100 percent of the time. A detailed example of how this works is provided below.

In year 1, a covered person has 25 AFVs in its fleet and has an AFV acquisition requirement of 9. The AFV requirement is based on the number of LDVs that the fleet anticipates acquiring during the waiver year. In this example, the covered person anticipates acquiring 10 LDVs, and has an AFV acquisition requirement of 9 AFVs (10 vehicles \times 90 percent fuel provider requirement). Thus, the cumulative total of AFVs for the purpose of the waiver request is 34. If the covered person's LDVs have an average fuel consumption of 500 gasoline gallon equivalents³ (gge)/year, the total amount of petroleum that the covered person must reduce in the first waiver year is 17,000 gge (34 AFVs and AFV requirements combined, multiplied by 500 gge).

In year 2, the fleet has retired 10 of the original required AFVs from its inventory, which leaves a total of 15 of the 25 AFVs originally counted in year 1. The fleet again plans to acquire 10 LDVs, thus generating a requirement to acquire 9 AFVs in year 2. Since the average number of years that this fleet keeps an AFV is 4 years, the 9 AFVs for which a waiver was granted in year 1 are included in the calculation of the year 2 required petroleum reduction. This results in a total of 33 AFVs (15 + 9 + 9) and a total petroleum reduction requirement of 16,500 gge for year 2 (assuming the same average fuel consumption of 500 gge per vehicle).

In year 3, the fleet has retired 10 more of the original required AFVs, leaving 5 in its inventory, and it is again required to acquire 9 AFVs. The calculation of the year 3 petroleum reduction includes the 9 AFVs required for each of years 1 and 2. Therefore, the total AFV count for year 3 is 32 (5 + 9 + 9 + 9), and the petroleum reduction requirement for year 3 is 16,000 gge (assuming the same average fuel consumption of 500 gge per vehicle).

In year 4, the fleet has retired the last 5 of the original required AFVs and plans to acquire 10 LDVs, generating a requirement of 9 AFVs. A total of 36 AFVs are included in the calculation (9 + 9 + 9 + 9), and the petroleum reduction requirement for year 4 is 18,000 gge (assuming the same average fuel consumption of 500 gge per vehicle).

In year 5, the fleet retires the 9 LDVs that were acquired in lieu of AFVs under the first year's waiver (the fleet retires LDVs after 4

years). The fleet acquires 10 more LDVs, generating 9 AFV requirements. Therefore, the total AFV count for year 5 is 36 (9 + 9 + 9 + 9) and the total petroleum requirement for year 5 is 18,000 gge (assuming the same average fuel consumption of 500 gge per vehicle).

The same approach is used to determine the reduction for a State entity, but the applicable AFV acquisition percentage (75 percent) in section 507(o) would be used.

C. Eligible Reductions in Petroleum Consumption

1. Light-Duty Vehicles

Section 514(b) of the Act states that DOE shall grant a waiver of the AFV acquisition requirements on a showing that a fleet owned, operated, leased or otherwise controlled by a covered person or State entity will achieve a specified petroleum reduction. The term "fleet" is defined to include only covered LDVs. (42 U.S.C. 13211.) However, consistent with the petroleum fuel reduction goals of title V of the Act, DOE also proposed to include petroleum reductions in previously excluded LDVs listed in section 490.3 toward a State's or covered person's annual petroleum reduction target. This provision of the proposal was based on DOE's rulemaking authority under title V and section 644 of the DOE Organization Act (42 U.S.C. 7254). No comments were received with regard to this, and DOE in today's final rule permits covered persons and States to consider reductions in petroleum consumption from LDVs excluded for purposes of calculating a fleet requirement under 10 CFR 490.3.

2. Medium- and Heavy-Duty Vehicles

DOE also proposed to exercise its rulemaking authority under title V and section 644 of the DOE Authorization Act to permit consideration of reductions in fuel consumption from vehicles with a gross vehicle weight rating (gvwr) greater than 8,500 lb, for the purpose of complying with a waiver. DOE received a comment from an industry association saying that adding medium- and heavy-duty vehicles was desirable, while another industry association argued that allowing consideration of petroleum reductions from larger vehicles reduces the momentum of replacing petroleum use in LDVs.

DOE believes that because of limited availability of original equipment manufacturer (OEM) light-duty models for some alternative fuels, particularly gaseous fuels, flexibility provided through the consideration of medium- and heavy-duty vehicles will make the

³ "Gasoline gallon equivalent" equates the energy content, in British thermal units (BTUs), in a gallon of an alternative fuel to that of a gallon of gasoline.

alternative compliance option attractive to more fleets. This, in turn, is likely to lead to somewhat greater petroleum displacement and support of infrastructure for replacement fuels.

For example, in model year 2007 OEM light-duty gaseous fuel offerings are currently limited to just one dedicated natural gas compact sedan. No propane LDVs currently are being offered by an OEM. There are, however, medium- and heavy-duty propane and natural gas OEM offerings and certified conversions from several manufacturers. Encouraging the use of gaseous fuel in medium- and heavy-duty vehicles potentially will also facilitate the use of gaseous fuel in the LDV fleet.

3. Nonroad Vehicles

In the NOPR, DOE explained its intent to allow use of reductions in petroleum consumption from excluded vehicles listed in section 490.3 to achieve the requirement, but inclusion of nonroad vehicles was not specifically proposed by DOE. Several of the organizations that participated in DOE's public hearing asked to specifically include petroleum reductions attributable to nonroad vehicles.

Five of the written comments urged DOE to allow the inclusion of nonroad vehicles. One fleet association stated that nonroad vehicles share infrastructure with AFVs and that consideration of nonroad vehicles would further promote replacement fuels. One commenter pointed out that nonroad vehicles can reduce much more petroleum over a vehicle's lifetime than a typical light-duty AFV in a utility fleet. Two other commenters stated that the expansion to nonroad vehicles would be consistent with the regulatory language in part 490 that permits States and covered persons to obtain credits using medium- and heavy-duty vehicles once LDV requirements are met.

Two fuel provider groups were opposed to the consideration of nonroad vehicles. These commenters stated that inclusion of such vehicles would not promote increased use of replacement fuels in on-road motor vehicles, as was the original intent of the statute.

Limited consideration of nonroad vehicles presents an opportunity to reduce petroleum and provide States and covered persons additional compliance flexibility, while also contributing to the development of infrastructure for replacement fuels used by LDVs. In the final rule, DOE is permitting limited consideration of replacement fuels in nonroad vehicles towards petroleum reduction requirements.

Section 490.804(b) of the final rule permits consideration of reductions in petroleum consumption of nonroad vehicles acquired during a waiver year in instances in which the refueling infrastructure established or upgraded during a waiver year that provides replacement fuel for nonroad vehicles also serves to increase the use of replacement fuels in a fleet's light-duty vehicles. For example, during a waiver year if a State or covered person adds new or upgrades existing refueling infrastructure for nonroad vehicles and shows DOE that existing or planned LDV acquisitions will also use the upgraded or new infrastructure, then the petroleum reductions from nonroad vehicles acquired as a result of those additions and upgrades may be used for meeting petroleum reduction requirements.

Generally, DOE views petroleum reductions from nonroad vehicles as a supplemental way for a State or covered person to expand its use of replacement fuel in on-road vehicles, particularly its LDVs. DOE does not view replacement fuel use in nonroad vehicles as a complete or even substantial substitution for a State's or covered person's annual petroleum reduction in its on-road vehicles. As provided in section 490.804(b)(2), DOE will recognize reductions attributable to nonroad vehicles in instances in which a State or covered person has taken reasonable steps to comply with the waiver requirement through reductions of petroleum in on-road motor vehicles.

4. Rollover of Excess Petroleum Reduction

One fuel provider association and one fuel provider wrote comments supportive of language in the proposed rule that permits applying petroleum reductions achieved in excess of the requirement in one model year to the requirement in a later model year. One fuel association, however, commented that while agreeing with the provision, excess petroleum reduction amounts should not be tradable. It was not DOE's intention to make excess petroleum reductions tradable but rather to provide a fleet further flexibility under the waiver program. To clarify its intent, DOE has added language to the final rule stating that petroleum reduction gallons are not tradable.

Section 490.804 in the final rule requires application by the State or covered person prior to receiving the benefit of rolling over petroleum reductions to satisfy annual requirements. DOE does not intend for a State's or covered person's entire petroleum reduction, or even a

substantial amount of annual petroleum reduction, to be met by petroleum reduction rollovers alone. The rollover provision is intended to add compliance flexibility to States or covered persons, particularly those that may have difficulty meeting their annual requirements because of unusual circumstances or circumstances beyond their control. For example, a State or covered person asking for a substantial petroleum rollover would have to show DOE it was subject to technology failures, delivery delays by manufacturers, weather-related disasters, emergencies or other such unusual circumstances that led or may lead to the need for a substantial petroleum reduction rollover. Other reasons for using the petroleum reduction rollovers to meet a substantial percentage of annual petroleum reduction requirements will be considered on a case-by-case basis.

D. Waiver Applications

Proposed section 490.803 set forth the minimum information that a State or covered person must provide DOE as part of a waiver application. A reasonable amount of information is needed for DOE to understand the calculation of an applicant's annual petroleum reduction target and the methods that will be used to reduce petroleum. A waiver application must include verifiable data that is sufficient to enable DOE to determine whether a State's or covered person's fleet will achieve the amount of petroleum reduction required for alternative compliance. Information required as proposed includes the model year for the waiver required; numbers of required AFVs existing in the fleet and number of acquisition requirements for the waiver year and previous waiver years; amount of petroleum and non-petroleum fuel, calculated in gges to be used in covered LDVs in the fleet for the waiver year including average fuel use per vehicle; and certification that Clean Air Act requirements are met.

In addition, DOE proposed that an application must include a plan with sufficient information to demonstrate that planned actions are verifiable, involve a reduction in petroleum in the fleet's vehicles, and show a net petroleum reduction equal to the required annual petroleum reduction. Today's final rule adopts the proposed application requirements in § 490.805.

One fuel provider and one fleet association argued that a State or covered person applying for a waiver should not be required to include the amount of fuel used by all of the light-duty vehicles in the fleet because it is

overly burdensome and is not a statutory requirement. In response to these commenters, DOE provides in the final rule that States and covered persons need only report fuel used by "covered light-duty vehicles." A State or covered person need only report fuel use in the vehicles that have been used to calculate the baseline amounts in waiver applications or in AFVs that the fleet acquired for meeting requirements under part 490 previous to the waiver. It should be noted, however, that if DOE needs to verify information or use its enforcement authority, DOE does have the authority to require a fleet to submit such information to obtain an overall perspective on the activities of the fleet related to compliance with subpart I.

DOE also intended by its proposal that a plan provide for petroleum reduction in a State's or covered person's vehicles and not include incentives for third parties. A fleet association and a fuel provider both commented that in proposed section 490.803(d)(2), which would exclude consideration of third party incentives in a reduction plan, use of the phrase "State's or covered person's own vehicles" could be interpreted to preclude leased vehicles. DOE agrees with these commenters. Today's final rule adopts § 490.804 to clarify the reductions of petroleum consumption that are eligible and ineligible for consideration under the waiver program.

E. Application Deadlines

As proposed, waiver applications would be required to be submitted to DOE by March 31 in the model year prior to which a waiver is requested. One fleet association and two fuel provider associations stated that the proposed deadline was not sufficient to prepare a waiver request because typically OEMs do not announce availability of new model year vehicles until late summer. Without knowing what vehicle models will be available, States and covered persons cannot project fuel consumption and potential fuel savings. In response to this concern the final rule establishes a March 31 deadline for a State or covered person to register its intent to submit a waiver application to DOE. Fleets that need the new model information may submit their applications to DOE no later than July 31 prior to the model year for which a waiver is sought. If the waiver is not dependent on such OEM information, DOE requires the State or covered person to submit a preliminary intent to apply for a waiver by March 31 and its application for a waiver no later

than June 30 prior to the model year for which it seeks a waiver.

Given the timing of today's final rule DOE will consider registrations of intent to submit a waiver received before May 31, 2007. This extension of the registration of intent deadline applies only to applications for MY 2008.

F. Use of Credits

One fuel provider and one fuel provider association commented that the proposed language regarding the use of credits was too restrictive and would prevent use of subpart F credits to offset a shortfall in meeting the petroleum reduction required for a waiver. After carefully considering this issue, DOE has amended the wording in section 490.808 of the final rule to require that a State or covered person "provide documentation that shows a good faith effort to meet the requirements." DOE has determined that this language provides States and covered persons a reasonable bar for applying for credits to offset a petroleum reduction shortfall, while still promoting the goals of the program.

G. Reporting Requirement

Consistent with section 514(c) of the Act, DOE proposed a reporting requirement by December 31 following a model year for which a waiver is granted. A State or covered person would meet this requirement by providing DOE a statement certifying the number of petroleum gallons and alternative fuel in gges used by its covered light-duty vehicles and the amount of petroleum reduced in the waiver year due to alternative compliance. In the final rule, DOE eliminates the proposed requirement to report "a baseline quantity of the petroleum motor fuel reduction of the State or covered person during the following model year, if the State or covered person intends to request alternative compliance for that model year." DOE determined that this information would be redundant with previously collected information. No comments were received on the other aspects of the proposed reporting requirements.

H. Sanctions for Violations

The proposed sanctions for violating a granted waiver reflected the statutory language of section 514(d) of the Act that states that DOE shall revoke the waiver of a State or covered person that fails to comply with the alternative compliance petroleum reduction or reporting requirements. DOE may also impose a civil penalty for any such violation (42 U.S.C. 13264(d)). No

comments were received on this, and no changes were made in corresponding provisions in the final rule regarding sanctions.

I. Exemptions

DOE proposed that it would not grant exemptions to a State under § 490.204 or to a covered person under § 490.308 if the State or covered person has been granted an alternative compliance waiver. Exemptions are based upon lack of alternative fuels and AFVs. The waivers provide sufficient flexibility by allowing States and covered persons to consider a wider range of options for meeting their petroleum reduction requirements. If a State or covered person is granted a waiver, the flexibility provided should alleviate any need for an exemption. DOE did receive a supportive comment on this issue from one industry association but no comments from any others. DOE is not making a change in its position on exemptions in the final rule.

J. Record Retention

Under proposed § 490.809, a State or covered person would be required to keep all documents pertaining to its application and compliance with a waiver for a minimum of three years following the end of the waiver year. No comments were received on this section and the proposed record retention provision is adopted in the final rule § 490.810.

K. Other Comments

DOE focused its response to comments on those that are directly relevant to the proposed rule. Other comments included areas that may be covered in future guidance such as a request that DOE standardize inputs and outputs to help with the application process. Yet other comments were clearly outside the scope of this rule and/or DOE's authority, including providing extra credits for light-duty zero emission vehicles; requiring OEMs to make more alternative fuel vehicle products available; and applying petroleum reduction in lieu of the vehicle acquisition requirements in part 490.

IV. Regulatory Review

A. Executive Order 12866

Today's final rule has been determined to not be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory

Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act regulations at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemaking that amends an existing rule or regulation which does not change the environmental effect of the rule or regulation being amended. Under the final rule, a State entity or alternative fuel provider requesting an alternative compliance waiver must show that in lieu of acquiring AFVs for its covered light-duty vehicle fleet, it would use alternative fuel and/or other replacement fuels in various types of motor vehicles to reduce petroleum fuel consumption by an amount that equals 100 percent alternative fuel use in the fleet's AFVs, including AFVs that would be required in waiver years. The final rule, as authorized by the statute, grants the waiver applicant greater compliance flexibility in exchange for achieving the maximum level of petroleum reduction that would occur if the State or covered person were to comply with the Act's AFV acquisition requirements. Because the amount of petroleum displaced would be the same, the final rule would not change the environmental effect of compliance with part 490. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The requirements in 10 CFR part

490 apply only to alternative fuel providers with fleets containing at least 50 LDVs (20 of which are centrally fueled or capable of being centrally fueled) and to like-size State fleets in metropolitan statistical areas with a population of more than 250,000. The owners and operators of fleets of this size are not small entities. In addition, the final rule establishes optional procedures for State entities and covered persons that wish to receive a waiver from otherwise applicable AFV acquisition requirements. Alternative compliance does not impose any additional burdens on the entities subject to sections 501 and 507(o) of the Energy Policy Act of 1992. On the basis of the foregoing, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Section 490.805 ("Application for waiver"), section 490.807 ("Reporting requirement"), and § 490.810 (Record retention) contain information collection requirements. DOE did not receive any comments on the information collection requirements of this final rule.

OMB Control Number 1910-5101 is assigned to the alternative fuel transportation program.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal

governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This final rule provides an alternative compliance option for States and alternative fuel providers subject to AFV acquisition requirements in 10 CFR part 490. The final rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The final rule will not impact the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this final rule and has determined that it will not preempt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB).

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's final regulatory action will not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

V. Approval by the Office of Secretary

The Secretary of Energy has approved the issuance of this final rule.

List of Subjects in 10 CFR Part 490

Energy, Energy conservation, Fuel, Motor vehicles, Petroleum, and Recordkeeping and reporting requirements.

Issued in Washington, DC, on March 12, 2007.

Alexander A. Karsner,
Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, the Department of Energy is amending chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

■ 1. The authority citation for part 490 is revised to read as follows:

Authority: 42 U.S.C. 7191 *et seq.*; 42 U.S.C. 13201, 13211, 13220, 13251 *et seq.*

■ 2. Section 490.600 is revised to read as follows:

§ 490.600 Purpose and scope.

This subpart sets forth the rules applicable to investigations under titles III, IV, V, and VI of the Act and to enforcement of sections 501, 503(b), 507, 508, or 514 of the Act, or any regulation issued under such sections.

■ 3. Section 490.603 is revised to read as follows:

§ 490.603 Prohibited acts.

It is unlawful for any person to violate any provision of sections 501, 503(b), 507, 514 of the Act, or any regulations issued under such sections.

■ 4. A new subpart I is added to read as follows:

Subpart I—Alternative Compliance

Sec.

- 490.801 Purpose and scope.
- 490.802 Eligibility for alternative compliance waiver.
- 490.803 Waiver requirements.
- 490.804 Eligible reductions in petroleum consumption.
- 490.805 Application for waiver.
- 490.806 Action on an application for waiver.
- 490.807 Reporting requirement.
- 490.808 Use of credits to offset petroleum reduction shortfall.
- 490.809 Violations.
- 490.810 Record retention.

Subpart I—Alternative Compliance

§ 490.801 Purpose and scope.

This subpart implements section 514 of the Act (42 U.S.C. 13263a) which permits States and alternative fuel providers to petition for alternative compliance waivers from the alternative fueled vehicle acquisition requirements in subparts C and D of this part, respectively.

§ 490.802 Eligibility for alternative compliance waiver.

Any State subject to subpart C of this part and any covered person subject to subpart D of this part may apply to DOE for a waiver from the applicable alternative fueled vehicle acquisition requirements.

§ 490.803 Waiver requirements.

DOE grants a State or covered person a waiver:

(a) If DOE determines that the State or covered person will achieve a reduction in petroleum consumption, through eligible reductions as specified in § 490.804 of this subpart, equal to the amount of alternative fuel used if the following vehicles were operated 100 percent of the time on alternative fuel during the model year for which a waiver is requested:

(1) Previously required alternative fueled vehicles in the fleet's inventory at the start of the model year for which a waiver is requested;

(2) Alternative fueled vehicles that the State or covered person would have been required to acquire in the model year for which a waiver is requested, and in previous model years in which a waiver was granted, absent any waivers;

(b) The State or covered person is in compliance with all applicable vehicle emission standards established by the Administrator of the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

(c) The State or covered person is in compliance with all applicable requirements of this subpart.

§ 490.804 Eligible reductions in petroleum consumption.

(a) *Motor vehicles.* Demonstrated reductions in petroleum consumption during the model year for which a waiver is requested that are attributable to motor vehicles owned, operated, leased or otherwise under the control of a State or covered person are applicable towards the petroleum fuel reduction required in § 490.803(a) of this subpart.

(b) *Qualified nonroad vehicles.* Demonstrated reductions in petroleum consumption during the model year for which a waiver is requested that are attributable to nonroad vehicles owned, operated, leased or otherwise under the control of a State or covered person acquired during waiver years are applicable towards the petroleum fuel reduction required in § 490.803(a) of this subpart:

(1) If acquisition of the nonroad vehicles leads directly to the establishment or upgrading of refueling or recharging infrastructure during a waiver year that would also allow for increased petroleum replacement by serving the fleet's on-road light-duty vehicles; and

(2) To the extent that additional reductions attributable to motor vehicles are not reasonably available.

(c) *Rollover of excess petroleum reductions.* (1) Petroleum reductions achieved by a fleet in excess of the amount required for alternative compliance in a previous model year are applicable towards the petroleum fuel reduction requirements for that fleet under § 490.803(a) of this subpart upon approval by DOE.

(2) Requests for approval to apply rollover reductions to future model years for which a waiver is requested must be made to DOE in writing as part of the reporting requirement specified in § 490.807 of this subpart.

(3) DOE will apply approved rollover reductions to a model year for which a waiver was granted but the required reduction in petroleum use was not achieved only to the extent that additional reductions attributable to motor vehicles were not reasonably available.

(4) Following receipt of a request to roll over excess petroleum reduction, DOE notifies the State or covered person of the amount of petroleum reduction that may be applied to a future model year's petroleum reduction requirement.

(5) Excess petroleum reductions are not tradable.

(d) *Ineligible reductions.* The petroleum reduction plan required by paragraph (c)(4) of this section must not include reductions in petroleum attributable to incentives for third parties to reduce their petroleum use, petroleum reductions that are not transportation-related, or petroleum reductions attributable to non-qualified nonroad vehicles.

§ 490.805 Application for waiver.

(a) A State or covered person must apply for a waiver applicable to an entire fleet for a full model year in accordance with the deadlines specified in paragraph (b) of this section. DOE will not grant a waiver for less than an entire fleet or less than a full model year.

(b)(1) A State or covered person must register a preliminary intent to apply for a waiver by March 31 prior to the model year for which a waiver is sought.

(2) If a complete waiver application is dependent on information regarding the availability of motor vehicle models to be released by motor vehicle manufacturers, the waiver application must be received by DOE no later than July 31 prior to the model year for which a waiver is sought.

(3) If a complete waiver application is not dependent on information regarding the availability of motor vehicle models to be released by motor vehicle manufacturers, the waiver application must be received by DOE no later than June 30 prior to the model year for which a waiver is sought.

(c) A waiver application must include verifiable data that is sufficient to enable DOE to determine whether the State or covered person is likely to achieve the amount of petroleum reduction required for alternative compliance and whether the fleet is in compliance with Clean Air Act vehicle emission standards. At a minimum, the State entity or covered person must provide DOE with the following information:

(1) The model year for which the waiver is requested;

(2) The total number of required alternative fueled vehicle acquisitions in the fleet including:

(i) The number of alternative fueled vehicle acquisitions that the State or covered person would, without a waiver, be required to acquire during the model year for which the waiver is requested;

(ii) The number of alternative fueled vehicle acquisitions that the State or covered person would, without a waiver, have been required to acquire during the model years for which waivers were previously granted;

(iii) The number of required alternative fueled vehicles existing in the fleet that were acquired during years in which no waiver was in force; and excluding

(iv) Any required alternative fuel vehicles acquired during a waiver or non-waiver year or light-duty vehicles acquired in lieu of alternative fuels vehicles during a waiver year that are to be retired before the beginning of the waiver year;

(3) The anticipated amount of gasoline and diesel and alternative fuel (calculated in gasoline gallon equivalents (gge)) to be used by the covered light-duty vehicles in the fleet for the waiver year including an estimate of per vehicle average fuel use in these vehicles;

(4) A petroleum reduction plan as described in paragraph (d) of this section; and

(5) Documents, or a certification by a responsible official of the State or covered person, demonstrating that the fleet is in compliance with all applicable vehicle emission standards established by the Administrator of the Environmental Protection Agency under the Clean Air Act.

(d) The petroleum reduction plan required by paragraph (c)(4) of this section must contain a documented explanation as to how the State or covered person will meet the reduction in petroleum consumption required by § 490.803(a) of this subpart.

(1) The planned actions must:

(i) Be verifiable;

(ii) Demonstrate a reduction in petroleum use by motor vehicles or qualified nonroad vehicles owned, operated, leased or otherwise controlled by the State or covered person;

(iii) Provide for a net reduction in petroleum consumption as specified in § 490.803(a) of this subpart.

(2) The documentation for the plan may include, but is not limited to, published data on fuel efficiency, Government data, letters from

manufacturers, and data on actual usage.

(e) A State or covered person must send its report, and two copies, to DOE on official company or agency letterhead, and the report must be signed by a responsible company or agency official. Send to: Regulatory Manager, Alternative Fuel Transportation Program, FreedomCAR and Vehicle Technologies Program, EE-2G/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

§ 490.806 Action on an application for waiver.

(a) DOE grants or denies a complete waiver application within 45 business days after receipt of a complete application.

(b) If DOE determines that an application is not complete in that sufficient information is not provided for DOE to make a determination, DOE notifies the State or covered person of the information that must be submitted to complete the application.

(c) If DOE denies a waiver, and the State or covered person wishes to exhaust administrative remedies, the State or covered person must appeal within 30 days of the date of the determination, pursuant to 10 CFR part 1003, subpart C, to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. DOE's determination shall be stayed during the pendency of an appeal under this paragraph.

§ 490.807 Reporting requirement.

(a) By December 31 following a model year for which an alternative compliance waiver is granted, a State or covered person must submit a report to DOE that includes:

(1) A statement certifying:

(i) The total number of petroleum gallons and/or alternative fuel gge used by the fleet during the waiver year in its covered light-duty vehicles; and

(ii) The amount of petroleum motor fuel reduced by the fleet in the waiver year through alternative compliance.

(b) A State or covered person must send its report to DOE on official company or agency letterhead, and the report must be signed by a responsible company or agency official. Send to: Regulatory Manager, Alternative Fuel Transportation Program, FreedomCAR and Vehicle Technologies Program, EE-2G/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

§ 490.808 Use of credits to offset petroleum reduction shortfall.

(a) If a State or covered person granted a waiver under this subpart wants to use alternative fueled vehicle credits purchased or earned pursuant to subpart F of this part to offset any shortfall in meeting the petroleum reduction required under § 490.803(a) of this subpart, it must make a written request to DOE.

(1) The State or covered person must provide details about the particular circumstances that led to the shortfall and provide documentation that shows a good faith effort to meet the requirements.

(2) DOE may request that a State or covered person supply additional information about the fleet and its operations if DOE deems such information necessary for a decision on the request.

(b) If DOE grants the request, it notifies the State or covered person of the credit amount required to offset the shortfall. DOE derives the credit amount using the fleet's fuel use per vehicle data.

(c) DOE gives the State entity or covered person until March 31 following the model year for which the waiver is granted, to acquire the number of credits required for compliance with this subpart.

§ 490.809 Violations.

If a State or covered person that receives a waiver under this subpart fails to comply with the petroleum motor fuel reduction or reporting requirements of this subpart, DOE will revoke the waiver. DOE may impose on the State or covered person a penalty under subpart G of this part.

§ 490.810 Record retention.

A State or covered person that receives a waiver under this subpart must retain documentation pertaining to its waiver application and alternative compliance, including petroleum fuel reduction by its fleet, for a period of three years following the model year for which the waiver is granted.

[FR Doc. E7-5021 Filed 3-19-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-26495; Directorate Identifier 2006-CE-80-AD; Amendment 39-14997; AD 2007-06-16]

RIN 2120-AA64

Airworthiness Directives; Alpha Aviation Design Limited (Type Certificate No. A48EU Previously Held by APEX Aircraft and AVIONS PIERRE ROBIN) Model R2160 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI references Alpha Aviation Service Bulletin AA-SB-28-002, dated June 28, 2006, which describes the unsafe condition as:

Development of the New Zealand produced Alpha 160A aircraft identified an issue with the fuel shut-off valve, where it may not be possible to switch the valve ON once the valve has been placed in the OFF position. This is due to friction in the shut-off system.

The fuel shut-off valve, which is normally ON, is a safety feature to allow the pilot to stop fuel flow to the engine in an emergency situation such as a forced landing without power. The fuel shut-off control is guarded and requires a deliberate action by the pilot to operate.

Notwithstanding this, a hazardous situation is possible if the fuel shut-off valve is inadvertently switched OFF in flight and the pilot is not able to switch it back ON.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 24, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 24, 2007.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA,