AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

$$BEV\ Fuel\ Economy = \frac{28{,}996\ \frac{\text{Wh}}{\text{gal}}}{244.75\ \frac{Wh}{mi}} = 118.47\ \text{MPGe}$$

where MPGe is miles per gallon equivalent.

Example 2: Plug-In Hybrid Electric Vehicle

A plug-in hybrid electric vehicle is tested in accordance with Environmental Protection Agency procedures and is found to have an Urban Dynamometer Driving Schedule energy consumption value of 265 Watt-hours per mile and a Highway Fuel Economy Driving Schedule energy consumption value of 220 Watt-hours per mile in charge depleting mode, a combined gasoline fuel economy of 50.0 miles per gallon in charge sustaining mode, and an all-electric range corresponding to a percentage utilization of 60 percent travel on electricity and 40 percent travel on gasoline.

The combined electrical energy consumption value is determined by averaging the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using weighting factors of 55 percent urban, and 45 percent highway to be 244.75 Wh/mile, which corresponds to 118.47 miles/gal equivalent as shown above for a BEV (using the MY 2030-and-beyond PEF value of 28,997 Wh/gal).

The PHEV fuel economy is calculated by dividing one by the sum of the percentage utilization for petroleum and electricity divided by their respective fuel economy.

In this case:

$$PHEV\ Fuel\ Economy = \frac{1}{\frac{0.60}{118.47\ \text{MPGe}} + \frac{0.40}{50.00\ \text{MPG}}} = 76.5\ \text{MPGe}$$

[89 FR 22059, Mar. 29, 2024]

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

Subpart A—General Provisions

Sec.
490.1 Purpose and scope.
490.2 Definitions.
490.3 Excluded vehicles.
490.4 General information inquiries.
490.5 Requests for an interpretive ruling.
490.6 Petitions for generally applicable rulemaking.
490.7 Relationship to other law.
490.8 Replacement fuel production goal.
APPENDIX A TO SUBPART A OF PART 490—METROPOLITAN STATISTICAL AREAS/CONSOLIDATED METROPOLITAN STATISTICAL AREAS WITH 1980 POPULATIONS OF 250,000 OR MORE

Subpart B [Reserved]

Subpart C—Mandatory State Fleet Program

490.200 Purpose and scope.
490.201 Alternative fueled vehicle acquisition mandate schedule.
490.202 Acquisitions satisfying the mandate.
490.203 Light Duty Alternative Fueled Vehicle plan.
490.204 Process for granting exemptions.
490.205 Reporting requirements.
490.206 Violations.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

490.300 Purpose and scope.
490.301 Definitions.
490.302 Vehicle acquisition mandate schedule.
490.303 Who must comply.
490.304 Which new light duty motor vehicles are covered.
490.305 Acquisitions satisfying the mandate.
490.306 Vehicle operation requirements.
490.307 Process for granting exemptions.
490.308 Annual reporting requirements.
490.309 Violations.

Subpart E [Reserved]

Subpart F—Alternative Fueled Vehicle Credit Program

490.500 Purpose and scope.
490.501 Definitions.
490.502 Applicability.

490.503 Creditable actions.
490.504 Credit allocation.
490.505 Use of alternative fueled vehicle credits.
490.506 Credit accounts.
490.507 Alternative fueled vehicle credit transfers.
490.508 Credit activity reporting requirements.

Subpart G—Investigations and Enforcement

490.600 Purpose and scope.
490.601 Powers of the Secretary.
490.602 Special orders.
490.603 Prohibited acts.
490.604 Penalties and fines.
490.605 Statement of enforcement policy.
490.606 Proposed assessments and orders.
490.607 Appeals.

Subpart H—Biodiesel Fuel Use Credit

490.701 Purpose and scope.
490.702 Definitions.
490.703 Biodiesel fuel use credit allocation.
490.704 Procedures and documentation.
490.705 Use of credits.
490.706 Procedure for modifying the biodiesel component percentage.
490.707 Increasing the qualifying volume of the biodiesel component.
490.708 Violations.

Subpart I—Alternative Compliance

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.

AUTHORITY: 42 U.S.C. 7191 *et seq.;* 42 U.S.C. 13201, 13211, 13220, 13251 *et seq;* 28 U.S.C. 2461 note.

SOURCE: 61 FR 10653, Mar. 14, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 490.1 Purpose and Scope.

(a) The provisions of this part implement the alternative fuel transportation program for State government and alternative fuel provider fleets under titles III, IV, and V of the Energy Policy Act of 1992 (Pub. L. 102–486).

(b) The provisions of this subpart cover:

(1) The definitions applicable throughout this part;

(2) Procedures to obtain an interpretive ruling and to petition for a generally applicable rule to amend this part; and

(3) The goal of the replacement fuel supply and demand program established under section 502(a) of the Act (42 U.S.C. 13252(a)).

[61 FR 10653, Mar. 14, 1996, as amended at 72 FR 12060, Mar. 15, 2007; 79 FR 15902, Mar. 21, 2014]

§ 490.2 Definitions.

The following definitions apply to this part—

Acquire means to take into possession or control.

Act means the Energy Policy Act of 1992 (Pub. L. 102–486) and any amendments thereof.

After-Market Converted Vehicle means an Original Equipment Manufacturer vehicle that is reconfigured by a conversion company, which is not under contract to the Original Equipment Manufacturer, to operate on an alternative fuel and whose conversion kit components are under warranty of the conversion company.

Alternative Fuel means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas, including liquid fuels domestically produced from natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials (including neat biodiesel); three P-series fuels (specifically known as Pure Regular, Pure Premium and Pure Cold Weather) as described by United States Patent number 5,697,987, dated December 16, 1997, and containing at least 60 percent non-petroleum energy content derived from methyltetrahydrofuran, which must be manufactured solely from biological materials, and ethanol, which must be manufactured solely from biological materials; and electricity (including electricity from solar energy).

Alternative Fueled Vehicle means a dedicated vehicle or a dual fueled vehicle, as those terms are defined in this section.

Assistant Secretary means the Assistant Secretary for Energy Efficiency and Renewable Energy or any other DOE official to whom the Assistant Secretary's duties under this part may be redelegated by the Secretary.

Automobile means a 4-wheeled vehicle that is propelled by conventional fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways and having a gross vehicle weight rating of less than 10,000 pounds, except:

(1) A vehicle operated only on a rail line;

(2) A vehicle manufactured in different stages by two or more original equipment manufacturers, if no intermediate or final-stage original equipment manufacturer of that vehicle manufactures more than 10,000 multistage vehicles per year; or

(3) A work truck, as that term is defined in this section.

Capable of Being Centrally Fueled means that a vehicle can be fueled at least 75 percent of the time at a location that is owned, operated, or controlled by the fleet or covered person, or at a location that is under contract with the fleet or covered person for fueling purposes.

Centrally Fueled means that a vehicle is fueled at least 75 percent of the time at a location that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes.

Control—

(1) When it is used to determine whether one person controls another or whether two persons are under common control, means any one or a combination of the following:

(i) A third person or firm has equity ownership of 51 percent or more in each of two firms; or

(ii) Two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies; or

(iii) One person or firm leases, operates, or supervises 51 percent or more of the equipment and/or facilities of another person or firm; owns 51 percent or more of the equipment and/or facilities of another person or firm; or has equity ownership of 51 percent or more of another person or firm.

(2) When it is used to refer to the management of vehicles, means a person has the authority to decide who can operate a particular vehicle, and the purposes for which the vehicle can be operated.

Covered Person means a person that owns, operates, leases, or otherwise controls—

(1) A fleet, as defined by this section, that contains at least 20 light duty motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more (as set forth in appendix A to this subpart) or in a FEDERAL REGISTER notice; and

(2) At least 50 light duty motor vehicles within the United States.

Dealer Demonstration Vehicle means any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or prelease evaluation.

Dedicated Vehicle means—

(1) An automobile that operates solely on one or more alternative fuels; or

(2) A motor vehicle, other than an automobile, that operates solely on one or more alternative fuels.

DOE means the Department of Energy.

Dual Fueled Vehicle means—

(1) An automobile that meets the criteria for a dual fueled automobile as set forth in 49 U.S.C. 32901(a)(9); or

(2) A motor vehicle, other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel.

Emergency Motor Vehicle means any vehicle that is legally authorized by a government authority to exceed the speed limit to transport people and equipment to and from situations in

which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance.

Fleet means a group of 20 or more light duty motor vehicles, excluding certain categories of vehicles as provided by § 490.3, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census as of December 31, 1992, with a 1980 Census population of more than 250,000 (listed in Appendix A to this subpart), that are centrally fueled or capable of being centrally fueled, and are owned, operated, leased, or otherwise controlled—

(1) By a person who owns, operates, leases, or otherwise controls 50 or more light duty motor vehicles within the United States and its possessions and territories;

(2) By any person who controls such person;

(3) By any person controlled by such person; or

(4) By any person under common control with such person.

Law Enforcement Motor Vehicle means any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other enforcement agencies of the Federal government, or by State highway patrols, municipal law enforcement, or other similar enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, and surveillance of people engaged in or potentially engaged in unlawful activities.

Lease means the use and control of a motor vehicle for transportation purposes pursuant to a rental contract or similar arrangement with a term of 120 days or more.

Light Duty Motor Vehicle means a light duty truck or light duty vehicle, as such terms are defined under section 216(7) of the Clean Air Act (42 U.S.C. § 7550(7)), having a gross vehicle weight rating of 8,500 pounds or less, before any after-market conversion to alternative fuel operation.

Model Year means the period from September 1 of the previous calendar year through August 31.

Motor Vehicle means a self-propelled vehicle, other than a non-road vehicle, designed for transporting persons or property on a street or highway.

Non-road Vehicle means a vehicle not licensed for on-road use, including such vehicles used principally for industrial, farming or commercial use, for rail transportation, at an airport, or for marine purposes.

Original Equipment Manufacturer means a manufacturer that provides the original design and materials for assembly and manufacture of its product.

Original Equipment Manufacturer Vehicle means a vehicle engineered, designed, produced and warranted by an Original Equipment Manufacturer.

Person means any individual, partnership, corporation, voluntary association, joint stock company, business trust, Governmental entity, or other legal entity in the United States except United States Government entities.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Used Primarily, as utilized in the definition of ''fleet,'' means that a majority of a vehicle's total annual miles are accumulated within a covered metropolitan or consolidated metropolitan statistical area.

Work Truck means a vehicle having a gross vehicle weight rating of more than 8,500 and less than or equal to 10,000 pounds that is not a medium-duty passenger vehicle as that term is defined in 40 CFR 86.1803–01.

[61 FR 10653, Mar. 14, 1996, as amended at 64 FR 26829, May 17, 1999; 79 FR 15902, Mar. 21, 2014]

§ 490.3 Excluded vehicles.

When counting light duty motor vehicles to determine under this part whether a person has a fleet or to calculate alternative fueled vehicle acquisition requirements, the following vehicles are excluded—

(a) Motor vehicles held for lease or rental to the general public, including

vehicles that are owned or controlled primarily for the purpose of short-term rental or extended-term leasing, without a driver, pursuant to a contract;

(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, including but not limited to, light duty motor vehicles owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicle for engineering, research and development or quality control reasons;

(d) Law enforcement vehicles;

(e) Emergency motor vehicles, including vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by DOE;

(f) Motor vehicles acquired and used for purposes that the Secretary of Defense has certified to DOE must be exempt for national security reasons;

(g) Nonroad vehicles; and

(h) Motor vehicles which, when not in use, are normally parked at the personal residences of the individuals that usually operate them, rather than at a central refueling, maintenance, or business location.

[61 FR 10653, Mar. 14, 1996, as amended at 79 FR 15903, Mar. 21, 2014]

§ 490.4 General information inquiries.

DOE responses to inquiries with regard to the provisions of this part that are not filed in compliance with §§ 490.5 or 490.6 of this part constitute general information and the responses provided shall not be binding on DOE.

§ 490.5 Requests for an interpretive ruling.

(a) *Right to file.* Any person who is or may be subject to this part shall have the right to file a request for an interpretive ruling on a question with regard to how the regulations apply to particular facts and circumstances.

(b) *How to file.* A request for an interpretive ruling shall be filed—

(1) With the Assistant Secretary;

(2) In an envelope labeled ''Request for Interpretive Ruling under 10 CFR part 490;'' and

(3) By messenger or mail at the Office of Energy Efficiency and Renewable Energy, EE–33, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 or at such other address as DOE may provide by notice in the FEDERAL REGISTER.

(c) *Content of request for interpretive ruling.* At a minimum, a request under this section shall—

(1) Be in writing;

(2) Be labeled ''Request for Interpretive Ruling Under 10 CFR Part 490;''

(3) Identify the name, address, telephone number, and any designated representative of the person requesting the interpretive ruling;

(4) State the facts and circumstances relevant to the request;

(5) Be accompanied by copies of relevant supporting documents, if any;

(6) Specifically identify the pertinent regulations and the related question on which an interpretive ruling is sought with regard to the relevant facts and circumstances; and

(7) Contain any arguments in support of the terms of an interpretation the requester is seeking.

(d) *Public comment.* DOE may give public notice of any request for an interpretive ruling and invite public comment.

(e) *Opportunity to respond to public comment.* DOE may provide an opportunity for any person who requested an interpretive ruling to respond to public comments.

(f) *Other sources of information.* DOE may—

(1) Conduct an investigation of any statement in a request;

(2) Consider any other source of information in evaluating a request for an interpretive ruling; and

(3) Rely on previously issued interpretive rulings dealing with the same or a related issue.

(g) *Informal conference.* DOE, on its own initiative, may convene an informal conference with the person requesting an interpretive ruling.

(h) *Effect of an interpretive ruling.* The authority of an interpretive ruling shall be limited to the person requesting such ruling and shall depend on the

accuracy and completeness of the facts and circumstances on which the interpretive ruling is based. An interpretive ruling by the Assistant Secretary shall be final for DOE.

(i) *Reliance on an interpretive ruling.* No person who obtains an interpretive ruling under this section shall be subject to an enforcement action for civil penalties or criminal fines for actions reasonably taken in reliance thereon, but a person may not act in reliance on an interpretive ruling that is administratively rescinded or modified, judicially invalidated, or its prospective effect is overruled by statute or regulation.

(j) *Denials of requests for an interpretive ruling.* DOE shall deny a request for an interpretive ruling if DOE determines that—

(1) There is insufficient information upon which to base an interpretive ruling;

(2) The questions posed should be treated in a general notice of proposed rulemaking under 42 U.S.C. 7191 and 5 U.S.C. 553;

(3) There is an adequate procedure elsewhere in this part for addressing the question posed such as a petition for exemption; or

(4) For other good cause.

(k) *Public file.* DOE may file a copy of an interpretive ruling in a public file labeled ''Interpretive Rulings Under 10 CFR Part 490'' which shall be available during normal business hours for public inspection at the DOE Freedom of Information Reading Room at 1000 Independence Avenue, SW, Washington, DC 20585, or at such other addresses as DOE may announce in a FEDERAL REGISTER notice.

§ 490.6 Petitions for generally applicable rulemaking.

(a) *Right to file.* Pursuant to 42 U.S.C. 7191 and 5 U.S.C. 553(e), any person may file a petition for generally applicable rulemaking under titles III, IV, and V of the Act with the DOE General Counsel.

(b) *How to file.* A petition for generally applicable rulemaking under this section shall be filed by mail or messenger in an envelope addressed to the Office of General Counsel, GC–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(c) *Content of rulemaking petitions.* A petition under this section must—

(1) Be labeled ''Petition for Rulemaking Under 10 CFR Part 490'';

(2) Describe with particularity the terms of the rule being sought;

(3) Identify the provisions of law that direct, authorize, or affect the issuance of the rules being sought; and

(4) Explain why DOE should not choose to make policy by precedent through interpretive rulings, petitions for exemption, or other adjudications.

(d) *Determination upon rulemaking petitions.* After considering the petition and other information deemed to be appropriate, DOE may grant the petition and issue an appropriate rulemaking notice, or deny the petition because the rule being sought—

(1) Would be inconsistent with statutory law;

(2) Would establish a generally applicable policy in an area that should be left to case-by-case determinations;

(3) Would establish a policy inconsistent with the underlying statutory purposes; or

(4) For other good cause.

§ 490.7 Relationship to other law.

(a) Nothing in this part shall be construed to require or authorize sale of, or conversion to, light duty alternative fueled motor vehicles in violation of applicable regulations of any Federal, State or local government agency.

(b) Nothing in this part shall be construed to require or authorize the use of a motor fuel in violation of applicable regulations of any Federal, State, or local government agency.

§ 490.8 Replacement fuel production goal.

The goal of the replacement fuel supply and demand program established by section 502(b)(2) of the Act (42 U.S.C. 13252(b)(2)) and revised by DOE pursuant to section 504(b) of the Act (42 U.S.C. 13254(b)) is to achieve a production capacity of replacement fuels sufficient to replace, on an energy equivalent basis, at least 30 percent of motor fuel consumption in the United States by the year 2030.

[72 FR 12060, Mar. 15, 2007]

APPENDIX A TO SUBPART A OF PART 490—METROPOLITAN STATISTICAL AREAS/CONSOLIDATED METROPOLITAN STATISTICAL AREAS WITH 1980 POPULATIONS OF 250,000 OR MORE

Albany-Schenectady-Troy MSA NY
Albuquerque MSA NM
Allentown-Bethlehem-Easton MSA PA
Appleton-Oshkosh-Neenah MSA WI
Atlanta MSA GA
Augusta-Aiken MSA GA-SC
Austin-San Marcos MSA TX
Bakersfield MSA CA
Baton Rouge MSA LA
Beaumont-Port Arthur MSA TX
Binghamton MSA NY
Birmingham MSA AL
Boise City MSA ID
Boston-Worcester-Lawrence CMSA MA-NH-ME-CT
Buffalo-Niagara Falls MSA NY
Canton-Massillon MSA OH
Charleston MSA SC
Charleston MSA WV
Charlotte-Gastonia-Rock Hill MSA NC-SC
Chattanooga MSA TN-GA
Chicago-Gary-Kenosha CMSA IL-IN-WI
Cincinnati-Hamilton CMSA OH-KY-IN
Cleveland-Akron CMSA OH
Colorado Springs MSA CO
Columbia MSA SC
Columbus MSA OH
Columbus MSA GA-AL
Corpus Christi MSA TX
Dallas-Fort Worth CMSA TX
Davenport-Moline-Rock Island MSA IA-IL
Dayton-Springfield MSA OH
Daytona Beach MSA FL
Denver-Boulder-Greeley CMSA CO
Des Moines MSA IA
Detroit-Ann Arbor-Flint CMSA MI
Duluth MSA MN-WI
El Paso MSA TX
Erie MSA PA
Eugene-Springfield MSA OR
Evansville-Henderson MSA IN-KY
Fort Wayne MSA IN
Fresno MSA CA
Grand Rapids-Muskegon-Holland MSA MI
Greensboro-Winston Salem-High Point MSA NC
Greenville-Spartanburg-Anderson MSA SC
Harrisburg-Lebanon-Carlisle MSA PA
Hartford MSA CT
Hickory-Morganton MSA NC
Honolulu MSA HI
Houston-Galveston-Brazoria CMSA TX
Huntington-Ashland MSA WV-KY-OH
Indianapolis MSA IN
Jackson MSA MS
Jacksonville MSA FL
Johnson City-Kingsport-Bristol MSA TN-VA
Johnstown MSA PA
Kalamazoo-Battle Creek MSA MI
Kansas City MSA MO-KS
Knoxville MSA TN
Lakeland-Winter Haven MSA FL
Lancaster MSA PA
Lansing-East Lansing MSA MI
Las Vegas MSA NV-AZ
Lexington MSA KY
Little Rock-N. Little Rock MSA AR
Los Angeles-Riverside-Orange County CMSA CA
Louisville MSA KY-IN
Macon MSA GA
Madison MSA WI
McAllen-Edinburg-Mission MSA TX
Melbourne-Titusville-Palm Bay MSA FL
Memphis MSA TN-AR-MS
Miami-Fort Lauderdale CMSA FL
Milwaukee-Racine CMSA WI
Minneapolis-St. Paul MSA MN-WI
Mobile MSA AL
Modesto MSA CA
Montgomery MSA AL
Nashville MSA TN
New London-Norwich MSA CT-RI
New Orleans MSA LA
New York-N. New Jersey-Long Island CMSA NY-NJ-CT-PA
Norfolk-Virginia Beach-Newport News MSA VA-NC
Oklahoma City MSA OK
Omaha MSA NE-IA
Orlando MSA FL
Pensacola MSA FL
Peoria-Pekin MSA IL
Philadelphia-Wilmington-Atlantic City CMSA PA-NJ DE-MD
Phoenix-Mesa MSA AZ
Pittsburgh MSA PA
Portland-Salem CMSA OR-WA
Providence-Fall River-Warwick MSA RI-MA
Raleigh-Durham-Chapel Hill MSA NC
Reading MSA PA
Richmond-Petersburg MSA VA
Rochester MSA NY
Rockford MSA IL
Sacramento-Yolo CMSA CA
Saginaw-Bay City-Midland MSA MI
St. Louis MSA MO-IL
Salinas MSA CA
Salt Lake City-Ogden MSA UT
San Antonio MSA TX
San Diego MSA CA
San Francisco-Oakland-San Jose CMSA CA
San Juan MSA PR
Santa Barbara-Santa Maria-Lompoc MSA CA
Scranton-Wilkes Barre-Hazleton MSA PA
Seattle-Tacoma-Bremerton CMSA WA
Shreveport-Bossier City MSA LA
Spokane MSA WA
Springfield MSA MA
Stockton-Lodi MSA CA
Syracuse MSA NY
Tampa-St. Petersburg-Clearwater MSA FL
Toledo MSA OH
Tucson MSA AZ
Tulsa MSA OK
Utica-Rome MSA NY

Washington-Baltimore CMSA DC-MD-VA-WV
West Palm Beach-Boca Raton MSA FL
Wichita MSA KS
York MSA PA
Youngstown-Warren MSA OH

Subpart B [Reserved]

Subpart C—Mandatory State Fleet Program

§ 490.200 Purpose and scope.

This subpart sets forth rules implementing the provisions of Section 507(o) of the Act which requires, subject to some exemptions, that certain percentages of new light duty motor vehicles acquired for State fleets be alternative fueled vehicles.

§ 490.201 Alternative fueled vehicle acquisition mandate schedule.

(a) Except as otherwise provided in this part, of the new light duty motor vehicles acquired annually for State government fleets, including agencies thereof but excluding municipal fleets, the following percentages shall be alternative fueled vehicles for the following model years;

(1) 10 percent for model year 1997;

(2) 15 percent for model year 1998;

(3) 25 percent for model year 1999;

(4) 50 percent for model year 2000; and

(5) 75 percent for model year 2001 and thereafter.

(b) Each State shall calculate its alternative fueled vehicle acquisition requirements for the State government fleets, including agencies thereof, by applying the alternative fueled vehicle acquisition percentages for each model year to the total number of new light duty motor vehicles to be acquired during that model year for those fleets.

(c) If the calculation performed under paragraph (b) of this section produces a number that requires the acquisition of a partial vehicle, an adjustment to the acquisition number will be made by rounding the number of vehicles down the next whole number if the fraction is less than one half and by rounding the number of vehicles up to the next whole number if the fraction is equal to or greater than one half.

(d) A State fleet that first becomes subject to this part after model year 1997 shall acquire alternative fueled vehicles in the next model year at the percentage applicable to that model year according to the schedule in paragraph (a) of this section, unless the State is granted an exemption or reduction of the acquisition percentage pursuant to the procedures and criteria in section 490.204.

§ 490.202 Acquisitions satisfying the mandate.

The following actions within a model year qualify as acquisitions for the purpose of compliance with the requirements of section 490.201 of this part:

(a) The purchase or lease of an Original Equipment Manufacturer light duty vehicle (regardless of the model year of manufacture) that is an alternative fueled vehicle and that was not previously under the control of the State or State agency;

(b) The purchase or lease of an aftermarket converted light duty vehicle (regardless of model year of manufacture), that was not previously under control of the State or State agency;

(c) The conversion of a newly purchased or leased light duty vehicle to operate on alternative fuels within four months after the vehicle is acquired for a State fleet; and

(d) The application of alternative fueled vehicle credits allocated under subpart F of this part.

[61 FR 10653, Mar. 14, 1996, as amended at 79 FR 15903, Mar. 21, 2014]

§ 490.203 Light Duty Alternative Fueled Vehicle Plan.

(a) *General Provisions.* (1) In lieu of meeting its requirements under section 490.201 exclusively with acquisitions for State fleets, a State may follow a Light Duty Alternative Fueled Vehicle Plan that has been approved by DOE under this section.

(2) Any Light Duty Alternative Fueled Vehicle Plan must provide for voluntary acquisitions or conversions, or combinations thereof, by State, local, and private fleets that equal or exceed the State's alternative fuel vehicle acquisition requirement under section 490.201.

(3) Any acquisitions of light duty alternative fueled vehicles by participants in the State plan may be included for purposes of compliance, irrespective of whether the vehicles are in excluded categories set forth in section 490.3 of this part.

(4) Except as provided in paragraph (h) of this section or except for a fleet exempt under section 490.204, a State that does not have an approved plan in effect under this section is subject to the State fleet acquisition percentage requirements of section 490.201.

(5) If a significant commitment under an approved plan is not met by a participant of a plan, the State shall meet its percentage requirements under section 490.201 or submit to DOE an amendment to the plan for DOE approval.

(b) *Required elements of a plan.* Each plan must include the following elements:

(1) Certification by the Governor, or the Governor's designee, that the plan meets the requirements of this subpart;

(2) Identification of State, local and private fleets that will participate in the plan;

(3) Number of new alternative fueled vehicles to be acquired by each plan participant;

(4) A written statement from each plan participant to assure commitment;

(5) A statement of contingency measures by the State to offset any failure to fulfill significant commitments by plan participants, in order to meet the requirements of section 490.201;

(6) A provision by the State to monitor and verify implementation of the plan;

(7) A provision certifying that all acquisitions and conversions under the plan are voluntary and will meet the requirements of §247 of the Clean Air Act, as amended (42 U.S.C. 7587) and all applicable safety requirements.

(c) *When to submit plan.* (1) For model year 1997, a State shall submit its plan on or before March 14, 1997.

(2) Beginning with model year 1998, a State shall submit its plan to DOE no later than June 1 prior to the first model year covered by such plan.

(d) *Review and approval.* DOE shall review and approve a plan which meets the requirements of this subpart within 60 days of the date of receipt of the plan by DOE at the address in paragraph (g)(1) of this section.

(e) *Disapproval of plans.* If DOE disapproves or requests a State to submit additional information, the State may revise and resubmit the plan to DOE within a reasonable time.

(f) *How a State may modify an approved plan.* If a State determines that it cannot successfully implement its plan, it may submit to DOE for approval, at any time, the proposed modifications with adequate justifications.

(g) *Where to submit plans.* (1) A State shall submit to DOE an original and two copies of the plan and shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-33, 1000 Independence Ave., SW., Washington, DC 20585, or to such other address as DOE may announce in a FEDERAL REGISTER notice.

(2) Any requests for modifications shall also be sent to the address in paragraph (g)(1) of this section.

(h) *MY 1997 Exemption.* (1) On or after September 1, 1996, a State shall be deemed automatically exempt from section 490.201 (a)(1) until DOE makes a final determination on a timely application to approve a plan for model year 1997 under this section if the State:

(i) Has submitted the application; or

(ii) Has sent a written notice to the Assistant Secretary, at the address under paragraph (g)(1) of this section, that it will file such an application on or before March 14, 1997.

(2) During the period of an automatic exemption under this paragraph, a State may procure light duty motor vehicles in accordance with its normal procurement policies.

§ 490.204 Process for granting exemptions.

(a) To obtain an exemption, in whole or in part, from the vehicle acquisition mandate in section 490.201 of this part, a State shall submit to DOE a written request for exemption, along with supporting documentation which must demonstrate that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the State fleet

are not available from fueling sites that would permit central fueling of fleet vehicles in the area in which the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the State fleet are not available for purchase or lease commercially on reasonable terms and conditions in the State; or

(3) The application of such requirements would pose an unreasonable financial hardship.

(b) Requests for exemption must be accompanied by supporting documentation, must be submitted no earlier than September 1 following the model year for which the exemption is sought and no later than January 31 following the model year for which the exemption is sought, and will only be considered following submission of the annual report under § 490.205.

(c) Exemptions are granted for one model year only, and they may be renewed annually, if supporting documentation is provided.

(d) Exemptions may be granted in whole or in part. When granting an exemption in part, DOE may, depending upon the circumstances, completely relieve a State from complying with a portion of the vehicle acquisition requirements for a model year, or it may require a State to acquire all or some of the exempted vehicles in future model years.

(e) If a State is seeking an exemption under—

(1) Paragraph (a)(1) of this section, the types of documentation that are to accompany the request must include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel; or

(2) Paragraph (a)(2) of this section, the types of documentation that are to accompany the request must include, but are not limited to, alternative fueled vehicle purchase or lease requests, a listing of vehicles that meet the normal practices and requirements of the State fleet, and any other documentation that exhibits good faith efforts to acquire alternative fueled vehicles; or

(3) Paragraph (a)(3) of this section, it must submit a statement identifying what portion of the alternative fueled vehicle acquisition requirement should be subject to the exemption and describing the specific nature of the financial hardship that precludes compliance.

(f) Requests for exemption shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-33, 1000 Independence Ave., SW., Washington, DC 20585, or to such other address as DOE may announce in a FEDERAL REGISTER notice.

(g) If DOE, in response to a request for exemption, seeks clarification or additional information from the State, such clarification or additional information must be submitted to DOE in accordance with paragraph (f) of this section within 30 days of DOE's inquiry. In the event a State does not comply with this timeframe, DOE will proceed under paragraph (h) of this section based on the documentation provided to date.

(h) The Assistant Secretary shall provide to the State, within 45 days of receipt of a request that complies with this section, a written determination as to whether the State's request has been granted or denied.

(i) If the Assistant Secretary denies an exemption, in whole or in part, and the State wishes to exhaust administrative remedies, the State 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. The Assistant Secretary's determination shall be stayed during the pendency of an appeal under this paragraph.

[61 FR 10653, Mar. 14, 1996, as amended at 79 FR 15903, Mar. 21, 2014]

§ 490.205 Reporting requirements.

(a) Any State subject to the requirements of this subpart must file an annual report for each State fleet on or before the December 31 after the close of the model year, beginning with model year 1997. The State annual report may consist of a single State report or separately prepared State agency reports.

(b) The report shall include the following information:

(1) Number of new light duty motor vehicles acquired for the fleet by a State during the model year;

(2) Number of new light duty alternative fueled vehicles that are required to be acquired during the model year;

(3) Number of new light duty alternative fueled vehicle acquisitions by the State during the model year;

(4) Number of alternative fueled vehicle credits applied towards acquisition requirements pursuant to § 490.505;

(5) For each new light duty alternative fueled vehicle acquisition—

(i) Vehicle make and model;

(ii) Model year;

(iii) Vehicle identification number;

(iv) An indication of whether the vehicle is a dedicated vehicle or a dual fueled vehicle;

(v) Type(s) of alternative fuel on which the vehicle is capable of operating;

(vi) Acquisition date; and

(vii) If the annual report shows that the State fleet did not satisfy its alternative fueled vehicle acquisition mandate, an indication of whether the fleet intends to submit a request for exemption under § 490.204; and

(6) Number of light duty alternative fueled vehicles acquired by municipal and private fleets during the model year under an approved Light Duty Alternative Fueled Vehicle Plan (if applicable).

(c) If banked alternative fueled vehicle credits are applied towards a State's alternative fueled vehicle acquisition requirements pursuant to § 490.505, or if allocation of alternative fueled vehicle credits is sought under subpart F of this part, then a credit activity report, as described in § 490.508, must be included with the annual report submitted under this section.

(d) Records shall be maintained and retained for a period of three years.

(e) All reports, marked ''Annual Report,'' shall be sent to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE-33, 1000 Independence Ave., SW., Washington, DC, 20585, or such other address as DOE may provide by notice in the FEDERAL REGISTER.

[61 FR 10653, Mar. 14, 1996, as amended at 79 FR 15903, Mar. 21, 2014]

§ 490.206 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

§ 490.300 Purpose and Scope.

This subpart implements section 501 of the Act, which requires, subject to some exemptions, that certain annual percentages of new light duty motor vehicles acquired by alternative fuel providers must be alternative fueled vehicles.

§ 490.301 Definitions.

In addition to the definitions found in section 490.2, the following definitions apply to this subpart—

Affiliate means a person that, directly or indirectly, controls, is controlled by, or is under common ownership or control of a person subject to vehicle acquisition requirements in this part.

Alternative Fuels Business means activities undertaken to derive revenue from—

(1) Producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity; or

(2) Generating, transmitting, importing, or selling at wholesale or retail electricity.

Business Unit means a semi-autonomous major grouping of activities for administrative purposes and organizational structure within a business entity and that is controlled by or under control of a person subject to vehicle acquisition requirements in this part.

Division means a major administrative unit of an enterprise comprising at least several enterprise units or constituting a complete integrated unit for a specific purpose and that is controlled by or under control of a person subject to vehicle acquisition requirements in this part.

Normal Requirements and Practices means the operating business practices and required conditions under which the principal business of a person subject to vehicle acquisition requirements in this part operates.

Principal Business means the sales-related activity that produces the greatest gross revenue.

Substantial Portion means that at least 30 percent of the annual gross revenue of a covered person is derived from the sale of alternative fuels.

Substantially Engaged means that a covered person, or affiliate, division, or other business unit thereof, regularly derives more than a negligible amount of sales-related gross revenue from an alternative fuels business.

§ 490.302 Vehicle acquisition mandate schedule.

(a) Except as provided in section 490.304 of this part, of the light duty motor vehicles newly acquired by a covered person described in section 490.303 of this part, the following percentages shall be alternative fueled vehicles for the following model years:

(1) 30 percent for model year 1997.

(2) 50 percent for model year 1998.

(3) 70 percent for model year 1999.

(4) 90 percent for model year 2000 and thereafter.

(b) Except as provided in section 490.304 of this part, this acquisition schedule applies to all light duty motor vehicles that a covered person newly acquires for use within the United States.

(c) If, when the mandated acquisition percentage of alternative fuel vehicles is applied to the number of new light duty motor vehicles to be acquired by a covered person subject to this subpart, a number results that requires the acquisition of a partial vehicle, an adjustment will be made to the required acquisition number by rounding down to the next whole number if the fraction is less than one half and by rounding up the number of vehicles to the next whole number if the fraction is equal to or greater than one half.

(d) Only acquisitions satisfying the mandate, as defined by section 490.305, count toward compliance with the acquisition schedule in paragraph (a) of this section.

(e) A covered person that is first subject to the acquisition requirements of this part after model year 1997 shall acquire alternative fueled vehicles in the next model year at the percentage applicable to that model year, according to the schedule in paragraph (a) of this section, unless the covered person is granted an exemption or reduction of the acquisition percentage pursuant to the procedures and criteria in section 490.307.

[61 FR 10653, Mar. 14, 1996, as amended at 79 FR 15903, Mar. 21, 2014]

§ 490.303 Who must comply.

(a) Except as provided by paragraph (b) of this section, a covered person must comply with the requirements of this subpart if that person is—

(1) A covered person whose principal business is producing, storing, refining, processing, transporting, distributing, importing or selling at wholesale or retail any alternative fuel other than electricity; or

(2) A covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity; or

(3) A covered person—

(i) Who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) A substantial portion of whose business is producing alternative fuels.

(b) This subpart does not apply to a covered person or affiliate, division, or other business unit of such person whose principal business is—

(1) transforming alternative fuels into a product that is not an alternative fuel; or

(2) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

§ 490.304 Which new light duty motor vehicles are covered.

(a) *General rule.* Except as provided in paragraph (b) of this section, the vehicle acquisition mandate schedule in section 490.302 of this part applies to all light duty motor vehicles newly acquired for use within the United States by a covered person described in section 490.303 of this part.

(b) *Exception.* If a covered person has more than one affiliate, division, or other business unit, then section 490.302 of this part only applies to light duty motor vehicles newly acquired by an affiliate, division, or other such business unit which is substantially engaged in the alternative fuels business.

§ 490.305 Acquisitions satisfying the mandate.

The following actions within the model year qualify as acquisitions for the purpose of compliance with the requirements of section 490.302 of this part—

(a) The purchase or lease of an Original Equipment Manufacturer light duty vehicle (regardless of the model year of manufacture) that is an alternative fueled vehicle and that was not previously under the control of the covered person;

(b) The purchase or lease of an aftermarket converted light duty vehicle (regardless of the model year of manufacture), that was not previously under the control of the covered person; and

(c) The conversion of a newly purchased or leased light duty vehicle to operate on alternative fuels within four months after the vehicle is acquired by a covered person; and

(d) The application of alternative fueled vehicle credits allocated under subpart F of this part.

[61 FR 10653, Mar. 14, 1996, as amended at 79 FR 15903, Mar. 21, 2014]

§ 490.306 Vehicle operation requirements.

The alternative fueled vehicles acquired pursuant to section 490.302 of this part shall be operated solely on alternative fuels, except when these vehicles are operating in an area where the appropriate alternative fuel is unavailable.

§ 490.307 Process for granting exemptions.

(a)(1) To obtain an exemption from the vehicle acquisition mandate in this subpart, a covered person, or its affiliate, division, or business unit which is subject to section 490.302 of this part, shall submit a written request for exemption to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE-33, 1000 Independence Ave., SW., Washington, DC 20585, or such other address as DOE may publish in the FEDERAL REGISTER, along with the supporting documentation required by this section.

(2) Requests for exemption must be accompanied by supporting documentation, must be submitted no earlier than September 1 following the model year for which the exemption is sought and no later than January 31 following the model year for which the exemption is sought, and will only be considered following submission of the annual report under § 490.308.

(b) A covered person requesting an exemption must demonstrate that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the covered person are not available from fueling sites that would permit central fueling of that person's vehicles in the area in which the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the covered person are not available for purchase or lease commercially on reasonable terms and conditions in any State included in a MSA/CMSA that the vehicles are operated in.

(c) *Documentation.* (1) Except as provided in paragraph (c) (2) of this section, if a covered person is seeking an exemption under paragraph (b)(1) of this section, the types of documentation that are to accompany the request include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel.

(2) If a covered person seeking an exemption under paragraph (b)(1) of this section operates light duty vehicles outside of the areas listed in appendix A of subpart A, and central fueling of those vehicles does not meet the normal requirements and practices of that person's business, then that covered person shall only be required to justify in a written request why central fueling is incompatible with its business.

(3) If a covered person is seeking an exemption under paragraph (b)(2) of this section, the types of documentation that are to accompany the request

include, but are not limited to, alternative fueled vehicle purchase or lease requests, a listing of vehicles that meet the normal practices and requirements of the covered person and any other documentation that exhibits good faith efforts to acquire alternative fueled vehicles.

(4) If DOE, in response to a request for exemption, seeks clarification or additional information from the covered person, such clarification or additional information must be submitted to DOE in accordance with paragraph (a) of this section within 30 days of DOE's inquiry. In the event a covered person does not comply with this timeframe, DOE will proceed under paragraph (f) of this section based on the documentation provided to date.

(d) Exemptions are granted for one model year only and may be renewed annually, if supporting documentation is provided.

(e) Exemptions may be granted in whole or in part. When granting an exemption in part, DOE may, depending upon the circumstances, completely relieve a covered person from complying with a portion of the vehicle acquisition requirements for a model year, or it may require a covered person to acquire all or some of the exempted vehicles in future model years.

(f) The Assistant Secretary shall provide to the covered person within 45 days after receipt of a request that complies with this section, a written determination as to whether the covered person's request has been granted or denied.

(g) If a covered person is denied an exemption, that covered person may file an appeal within 30 days of the date of determination, pursuant to 10 CFR part 1003, subpart C, with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585. The Assistant Secretary's determination shall be stayed during the pendency of an appeal under this paragraph.

[61 FR 10653, Mar. 14, 1996. Redesignated and amended at 79 FR 15904, Mar. 21, 2014]

§ 490.308 Annual reporting requirements.

(a) If a person is required to comply with the vehicle acquisition schedule in section 490.302, that person shall file an annual report under this section, on a form obtainable from DOE, with the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE-33, 1000 Independence Ave., SW., Washington, DC 20585, or such other address as DOE may publish in the FEDERAL REGISTER, on or before the December 31 after the close of the applicable model year.

(b) This report shall include the following information—

(1) Number of new light duty motor vehicles acquired by the covered person in the United States during the model year;

(2) Number of new light duty alternative fueled vehicles that are required to be acquired during the model year;

(3) Number of new light duty alternative fueled vehicle acquisitions in the United States during the model year;

(4) Number of alternative fueled vehicle credits applied towards acquisition requirements pursuant to § 490.505;

(5) For each new light duty alternative fueled vehicle acquisition—

(i) Vehicle make and model;

(ii) Model year;

(iii) Vehicle Identification Number;

(iv) An indication of whether the vehicle is a dedicated vehicle or a dual fueled vehicle;

(v) Type(s) of alternative fuel on which the vehicle is capable of operating;

(vi) Acquisition date; and

(vii) If the annual report shows that the covered person did not satisfy its alternative fueled vehicle acquisition mandate, an indication of whether the covered person intends to submit a request for exemption under § 490.307.

(c) If banked alternative fueled vehicle credits are applied towards a covered person's alternative fueled vehicle acquisition requirements pursuant to § 490.505, or if allocation of alternative fueled vehicle credits is sought under subpart F of this part, then a credit activity report, as described in § 490.508, must be included with the annual report submitted under this section.

(d) Records shall be maintained and retained for a period of three years.

[61 FR 10653, Mar. 14, 1996. Redesignated and amended at 79 FR 15904, Mar. 21, 2014]

§ 490.309 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

[61 FR 10653, Mar. 14, 1996. Redesignated at 79 FR 15904, Mar. 21, 2014]

Subpart E [Reserved]

Subpart F—Alternative Fueled Vehicle Credit Program

§ 490.500 Purpose and scope.

This subpart implements the statutory requirements of section 508 of the Act, which provides for the allocation of credits to fleets or covered persons that:

(a) Acquire alternative fueled vehicles in excess of the number they are required to acquire under this part or obtain alternative fueled vehicles before the model year when they are required to do so under this part;

(b) Acquire certain other vehicles as identified in this subpart; or

(c) Invest in qualified alternative fuel infrastructure or non-road equipment or an emerging technology.

[79 FR 15904, Mar. 21, 2014]

§ 490.501 Definitions.

In addition to the definitions found in §490.2, the following definitions apply to this subpart:

Alternative Fuel Infrastructure means property that is for:

(1) The storage and dispensing of an alternative fuel into the fuel tank of a motor vehicle propelled by such fuel; or

(2) The recharging of motor vehicles or neighborhood electric vehicles propelled by electricity.

Alternative Fuel Non-road Equipment means mobile, non-road equipment that operates on alternative fuel (including but not limited to forklifts, tractors, bulldozers, backhoes, front-end loaders, and rollers/compactors).

Emerging Technology means a pre-production or pre-commercially available version of a fuel cell electric vehicle, hybrid electric vehicle, medium- or heavy-duty electric vehicle, medium- or heavy-duty fuel cell electric vehicle, neighborhood electric vehicle, or plug-in electric drive vehicle, as such vehicles are defined in this section.

Fuel Cell Electric Vehicle means a motor vehicle or non-road vehicle that uses a fuel cell, as that term is defined in section 803 of the Spark M. Matsunaga Hydrogen Act of 2005 (42 U.S.C. 16152(1)).

Hybrid Electric Vehicle means a new qualified hybrid motor vehicle as defined in section 30B(d)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 30B(d)(3)).

Medium- or Heavy-Duty Electric Vehicle means an electric, hybrid electric, or plug-in hybrid electric vehicle with a gross vehicle weight rating of more than 8,500 pounds.

Medium- or Heavy-Duty Fuel Cell Electric Vehicle means a fuel cell electric vehicle with a gross vehicle weight rating of more than 8,500 pounds.

Neighborhood Electric Vehicle means a 4-wheeled on-road or non-road vehicle that—

(1) Has a top attainable speed in 1 mile of more than 20 mph and not more than 25 mph on a paved level surface; and

(2) Is propelled by an electric motor and an on-board, rechargeable energy storage system that is rechargeable using an off-board source of electricity.

Plug-in Electric Drive Vehicle means a vehicle that—

(1) Draws motive power from a battery with a capacity of at least 4 kilowatt-hours;

(2) Can be recharged from an external source of electricity for motive power;

(3) Is a light-, medium-, or heavy-duty motor vehicle or non-road vehicle, as those terms are defined in section 216 of the Clean Air Act (42 U.S.C. 7550); and

(4) In the case of a plug-in hybrid electric vehicle, also includes an on-board method of charging the energy storage system and/or providing motive power.

[79 FR 15904, Mar. 21, 2014]

§ 490.502 Applicability.

This subpart applies to all fleets and covered persons that are required to acquire alternative fueled vehicles by this part.

[79 FR 15904, Mar. 21, 2014]

§ 490.503 Creditable actions.

A fleet or covered person becomes entitled to alternative fueled vehicle credits, at the allocation levels specified in § 490.504, by:

(a)(1) Acquiring light duty alternative fueled vehicles, including those in excluded categories under § 490.3, in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire under § 490.201 or § 490.302;

(2) Acquiring alternative fueled vehicles, including those in excluded categories under § 490.3, with a gross vehicle weight rating of more than 8,500 pounds, in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire under § 490.201 or § 490.302;

(3) Acquiring in model year 2014 or in any model year thereafter, any of the following vehicles in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire under § 490.201 or § 490.302:

(i) Medium- or heavy-duty fuel cell electric vehicles that are not alternative fueled vehicles; or

(ii) Medium- or heavy-duty electric vehicles that are not alternative fueled vehicles;

(b) Acquiring alternative fueled vehicles, including those in excluded categories under § 490.3 and those with a gross vehicle weight rating of more than 8,500 pounds, in model years before the model year when that fleet or covered person is first required to acquire light duty alternative fueled vehicles under § 490.201 or § 490.302;

(c) Investing, during a model year that is model year 2014 or thereafter and is also a model year in which requirements under this part apply to the fleet or covered person, at least $25,000 in alternative fuel infrastructure or alternative fuel non-road equipment, or at least $50,000 in an emerging technology, provided that:

(1) The emerging technology, alternative fuel infrastructure, or alternative fuel non-road equipment is put into operation during the year in which the fleet or covered person has applied for credits;

(2) In the case of an emerging technology, the amount invested by the fleet or covered person is not the basis for credit under paragraphs (a), (b), or (d) of this section; and

(3) In the case of alternative fuel nonroad equipment, the equipment is being operated on alternative fuel, within the constraints of best practices and seasonal fuel availability; or

(d) Acquiring, during a model year that is model year 2014 or thereafter and is also a model year in which requirements under this part apply to the fleet or covered person, any of the following vehicles, including those in excluded categories under § 490.3:

(1) A hybrid electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle;

(2) A plug-in electric drive vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle;

(3) A fuel cell electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle; or

(4) A neighborhood electric vehicle.

(e) For purposes of this subpart, a fleet or covered person that acquired a motor vehicle on or after October 24, 1992, and converted it to an alternative fueled vehicle before April 15, 1996, shall be entitled to a credit for that vehicle notwithstanding the time limit on conversions established by §§ 490.202(c) and 490.305(c).

[79 FR 15905, Mar. 21, 2014]

§ 490.504 Credit allocation.

(a) Based on annual credit activity report information, as described in § 490.508, DOE shall allocate:

(1) One alternative fueled vehicle credit for each alternative fueled vehicle, regardless of the vehicle's gross vehicle weight rating, that a fleet or covered person acquires in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire under § 490.201 or § 490.302; and

(2) One-half of an alternative fueled vehicle credit for each medium- or heavy-duty fuel cell electric vehicle that is not an alternative fueled vehicle and each medium- or heavy-duty electric vehicle that is not an alternative fueled vehicle, either or both of

which a fleet or covered person acquires in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire under § 490.201 or § 490.302.

(b) If an alternative fueled vehicle, regardless of the vehicle's gross vehicle weight rating, is acquired by a fleet or covered person in a model year before the first model year that the fleet or covered person is required to acquire light duty alternative fueled vehicles by this part, as reported in the annual credit activity report, DOE shall allocate one credit per alternative fueled vehicle for each year the alternative fueled vehicle is acquired before the model year when acquisition requirements apply.

(c) DOE shall allocate credits to fleets and covered persons under paragraph (b) of this section only for alternative fueled vehicles acquired on or after October 24, 1992.

(d) Based on annual credit activity report information, as described in § 490.508, DOE shall allocate alternative fueled vehicle credit in the amount set forth below for the associated creditable actions that a fleet or covered person undertakes as described in § 490.503(d):

(1) A hybrid electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle—½ credit;

(2) A plug-in electric drive vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle—½ credit;

(3) A fuel cell electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle—½ credit; and

(4) A neighborhood electric vehicle—¼ credit.

(e) Based on annual credit activity report information, as described in § 490.508, DOE shall allocate one alternative fueled vehicle credit for every $25,000 that a fleet or covered person invests, as described in § 490.503(c), in:

(1) Alternative fuel infrastructure that is:

(i) Publicly accessible, provided that the maximum number of credits under this paragraph shall not exceed ten for the model year and the alternative fuel infrastructure became operational in the same model year, and provided further that the total number of credits allocated under this paragraph (e)(1)(i) and paragraph (e)(1)(ii) of this section do not exceed ten in a given model year; or

(ii) Not publicly accessible, provided that the maximum number of credits under this paragraph shall not exceed five for the model year and the alternative fuel infrastructure became operational in the same model year, and provided further that the total number of credits allocated under this paragraph (e)(1)(ii) and paragraph (e)(1)(i) of this section do not exceed ten in a given model year; or

(2) Alternative fuel non-road equipment, provided that the maximum number of credits under this paragraph (e)(2) shall not exceed five for the model year, and provided further that the equipment is being operated on alternative fuel.

(f) Based on annual credit activity report information, as described in § 490.508 of this subpart, DOE shall allocate two alternative fueled vehicle credits for the first $50,000, and one alternative fueled vehicle credit for every $25,000 thereafter, that a fleet or covered person invests, as described in § 490.503(c), in emerging technology, provided that the maximum number of credits under this paragraph (f) shall not exceed five for the model year, and provided further that the amount for which credit is allocated under this paragraph has not been the basis for credit allocation under paragraphs (a), (b), or (d) of this section.

(g) A fleet or covered person may aggregate the amount of money invested in alternative fuel infrastructure, alternative fuel non-road equipment, and emerging technology such that funds from multiple categories may be used to achieve the applicable threshold for the purpose of earning an alternative fueled vehicle credit, so long as no funds are aggregated from a category for which the fleet has already been allocated the maximum number of credits allowed for that category, as set forth in paragraphs (e) and (f) of this section.

[79 FR 15905, Mar. 21, 2014]

§ 490.505 Use of alternative fueled vehicle credits.

At the request of a fleet or covered person in an annual report under subpart C or D of this part, DOE shall treat each banked alternative fueled vehicle credit as the acquisition of an alternative fueled vehicle that the fleet or covered person is required to acquire under this part. Each full credit shall count as the acquisition of one alternative fueled vehicle in the model year for which the fleet or covered person requests that the credit be applied.

[79 FR 15906, Mar. 21, 2014]

§ 490.506 Credit accounts.

(a) DOE shall establish a credit account for each fleet or covered person that obtains an alternative fueled vehicle credit.

(b) DOE shall send to each fleet and covered person an annual credit account balance statement after the receipt of its credit activity report under § 490.508.

[79 FR 15906, Mar. 21, 2014]

§ 490.507 Alternative fueled vehicle credit transfers.

(a) Any fleet or covered person that is required to acquire alternative fueled vehicles may transfer an alternative fueled vehicle credit to—

(1) A fleet that is required to acquire alternative fueled vehicles; or

(2) A covered person subject to the requirements of this part, if the transferor provides certification to the covered person that the credit represents a vehicle that operates solely on alternative fuel.

(b) Proof of credit transfer may be on a form provided by DOE, or otherwise in writing, and must include dated signatures of the transferor and transferee. The proof should be received by DOE within 30 days of the transfer date at the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–2G, 1000 Independence Avenue SW, Washington, DC 20585–0121, or such other address as DOE publishes on its Web site or in the FEDERAL REGISTER.

[79 FR 15906, Mar. 21, 2014]

§ 490.508 Credit activity reporting requirements.

(a) A fleet or covered person that either applied one or more banked credits towards its alternative fueled vehicle acquisition requirements pursuant to § 490.505, seeks the allocation of alternative fueled vehicle credits under this subpart, or participated in a credit transfer under § 490.507 must include a credit activity report with its annual report submitted under subpart C or D of this part.

(b) The credit activity report must include the following information:

(1) Number of alternative fueled vehicle credits applied towards acquisition requirements pursuant to § 490.505;

(2) Number of alternative fueled vehicle credits requested for:

(i) Light duty alternative fueled vehicles acquired in excess of the required acquisition number;

(ii) Alternative fueled vehicles with a gross vehicle weight rating of more than 8,500 pounds acquired in excess of the required acquisition number;

(iii) Medium- or heavy-duty fuel cell electric vehicles that are not alternative fueled vehicles, acquired in excess of the required acquisition number;

(iv) Medium- or heavy-duty electric vehicles that are not alternative fueled vehicles, acquired in excess of the required acquisition number;

(v) Light duty alternative fueled vehicles acquired in model years before the first model year the fleet or covered person is required to acquire light duty alternative fueled vehicles by this part;

(vi) Alternative fueled vehicles with a gross vehicle weight rating of more than 8,500 pounds acquired in model years before the first model year the fleet or covered person is required to acquire light duty alternative fueled vehicles by this part;

(vii) The acquisition of light duty hybrid electric vehicles that are not alternative fueled vehicles;

(viii) The acquisition of light duty plug-in electric drive vehicles that are not alternative fueled vehicles;

(ix) The acquisition of light duty fuel cell electric vehicles that are not alternative fueled vehicles; and

(x) The acquisition of neighborhood electric vehicles.

(3) Number of alternative fueled vehicle credits, in whole number values, requested for each of the following:

(i) Investment in alternative fuel infrastructure;

(ii) Investment in alternative fuel non-road equipment; and

(iii) Investment in an emerging technology.

(4) For each vehicle that is not an alternative fueled vehicle and for which credit is requested under paragraphs (b)(2)(iii), (iv), (vii), (viii), (ix), or (x) of this section:

(i) Vehicle make and model;

(ii) Model year;

(iii) Vehicle Identification Number; and

(iv) Acquisition date.

(5) For investment in alternative fuel infrastructure, supporting documentation and a written statement, certified by a responsible official of the fleet or covered person, indicating or providing:

(i) The model year or period in which the investment was made;

(ii) The amount of money invested by the fleet or covered person and to whom the money was provided;

(iii) The physical location(s) (address and zip code) and a detailed description of the alternative fuel infrastructure, including the name and address of the construction/installation company (where appropriate), whether the infrastructure is publicly accessible, and the type(s) of alternative fuel offered; and

(iv) The date on which the alternative fuel infrastructure became operational.

(6) For investment in alternative fuel non-road equipment, supporting documentation and a written statement, certified by a responsible official of the fleet or covered person, indicating or providing:

(i) The model year or period in which the investment was made;

(ii) The amount of money invested by the fleet or covered person and to whom the money was provided; and

(iii) A detailed description of the alternative fuel non-road equipment, including the name and address of the manufacturer, the type(s) of alternative fuel on which the equipment is capable of being operated, a certification that the equipment is being operated on that alternative fuel, the date on which the fleet or covered person purchased the equipment, and the date on which it was put into operation.

(7) For investment in an emerging technology, supporting documentation and a written statement, certified by a responsible official of the fleet or covered person, indicating or providing:

(i) The model year or period in which the investment was made;

(ii) The amount of money invested by the fleet or covered person and to whom the money was provided;

(iii) A certification that the emerging technology's acquisition is not included as a new light duty alternative fueled vehicle acquisition in the fleet or covered person's annual report;

(iv) A certification that the emerging technology's acquisition is not included in paragraph (b)(2) of this section and the amount invested is not included in the amounts submitted under paragraph (b)(5)(ii) or (b)(6)(ii) of this section; and

(v) A detailed description of the emerging technology, including the name and address of the manufacturer, the date on which the fleet or covered person purchased the emerging technology, and the date on which it was put it into operation.

(8) The total number of alternative fueled vehicle credits requested by the fleet or covered person, calculated by adding the two subtotals under paragraphs (b)(2) and (b)(3) of this section and then rounding the aggregate figure to the nearest whole number; in rounding to the nearest whole number, any fraction equal to or greater than one half shall be rounded up and any fraction less than one half shall be rounded down.

(9) Purchases of alternative fueled vehicle credits:

(i) Credit source; and

(ii) Date of purchase;

(10) Sales of alternative fueled vehicle credits:

(i) Credit purchaser; and

(ii) Date of sale.

[79 FR 15906, Mar. 21, 2014]

Subpart G—Investigations and Enforcement

§ 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.

[72 FR 12964, Mar. 20, 2007]

§ 490.601 Powers of the Secretary.

For the purpose of carrying out titles III, IV, V, and VI of the Act, DOE may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require by subpoena the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memoranda, contracts, agreements, or other records as the Secretary of Transportation is authorized to do under section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2005(b)(1)).

§ 490.602 Special orders.

(a) DOE may require by general or special orders that any person—

(1) File, in such form as DOE may prescribe, reports or answers in writing to specific questions relating to any function of DOE under this part; and

(2) Provide DOE access to (and for the purpose of examination, the right to copy) any documentary evidence of such person which is relevant to any function of DOE under this part.

(b) File under oath any reports and answers provided under this section or as otherwise prescribed by DOE, and file such reports and answers with DOE within such reasonable time and at such place as DOE may prescribe.

§ 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.

[72 FR 12964, Mar. 20, 2007]

§ 490.604 Penalties and Fines.

(a) *Civil penalties.* Whoever violates § 490.603 shall be subject to a civil penalty of not more than $11,128 for each violation.

(b) *Willful violations.* Whoever willfully violates section 490.603 of this part shall pay a criminal fine of not more than $10,000 for each violation.

(c) *Repeated violations.* Any person who knowingly and willfully violates section 490.603 of this part, after having been subjected to a civil penalty for a prior violation of section 490.603 shall pay a criminal fine of not more than $50,000 for each violation.

[61 FR 10653, Mar. 14, 1996, as amended at 62 FR 46183, Sept. 2, 1997; 74 FR 66032, Dec. 14, 2009; 79 FR 19, Jan. 2, 2014; 81 FR 41794, June 28, 2016; 81 FR 96351, Dec. 30, 2016; 83 FR 1291, Jan. 11, 2018; 83 FR 66083, Dec. 26, 2018; 85 FR 830, Jan. 8, 2020; 86 FR 2956, Jan. 14, 2021; 87 FR 1064, Jan. 10, 2022; 88 FR 2193, Jan. 13, 2023; 89 FR 1028, Jan. 9, 2024; 89 FR 105406, Dec. 27, 2024]

§ 490.605 Statement of enforcement policy.

DOE may agree not to commence an enforcement proceeding, or may agree to settle an enforcement proceeding, if the person agrees to come into compliance in a manner satisfactory to DOE. DOE normally will not commence an enforcement action against a person subject to the acquisition requirements of this part without giving that person notice of its intent to enforce 90 days before the beginning of an enforcement proceeding.

§ 490.606 Proposed assessments and orders.

DOE may issue a proposed assessment of, and order to pay, a civil penalty in a written statement setting forth supporting findings of violation of the Act or a relevant regulation of this part. The proposed assessment and order shall be served on the person named therein by certified mail, return-receipt requested, and shall become final for DOE if not timely appealed pursuant to section 490.607 of this part.

§ 490.607 Appeals.

(a) In order to exhaust administrative remedies, on or before 30 days from the date of issuance of a proposed assessment and order to pay, a person must appeal a proposed assessment and

order to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) Proceedings in the Office of Hearings and Appeals shall be subject to subpart F of 10 CFR part 1003 except that—

(1) Appellant shall have the ultimate burden of persuasion;

(2) Appellant shall have right to a trial-type hearing on contested issues of fact only if the hearing officer concludes that cross examination will materially assist in determining facts in addition to evidence available in documentary form; and

(3) The Office of Hearings and Appeals may issue such orders as it may deem appropriate on all other procedural matters.

(c) The determination of the Office of Hearings and Appeals shall be final for DOE.

Subpart H—Biodiesel Fuel Use Credit

SOURCE: 64 FR 27174, May 19, 1999, unless otherwise noted.

§ 490.701 Purpose and scope.

(a) This subpart implements provisions of the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388) that require, subject to some limitations, the allocation of credit to a fleet or covered person under Titles III and V of the Energy Policy Act of 1992 for the purchase of a qualifying volume of the biodiesel component of a fuel containing at least 20 percent biodiesel by volume.

(b) Fleets and covered persons may use these credits to meet, in part, their mandated alternative fueled vehicle acquisition requirements.

§ 490.702 Definitions.

In addition to the definitions found in §490.2, the following definitions apply to this subpart—

Biodiesel means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act; and

Qualifying volume means—

(1) 450 gallons; or

(2) If DOE determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use.

§ 490.703 Biodiesel fuel use credit allocation.

(a) DOE shall allocate to a fleet or covered person one credit for each qualifying volume of the biodiesel component of a fuel that contains at least 20 percent biodiesel by volume if:

(1) Each qualifying volume of the biodiesel component of a fuel was purchased after November 13, 1998;

(2) The biodiesel component of fuel is used in vehicles owned or operated by the fleet or covered person; and

(3) The biodiesel component of the fuel is used in vehicles weighing more than 8,500 pounds gross vehicle weight rating.

(b) No credit shall be allocated under this subpart for a purchase of the biodiesel component of a fuel if the fuel is:

(1) For use in alternative fueled vehicles which have been used to satisfy the alternative fueled vehicle acquisition requirements under Titles III and V of the Energy Policy Act of 1992; or

(2) Required by Federal or State law.

[64 FR 27174, May 19, 1999, as amended at 66 FR 2210, Jan. 11, 2001]

§ 490.704 Procedures and documentation.

(a) To receive a credit under this subpart, the fleet or covered person shall submit its request, on a form obtained from DOE, to the Office of Energy Efficiency and Renewable Energy, U. S. Department of Energy, EE–34, 1000 Independence Ave. SW., Washington, DC 20585, or such other address as DOE may publish in the FEDERAL REGISTER, along with the documentation required by paragraph (b) of this section.

(b) Each request for a credit under this subpart must be submitted on or before the December 31 after the close of the applicable model year and must include written documentation stating the quantity of biodiesel purchased, for

the given model year, for use in vehicles weighing in excess of 8,500 lbs. gross vehicle weight;

(c) A fleet or covered person submitting a request for a credit under this subpart must maintain and retain purchase records verifying information in the request for a period of three years from December 31 immediately after the close of the model year for which the request is submitted.

§ 490.705 Use of credits.

(a) At the request of a fleet or covered person allocated a credit under this subpart, DOE shall, for the model year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under titles III and V of the Energy Policy Act of 1992.

(b) Except as provided in paragraph (c) of this section, credits allocated under this subpart may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under titles III and V of the Energy Policy Act of 1992.

(c) A fleet or covered person that is a biodiesel alternative fuel provider described in section 490.303 of this part may use its credits allocated under this subpart to satisfy all of its alternative fueled vehicle requirements under section 490.302.

(d) A fleet or covered person may not trade or bank biodiesel fuel credits.

[64 FR 27174, May 19, 1999, as amended at 66 FR 2210, Jan. 11, 2001]

§ 490.706 Procedure for modifying the biodiesel component percentage.

(a) DOE may, by rule, lower the 20 percent biodiesel volume requirement of this subpart for reasons related to cold start, safety, or vehicle function considerations.

(b) Any person may use the procedures in section 490.6 of this part to petition DOE for a rulemaking to lower the biodiesel volume percentage. A petitioner should include any data or information that it wants DOE to consider in deciding whether or not to begin a rulemaking.

§ 490.707 Increasing the qualifying volume of the biodiesel component.

DOE may increase the qualifying volume of the biodiesel component of fuel for purposes of allocation of credits under this subpart only after it:

(a) Collects data establishing that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents; and

(b) Conducts a rulemaking to amend the provisions of this subpart to change the qualifying volume to the average annual alternative fuel use.

§ 490.708 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

Subpart I—Alternative Compliance

SOURCE: 72 FR 12964, Mar. 20, 2007, unless otherwise noted.

§ 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) Upon approval by DOE, petroleum fuel use reductions achieved by a fleet in excess of the amount required for alternative compliance in a previous model year may be applied towards the petroleum fuel use reduction requirement under § 490.803(a) in a model year for which a waiver is granted and for which the fleet experiences a shortfall.

(2)(i) A fleet seeking to roll over for future use the petroleum fuel use reductions that it achieved in excess of the amount required for alternative compliance in a particular model year must make a written request to DOE as part of the fleet's annual report required under § 490.807 for the model year in which the excess reductions were achieved.

(ii) Following receipt of a request under paragraph (c)(2)(i) of this section, DOE will notify the requesting fleet of the amount of excess petroleum fuel use reductions that DOE has approved for rollover and potential application towards the petroleum fuel use reduction requirement in a future model year.

(iii) A fleet seeking to apply excess petroleum fuel use reductions rolled over pursuant to paragraph (c)(2)(ii) of this section in a model year for which a waiver is granted and for which the fleet experiences a shortfall in achieving the petroleum fuel use reduction requirement under § 490.803(a) must make a written request to DOE as part of the fleet's annual report required under § 490.807. The written request must specify the amount of the rollover reductions (in GGE) the fleet wishes to have applied and the total balance of rollover reductions (in GGE) the fleet possesses.

(3)(i) In considering a written request to apply rollover reductions under paragraph (c)(2)(iii) of this section, DOE may seek from the fleet additional information about the fleet and its operations.

(ii) Upon approving a request to apply rollover reductions, DOE will apply the approved rollover reductions only to the extent that other reductions in petroleum consumption through any of the means set forth in paragraphs (a) and (b) of this section were not reasonably achievable.

(4) 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.

[72 FR 12964, Mar. 20, 2007, as amended at 79 FR 15907, Mar. 21, 2014]

§ 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) A complete waiver application must be received by DOE no later than July 31 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 nonwaiver 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.

[72 FR 12964, Mar. 20, 2007, as amended at 79 FR 15907, Mar. 21, 2014]

§ 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 received 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 and may impose on the State or covered person a penalty under subpart G of this part. A State or covered person whose waiver has been revoked by DOE is precluded from requesting an exemption under § 490.204 or § 490.307 from the vehicle acquisition mandate for the model year of the revoked waiver.

[79 FR 15907, Mar. 21, 2014]

§ 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.

PARTS 491–499 [RESERVED]