

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 490

#### RIN 1904-AB66

#### Alternative Fuel Transportation Program; Alternative Compliance

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

**ACTION:** Notice of proposed rulemaking and opportunity for comment.

**SUMMARY:** The Department of Energy (DOE) today publishes a proposed rule to implement section 514 of the Energy Policy Act of 1992, as amended by section 703 of the Energy Policy Act of 2005, which allows States and alternative fuel providers to petition for a waiver of the alternative fueled vehicle (AFV) acquisition requirements in 10 CFR part 490. The new law requires a State entity or alternative fuel provider requesting a waiver to show that in lieu of complying with the applicable AFV acquisition requirement for a model year, it will take other actions to reduce its annual petroleum motor fuel consumption by an amount equal to 100 percent alternative fuel use in all of the fleet's AFVs, including AFVs that the State entity or alternative fuel provider would have been required to acquire if there was no waiver.

**DATES:** Public comment on this proposed rule will be accepted until August 7, 2006. A public workshop will be held on July 12, 2006, from 9 a.m. to 4 p.m. Interested persons who wish to speak at the public workshop should telephone Ms. Linda Bluestein at (202) 586-6116, by 4:30 p.m. on July 7, 2006. Each presentation is limited to 20 minutes.

**ADDRESSES:** You may submit comments, identified by RIN 1904-AB66, by any of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. E-mail to [linda.bluestein@ee.doe.gov](mailto:linda.bluestein@ee.doe.gov). Include RIN 1904-AB66 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.

3. Mail: Address written comments to Ms. Linda Bluestein, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, FreedomCAR and Vehicle Technologies Program, Mailstop EE-2G, Room 5F-034, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

The public workshop for this rulemaking will be held in Washington, DC, at the DOE Forrestal Building in Room 1E-245, 1000 Independence Avenue, SW., Washington, DC.

This notice of proposed rulemaking, the public workshop transcript, and any comments that DOE receives are being made available on the Alternative Fuel Transportation Program Web site at: [http://www.eere.energy.gov/vehiclesandfuels/epact/state/state\\_resources.html](http://www.eere.energy.gov/vehiclesandfuels/epact/state/state_resources.html). You also may obtain copies of comments by contacting Ms. Bluestein.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Bluestein, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, FreedomCAR and Vehicle Technologies Program, Mailstop EE-2G, Room 5F-034, 1000 Independence Avenue, SW., Washington, DC 20585-0121; (202) 586-6116 or [linda.bluestein@ee.doe.gov](mailto:linda.bluestein@ee.doe.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Introduction and Background
- II. Discussion
- III. Public Comment Procedures
- IV. Regulatory Review

#### I. Introduction and Background

In August 2005, the Energy Policy Act of 2005, Public Law 109-58, (EPACT 2005) was signed into law. The law adds new flexibility for State and alternative fuel provider fleets subject to AFV acquisition requirements under 10 CFR part 490, the Alternative Fuel Transportation Program. Specifically,

section 703 of EPACT 2005 adds section 514 (entitled "Alternative Compliance") to title V of the Energy Policy Act of 1992 (Act) (42 U.S.C. 13251 *et seq.*). Section 514 authorizes DOE to grant to covered alternative fuel providers (hereafter "covered persons") and States with credits under section 508 of the Act a waiver from the AFV acquisition requirements under section 501 (42 U.S.C. 13251) and section 507(o) (42 U.S.C. 13257(o)), respectively. The statute provides that any State or covered person may apply for an alternative compliance waiver, and that DOE must grant the waiver if the State or covered person demonstrates that its fleet will reduce annual petroleum consumption by an amount equal to the amount of petroleum it would reduce if the fleet's cumulative inventory of AFVs operated 100 percent of the time on alternative fuel (42 U.S.C. 13264(a) and (b)). The State or covered person requesting a waiver also must be in compliance with all applicable vehicle emission standards established by the Environmental Protection Agency under the Clean Air Act.

Today's proposed rule would establish procedures for the submission of, and action on, applications for alternative compliance waivers submitted by States and covered persons subject to AFV acquisition requirements under 10 CFR part 490. Proposed new subpart I of part 490 includes provisions regarding the timing of waiver requests and responses by DOE, waiver documentation and submission requirements, annual reporting of petroleum reductions, use of credits to offset petroleum reduction shortfall, rollover of excess petroleum reduction to future years, enforcement for violations, and record retention.

#### II. Discussion

Under the proposed rule, a State or covered person must submit a waiver application to DOE no later than March 31 of the year before the model year for which it requests a waiver. The proposed rule would require a waiver application to include a minimum amount of information to enable DOE to make a decision about granting the waiver. DOE would evaluate applications for waivers on a case-by-case basis. The proposed rule provides that DOE would grant or deny a waiver

within 45 working days from the time a complete application is submitted.

Fleets operating under a waiver would be allowed to choose various strategies or actions to reduce petroleum motor fuel consumption. For example, some States or covered persons may meet their annual petroleum reduction requirement by combining alternative fuel use by existing fleet AFVs with petroleum reductions from the use of hybrid vehicles, which are not counted towards meeting the AFV acquisition requirements because they are not primarily powered by electricity (an alternative fuel). A fleet could also meet its petroleum reduction requirement with alternative fuel or other replacement fuel use in vehicles of more than 8,500 lb gross vehicle weight rating (gvwr) or in light-duty vehicles that are excluded, by statute and part 490, from covered fleets.

#### *Eligibility for an Alternative Compliance Waiver*

Section 514(a) of the Act provides that any covered person subject to the AFV acquisition requirements of section 501 and any State subject to the AFV acquisition requirements of section 507(o) may petition the Secretary of Energy for a waiver of those requirements. Section 514(b) of the Act provides that the Secretary *shall* grant a waiver of the AFV acquisition requirements on a showing that a *fleet* owned, operated, leased or otherwise controlled by a covered person or State entity given credit under section 508 will achieve a specified reduction in the annual consumption of petroleum fuels and is in compliance with all applicable vehicle emission standards established by the Environmental Protection Agency under the Clean Air Act. For both covered persons and State entities given credit under section 508, the statute requires DOE to grant a waiver on a showing that petroleum motor fuel consumption will be reduced in an amount equal to the amount of petroleum the fleet's cumulative inventory of AFVs would reduce if those vehicles operated 100 percent of the time on alternative fuel. The term "fleet" is defined in title V of the Act to include only covered light-duty vehicles (LDVs) (42 U.S.C. 13211(9)).

While section 514(b) specifies a showing that, if met, requires DOE to grant a waiver, there is a gap in the statute because section 514(b), read in light of the surrounding provisions in section 514 and elsewhere in title V of the Act, does not *directly* address two questions. The first question is whether DOE may grant a section 514(a) waiver petition if the applicant makes a

showing of replacement fuel use attributable to medium- or heavy-duty vehicles or other vehicles outside of its covered light-duty vehicle fleet. The second question is whether DOE may grant a petition by a State that makes the requisite showing of replacement fuel substitution even though that State has only complied with its minimum AFV acquisition requirements and does not have cumulative credits under section 508 of the Act. To fill the gap in the statute, DOE proposes to exercise its rulemaking authority under title V and section 644 of the DOE Organization Act (42 U.S.C. 7254) to propose provisions that address these questions.

First, proposed § 490.802 provides for the grant of a waiver to a covered person or State entity that demonstrates it will achieve the specified level of petroleum fuel reduction in any of its motor vehicles, not just covered LDVs. Thus, under the proposed rule, a State or covered person receiving a waiver would be allowed to use alternative fuel or other replacement fuels in vehicles that are not part of the covered "fleet," such as medium- and heavy-duty vehicles and excluded LDVs, to meet its petroleum reduction requirement. DOE believes this additional flexibility will make the alternative compliance option attractive to more fleets, and this, in turn, is likely to lead to somewhat greater petroleum displacement. While State entities that meet the minimum AFV acquisition requirements in section 507(o) are not required by the Act to use alternative fuel in their AFVs,<sup>1</sup> fleets operating under a waiver must reduce petroleum motor fuel consumption by an amount equal to the amount of petroleum the fleet's cumulative inventory of AFVs would reduce if those AFVs operated 100 percent of the time on alternative fuel. Because AFVs in State fleets that are flexible or dual-fuel vehicles often operate on petroleum fuel, increased use of the waiver option would result in greater petroleum displacement.

Second, proposed § 490.802 provides that States that have not been given credits under section 508 of the Act must meet the same eligibility criteria as States that have received such credits. While a majority of State fleets have complied with AFV acquisition requirements using credits earned under section 508 for AFV acquisitions in excess of model year requirements, a significant number of State fleets have not received section 508 credits. DOE is unable to discern any basis for treating

State entities that have not earned credits differently than State entities that have earned credits, or any harm to the apparent goal of the statute that would result from subjecting all States to the same eligibility criteria. Thus, all States requesting a waiver would be required to demonstrate that they will achieve the same amount of annual petroleum reduction, and that they are in compliance with applicable Clean Air Act standards.

#### *Petroleum Reduction Calculation*

Section 514(b) provides that for covered persons, the specified annual reduction in petroleum consumption is the amount that would result from "100 percent cumulative compliance with the fuel use requirements in section 501" (42 U.S.C. 13264(b)(1)(A)). For States, the specified annual reduction in petroleum consumption is the amount equal to "the annual consumption by the State entity of alternative fuels if all of the cumulative alternative fuel vehicles of the State entity given credit under section 508 were to use alternative fuel 100 percent of the time" (42 U.S.C. 13264(b)(1)(B)). The language of these provisions differs slightly because, as previously mentioned, there is a statutory fuel use requirement for covered persons in the Act, but none for State fleets.

Consistent with the statute, proposed § 490.802 would require both covered persons and State entities to reduce petroleum fuel consumption by an amount equal to the amount of petroleum the fleet's cumulative inventory of AFVs, including required AFV acquisitions in waiver years, would reduce if those vehicles operated 100 percent of the time on alternative fuel. The inclusion of required AFV acquisitions in waiver years is compelled by the statute's apparent purpose of providing States and covered persons compliance flexibility in exchange for achieving the maximum level of petroleum fuel reduction that would occur if the State or covered person were to comply with the Act's AFV acquisition requirements. If AFV requirements for waiver years were not included in the cumulative AFV count, a State or covered person that requests a waiver in successive years would have rapidly diminishing petroleum reduction requirements, and that would be unreasonable in light of the petroleum replacement goal of the statute.

The following example is provided to show how the petroleum reduction requirement would apply in successive years for which a covered person

<sup>1</sup> The Act does require alternative fuel use in AFVs acquired by covered persons. See 42 U.S.C. 13251(a)(4).

requests an alternative compliance waiver:

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

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

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

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

In year 5, the fleet retires the 9 LDVs represented by the first waiver year's AFV requirements (the fleet retires LDVs after 4 years). The fleet acquires 10 more LDVs, generating 9 AFV requirements. Therefore, the total AFV count for year 5 is 36 and the total petroleum requirement for year 5 is 18,000 gge.

Although simplified, this example shows how DOE proposes to implement the cumulative compliance/AFV

language in section 514(b) to calculate a covered person's petroleum reduction requirement. The same approach would be used to determine the reduction for a State entity, but the applicable AFV acquisition percentage (75 percent) in section 507(o) would be used.

#### *The application for a waiver.*

Proposed § 490.803 specifies the items of information that an applicant for an alternative compliance waiver would have to submit to DOE for the model year for which it is seeking a waiver. These items of information are:

- The model year for which the State or covered person is requesting the waiver;

- The average length of time a LDV stays in the State's or covered person's fleet until retirement;

- The number of AFVs that the State or covered person would be required to acquire during the waiver year, calculated in the same way as AFV requirements are calculated on DOE Form FCVT 101;

- The total number of AFVs in the fleet inventory during the waiver year, including AFVs previously reported to DOE on Form FCVT 101 and AFV requirements for the waiver year and preceding waiver years, and excluding AFVs that will be retired before the beginning of the waiver year;

- The average annual fuel consumption in gges of the fleet's LDVs, which may be an average of previous years' consumption, and an estimate of per vehicle consumption;

- The estimated amount of petroleum that the fleet must reduce during the waiver year, estimated by multiplying the number of fleet AFVs, including AFV requirements accumulated during the current and previous waiver years, by the average LDV fuel consumption;

- A detailed plan describing the actions or strategies the State or covered person will pursue to reduce petroleum consumption and the amount of petroleum reduction anticipated from each action or strategy; and

- Documents or a certification by a responsible official of the State or covered person showing the fleet is in compliance with all applicable Clean Air Act vehicle emission standards.

The information a State or covered person submits to DOE with its alternative compliance plan must be verifiable and from credible sources. Sources of fuel economy and efficiency information must be documented.

Under proposed § 490.809, a State or covered person would be required to keep all documents pertaining to its application and compliance with a waiver for a minimum of three years following the end of the waiver year.

*Use of credits.* DOE recognizes that a fleet, despite good faith efforts, may fail to achieve the required petroleum reduction in a model year because the amount will have been estimated based on assumptions about the number of vehicles and the actual amount of fuel the fleet would use in the following model year. DOE, therefore, provides in proposed § 490.805 that a State or covered person may request to use credits purchased or earned pursuant to 10 CFR subpart F to offset a shortfall in its reduction of petroleum.

#### *Rollover of excess petroleum reduction.*

Proposed § 490.806 provides that a State or covered person that overcomplies with its petroleum reduction requirement under subpart I may request that the excess reduction be applied to meet the petroleum reduction requirement in one or more future years. For example, if a fleet reduces petroleum use by 65,000 gallons, but is only required under the terms of the waiver to reduce 60,000 gallons, the excess 5,000 gallons could be applied to meet the petroleum reduction required in the next waiver year or some future year for which a waiver is requested.

*Annual report.* Section 514(c) of the Act requires a State or covered person that is granted a waiver to submit a report to DOE not later than December 31 following the model year for which the waiver is granted (42 U.S.C. 13264(c)). This provision would be implemented by proposed § 490.807.

*Sanctions for violations.* Section 514(d) of the Act provides that DOE shall revoke the waiver of a State or covered person that fails to comply with the alternative compliance petroleum reduction or reporting requirements, and that DOE may impose a civil penalty for any such violation (42 U.S.C. 13264(d)). This section would be implemented by proposed § 490.808.

*Exemptions.* DOE will not grant exemptions to a State under 10 CFR § 490.204 or to a covered person under 10 CFR 490.308 if the State or covered person has been granted an alternative compliance waiver. Exemptions are based upon lack of alternative fuels and/or AFVs. Because a fleet operating under a waiver has the flexibility to consider all available technologies for meeting its petroleum consumption reduction requirement, it has no need for an exemption.

### III. Public Comment Procedures

#### A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, or arguments. Written comments should be submitted

to the address, and in the form, indicated in the **ADDRESSES** section of this notice of proposed rulemaking. To help DOE review the comments, interested persons are asked to refer to specific proposed rule provisions, if possible.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information Act regulations at 10 CFR 1004.11.

#### B. Public Workshop

A public workshop will be held at the time, date, and place indicated in the **DATES** and **ADDRESSES** sections of this notice of proposed rulemaking. Any person who is interested in making an oral presentation should make a phone request to the person and telephone number in the **DATES** section by 4:30 p.m. on the date specified for making such requests. The person should provide a daytime phone number where he or she can be reached. Each oral presentation will be limited to 20 minutes. Persons making an oral presentation are requested to bring three copies of their prepared statement to the workshop and submit them to the registration desk.

DOE reserves the right to select the persons who will speak. DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the workshop. A DOE official will be designated to preside at the workshop. The workshop will not be a judicial or evidentiary-type hearing, but will be conducted in accordance with 42 U.S.C. 7191. Any further procedural rules for the conduct of the workshop will be announced by the presiding official.

A transcript of the workshop will be made, and the entire record of this rulemaking will be retained by DOE and made available as provided in the **ADDRESSES** section of this notice of proposed rulemaking.

### IV. Regulatory Review

#### A. Executive Order 12866

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

to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

#### B. National Environmental Policy Act

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

#### C. Regulatory Flexibility Act

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

DOE has reviewed today's proposed rule under the provisions of the

Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The requirements in 10 CFR part 490 apply only to alternative fuel providers with fleets containing at least 50 LDVs (20 of which are centrally fueled or capable of being centrally fueled) and to like-size State fleets in metropolitan statistical areas with a population of more than 250,000. The owners and operators of fleets of this size are not small entities. In addition, the proposed rule establishes voluntary procedures for State entities and covered persons that wish to receive a waiver from otherwise applicable AFV acquisition requirements. Alternative compliance does not impose any additional burdens on the entities subject to sections 501 and 507(o) of the Energy Policy Act of 1992. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

#### D. Paperwork Reduction Act

Proposed § 490.803 ("Application for waiver"), proposed § 490.807(c) ("Reporting requirement"), and proposed § 490.809 (Record retention) contain information collection requirements. DOE has submitted this proposed collection of information to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DOE estimates that alternative compliance waivers will be requested for 15 State and fuel provider fleets. Part of the information specified in § 490.803 that a State or covered person would be required to submit with its application for a waiver under proposed subpart I is already required for reporting pursuant to 10 CFR 490.205 and 490.309. DOE estimates the additional burden required to provide information pertaining to its required petroleum reduction and plan for achieving that reduction to be 21 hours for each model year for which a waiver is requested. DOE estimates that a State or covered person would expend 20 hours to comply with the reporting requirements

in § 490.803 (“Application for waiver”) and § 490.807 (“Reporting requirement”) and 1 hour to comply with the recordkeeping requirement in § 490.809. DOE estimates the total annual costs of a State or covered person that receives an alternative compliance waiver would be \$1,134.00 for each fleet subject to the waiver.

DOE invites public comment on: (1) Whether the proposed information collection requirements are necessary for the performance of DOE’s functions, including whether the information will have practical utility; (2) the accuracy of DOE’s estimates of the burden of the proposed information collection requirements; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection requirements on respondents. Comments should be addressed to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the contact person at the address given in the **ADDRESSES** section of this notice of proposed rulemaking. Interested persons may obtain a copy of the DOE’s Paperwork Reduction Act Submission to OMB from the contact person named in this notice of proposed rulemaking.

#### *E. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant

Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

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

#### *F. Treasury and General Government Appropriations Act, 1999*

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

#### *G. Executive Order 13132*

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

#### *H. Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and

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

#### *I. Treasury and General Government Appropriations Act, 2001*

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

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

#### *J. Executive Order 13211*

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the

supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### Approval by the Office of Secretary

The Secretary of Energy has approved the issuance of this notice of proposed rulemaking.

#### List of Subjects in 10 CFR Part 490

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

Issued in Washington, DC, on June 19, 2006.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, the Department of Energy is proposing to amend Chapter II of title 10 of the Code of Federal Regulations as set forth below:

### PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

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

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

#### § 490.600 [Amended]

2. Section 490.600 of subpart G is amended by replacing the word "or" after the number "507" with a comma and adding the words "or 514" after the number "508".

#### § 490.603 [Amended]

3. Section 490.603 of subpart G is amended by removing the word "or" after the number "503(b)" and adding the words "or 514" after the number "507".

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

#### Subpart I—Alternative Compliance

Sec.

490.801 Purpose and scope.

490.802 Eligibility for alternative compliance waiver.

490.803 Application for waiver.

490.804 Action on an application for waiver.

490.805 Use of credits to offset petroleum reduction shortfall.

490.806 Rollover of excess petroleum reduction.

490.807 Reporting requirement.

490.808 Violations.

490.809 Record retention.

#### Subpart I—Alternative Compliance

##### § 490.801 Purpose and scope.

This subpart implements section 514 of the Act (42 U.S.C. 13264) which allows 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 of the applicable alternative fueled vehicle acquisition requirements if the fleet owned, operated, leased, or otherwise controlled by the State or covered person:

(a) Will achieve a reduction in the annual consumption of petroleum fuels by its motor vehicles equal to the amount of alternative fuel the fleet's inventory of alternative fueled vehicles, including alternative fueled vehicles that the State or covered person would have been required to acquire in model years for which a waiver is received, would use if operated 100 percent of the time on alternative fuel; and

(b) 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.*).

##### § 490.803 Application for waiver.

(a) A State or covered person must apply for an entire fleet for a waiver for each full model year for which it requests alternative compliance under this subpart. DOE does not grant a waiver for less than an entire fleet or a full model year.

(b) To provide a sufficient amount of time for DOE action on the request, a State or covered person must submit its application to DOE no later than March 31 prior to the model year for which it seeks a waiver.

(c) A waiver application must include verifiable data that is sufficient to enable DOE to determine whether the State's or covered person's fleet will achieve the amount of petroleum reduction required for alternative

compliance and whether the fleet is in compliance with Clean Air Act vehicle emission standards. As 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 anticipated total number of alternative fueled vehicles in the fleet for the model year for which a waiver is requested, including alternative fueled vehicle acquisition requirements accumulated in previous waiver years, and excluding any covered vehicles that are to be retired before the beginning of the waiver year;

(3) The average length of time a light-duty vehicle stays in the fleet;

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

(5) The anticipated amount of gasoline and diesel and alternative fuel (calculated in gasoline gallon equivalents (gge) using the conversion table provided on the FreedomCAR and Vehicle Technologies Program Web site at: [http://www1.eere.energy.gov/vehiclesandfuels/epact/state/state\\_resources.html](http://www1.eere.energy.gov/vehiclesandfuels/epact/state/state_resources.html)) to be used by the light-duty vehicles in the fleet for the waiver year including an estimate of per vehicle average fuel use in these vehicles;

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

(7) Documents, or a certification by a responsible official of the State or covered person, showing 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)(7) of this section must contain a well-documented explanation as to how the State or covered person will meet the reduction in petroleum consumption required by § 490.802(a) of this subpart.

(1) The planned actions must be:

(i) Verifiable;

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

(iii) Deliver a net reduction in petroleum consumption equal to the amount of alternative fuel the fleet's inventory of alternative fueled vehicles, including alternative fueled vehicles that the State or covered person would have been required to acquire in waiver

years, would use if operated 100 percent of the time on alternative fuel.

(2) The plan must provide for the reduction of petroleum motor fuel by the State's or covered person's own vehicles and, therefore, may not include incentives for third parties to reduce their petroleum use or petroleum reductions that are not transportation-related.

(3) 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) If DOE determines that the information provided in the application is not sufficient for making a decision, it shall notify the State or covered person of the information that must be submitted before DOE can act on the application.

(f) A State or covered person must submit its application for an alternative compliance waiver on official company or agency letterhead and in triplicate to: Ms. Linda Bluestein, Regulatory Manager, FreedomCAR and Vehicle Technologies Program, EE-2G/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**§ 490.804 Action on an application for waiver.**

(a) DOE shall grant or deny a waiver application within 45 working days after it receives a complete application.

(b) DOE shall grant the State or covered person a waiver if it determines that:

(1) The requirements for eligibility in § 490.803 are met; and

(2) The State or covered person has complied with all of the requirements in this subpart.

**§ 490.805 Use of credits to offset petroleum reduction shortfall.**

(a) A State or covered person granted a waiver under this subpart may submit to DOE a request in writing 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 § 490.802 of this subpart.

(1) The State or covered person must provide details about the particular circumstances that led to the shortfall and demonstrate that it did everything under its control to meet its petroleum reduction requirement.

(2) DOE may ask the State or covered person to supply additional information about the fleet and its operation if such information is considered necessary for a decision on the request.

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

(c) DOE shall give 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.

**§ 490.806 Rollover of excess petroleum reduction.**

(a) A State or covered person that has achieved petroleum reduction in excess of the amount required for alternative compliance in a model year may submit to DOE a request that it be allowed to roll over the excess petroleum reduction to meet the petroleum reduction requirement in a future model year for which it requests a waiver.

(b) After considering the request and supporting information, DOE shall notify the State or covered person of the amount of petroleum reduction that it may apply towards meeting a future model year's petroleum reduction requirement.

**§ 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; and

(2) A projection of the baseline quantity of the petroleum motor fuel reduction of the State or covered person during the following model year, if the State or covered person intends to request alternative compliance for that model year.

(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.

**§ 490.808 Violations.**

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

**§ 490.809 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 after the end of the model year for which the waiver is granted.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 23**

[Docket No. CE253, Notice No. 23-06-05-SC]

**Special Conditions; Cessna Aircraft Company Model 510 Airplane; Turbofan Engines and Engine Location**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Cessna Aircraft Company, Model 510 airplane. This new airplane will have novel and unusual design features not typically associated with normal, utility, acrobatic, and commuter category airplanes. These design features include turbofan engines and engine location, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These proposed special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Comments must be received on or before July 24, 2006.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE253, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE253. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Rouse, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 301, 901 Locust