



# FEDERAL REGISTER

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Vol. 76

Monday,

No. 210

October 31, 2011

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Part III

## Department of Energy

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10 CFR Part 490

Alternative Fuel Transportation Program; Alternative Fueled Vehicle Credit Program (Subpart F) Modification and Other Amendments; Proposed Rule

**DEPARTMENT OF ENERGY****10 CFR Part 490****[Docket ID No. EERE-2011-OT-0066]****RIN 1904-AB81****Alternative Fuel Transportation Program; Alternative Fueled Vehicle Credit Program (Subpart F) Modification and Other Amendments****AGENCY:** Department of Energy (DOE).**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** DOE today proposes a rule pursuant to the Energy Independence and Security Act of 2007 (EISA), that would revise the allocation of marketable credits under DOE's Alternative Fuel Transportation Program (AFTP or Program), by including EISA-specified electric drive vehicles and investments in qualified alternative fuel infrastructure, nonroad equipment, and relevant emerging technologies. DOE also is proposing modifications to the use of Program credits, revisions to the exemption process, clarifications of the Alternative Compliance option, and several technical and other amendments intended to make the Program regulations clearer.

**DATES:** Public comments on this proposed rulemaking must be received no later than December 30, 2011 to ensure consideration.

**ADDRESSES:** DOE has established a docket for this action under Docket ID No. EERE-2011-OT-0066. All documents in the docket are listed in the EDOCKET index and may be accessed at <http://www.regulations.gov>, under the aforementioned docket number. Submit comments, identified by the aforementioned docket number, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *Email:* [regulatory\\_info@afdc.nrel.gov](mailto:regulatory_info@afdc.nrel.gov).

3. *Mail or deliver:* (eight copies) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2G, RIN 1904-AB81, 1000 Independence Avenue SW., Washington, DC 20585-0121. DOE is currently using Microsoft Word. Organizations are strongly encouraged to submit comments electronically, to facilitate timely receipt of comments and inclusion in the electronic docket.

Copies of this notice and written comments will be placed at the following Web site address: <http://www1.eere.energy.gov/vehiclesandfuels/epact/private/index.html>. Before taking

final action on today's proposal, DOE will consider all comments and other relevant information received on or before the date specified above. All comments submitted will be made available in the electronic docket set up for this rulemaking. Therefore, no information desired to be kept confidential should be submitted to the docket. This docket will be available via the DOE EDOCKET through <http://www.regulations.gov>, which may be located using key words or the above noted docket number. For more information concerning public participation in this rulemaking, see the **SUPPLEMENTARY INFORMATION** section on "Opportunity for Public Comment."

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE-2G), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-0121; *Telephone:* (202) 586-9171; *Email:* [regulatory\\_info@afdc.nrel.gov](mailto:regulatory_info@afdc.nrel.gov); or Mr. Ari Altman, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-0121; *Telephone:* (202) 287-6307; *Email:* [Ari.Altman@hq.doe.gov](mailto:Ari.Altman@hq.doe.gov).

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**I. Introduction**

Titles III through V of the Energy Policy Act of 1992 (EPAAct 1992, Pub. L. 102-486, as amended at 42 U.S.C. 13201 *et seq.*) focus on the replacement of petroleum transportation fuels with fuels such as alternative fuels and conventional/replacement fuel blends. The provisions in EPAAct 1992 encourage the purchase and use of replacement fuels, requiring that certain fleets acquire alternative fueled vehicles (AFVs) as part of their annual light duty vehicle (LDV) acquisitions. Section 301(3) of EPAAct 1992 (42 U.S.C. 13211(3)) defines the term "alternative fueled vehicle" as a "dedicated [alternative fuel] or dual fueled vehicle," and sections 501 (42 U.S.C. 13251) and 507 (42 U.S.C. 13257) of the statute contain AFV-acquisition mandates for alternative fuel provider fleets and State fleets, respectively. These fleets may earn credits towards their light duty AFV-acquisition requirements in various ways, as provided by section 508 of EPAAct 1992 (42 U.S.C. 13258) and the Program regulations at 10 CFR part 490.

Congress has amended the EPCAct 1992 fleet program for State and alternative fuel provider (SFP) fleets several times. The amendments have allowed covered fleets to earn additional credits for the use of biodiesel in blends of 20 percent biodiesel or greater and have provided an alternative compliance option. Note that upon the creation of the "Alternative Compliance" option (see discussion in Part II.A), the original program based upon AFV acquisitions and biodiesel use became known as "Standard Compliance." Each amendment has allowed the fleets to explore the viability of expanded use of AFVs and alternative fuels and thereby promote the use of replacement fuels.

For the purposes of EPCAct 1992 and related programs, the terms "alternative fuel" and "replacement fuel" both are widely used, but are not interchangeable. While a more specific definition of "alternative fuel" is set forth below, in general, alternative fuels include a variety of non-petroleum transportation fuels, as provided in section 301(2) of EPCAct 1992. Replacement fuel, as defined in section 301(14), refers to the alternative fuel portion of an alternative/petroleum fuel mix or a neat (*i.e.*, 100%) alternative fuel. For example, B20 (a 20 percent blend of biodiesel with 80 percent petroleum diesel) is not an alternative fuel, but the 20 percent that is non-petroleum is considered replacement fuel, while B100 (neat biodiesel) is both an alternative fuel and a replacement fuel.

The primary focus of today's proposal is section 133 of EISA, which amended section 508 of EPCAct 1992. EISA section 133 provides definitions and directs DOE to allocate credits under section 508 for the acquisition by covered fleets of various types of electric drive vehicles, and for investments by covered fleets in qualified alternative fuel infrastructure, nonroad equipment, and emerging technologies related to those electric drive vehicles. As discussed in more detail below, some of the electric drive vehicles identified in section 133 already meet the EPCAct 1992 definition of an AFV and therefore already are entitled to full credit under the AFTP, while others do not currently meet the AFV definition. In today's action, DOE is proposing credit allocations under the AFTP for the acquisition by covered fleets of those section 133-identified electric drive vehicles that do not already qualify as AFVs, and for several specific types of investments that covered fleets may make. These credit allocations would

only impact SFP fleets operating under Standard Compliance.

DOE also is proposing today to modify several aspects of the existing AFTP. These modifications would: Enhance the timeliness of exemption requests; require covered fleets to use their own banked credits before requesting exemptions; mandate that fleets without sufficient AFV acquisitions, biodiesel fuel use credits, and banked credits to meet their compliance requirements include in their annual reports information about any efforts they made to acquire credits from other fleets; and revise the deadline for submitting Alternative Compliance waiver applications. Finally, DOE also is proposing a number of clarifications as well as several revisions that would make the AFTP regulations consistent with amendments to EPCAct 1992.

## II. Background

### A. General

The overall objectives of the fleet programs and other efforts under Titles III–V of EPCAct 1992 are to expand the use of alternative fuels and AFVs within specified fleets and to replace petroleum with replacement fuels to the "maximum extent practicable."<sup>1</sup> The requirements of Titles III through V of EPCAct 1992 focus on particular fleets, such as SFP fleets (which are the subjects of today's proposal) and Federal fleets,<sup>2</sup> as well as voluntary activities, such as those implemented under DOE's Clean Cities Program.<sup>3</sup> The mandated programs for centrally-fueled fleets seek to catalyze maximum use of replacement fuels, and, in particular, alternative fuels.

As indicated above, EPCAct 1992 establishes AFV-acquisition requirements for SFP fleets, which DOE codified as the AFTP at 10 CFR 490.1 *et seq.*<sup>4</sup> Titles III, IV, and V of EPCAct 1992 do not provide broad incentives for petroleum reduction or requirements for overall emissions reductions, but

rather focus on requirements for certain centrally-fueled fleets to acquire AFVs.

EPCAct 1992 requires that SFP fleets acquire AFVs as minimum percentages of their annual LDV acquisitions (now 90 percent for alternative fuel provider fleets and 75 percent for State fleets, in Sections 501(a) and 507(o), respectively). The types of vehicles that satisfy the SFP fleet acquisition mandates are determined primarily by the definitions of "alternative fuel" and "alternative fueled vehicle" in section 301 of the statute. The threshold that determines whether an SFP fleet is subject to these respective acquisition mandates turns on the size and location criteria set forth in the section 301 definitions of "fleet" and "covered person." Generally, covered fleets under the AFTP are those State government entities and alternative fuel providers that own, operate, lease, or otherwise control 50 or more non-excluded LDVs, at least 20 of which are capable of being centrally fueled and are used primarily in a metropolitan statistical area (MSA) or consolidated MSA with a 1980 Census population of more than 250,000.

Consistent with sections 501(a)(5) and 507(i)(1) of EPCAct 1992, the AFTP regulations at 10 CFR 490.204 and 490.308 provide a process through which State fleets and alternative fuel provider fleets, respectively, may request exemptions from the applicable AFV-acquisition requirements for a particular model year. All covered fleets may seek an exemption on the basis of lack of available AFVs or lack of available alternative fuels; State fleets also may seek an exemption on the basis of unreasonable financial hardship.

Under section 507(o)(2) of EPCAct 1992 and its implementing regulation, 10 CFR 490.203, States may submit a Light Duty Alternative Fueled Vehicle Plan to DOE for approval, which serves as an additional compliance option. An approved plan relieves those State fleets that are included in the plan from otherwise having to meet the AFV-acquisition mandate on their own. While the plan must provide for voluntary acquisitions or conversions by State, local, and private fleet participants that, in the aggregate, equal or exceed the State's AFV-acquisition requirement, there is no limit to the number of State, local, and private fleets that may participate in the plan. Any such plan must include, among other information, a certification from the appropriate State official and a written statement of commitment from each plan participant.

Under the AFTP, covered fleets can earn, sell, or purchase AFV-acquisition

<sup>1</sup> 42 U.S.C. 13252(a).

<sup>2</sup> Under section 303 of EPCAct 1992 (42 U.S.C. 13212), Federal fleets were required to acquire AFVs starting in Fiscal Year (FY) 1993, increasing their acquisitions to 75 percent of all covered acquisitions in FY 1999 and thereafter.

<sup>3</sup> Under section 505 of EPCAct 1992 (42 U.S.C. 13255), DOE obtains voluntary commitments from fuel suppliers to make replacement fuels available, from fleets to acquire AFVs and use alternative fuels, and from vehicle manufacturers to make AFVs and related services available to the public. These commitments comprise the Clean Cities Program, which works to bring together all necessary parties in given geographic areas to further the use of alternative fuels.

<sup>4</sup> DOE promulgated the AFTP regulations on March 14, 1996. 61 FR 10622.

credits. Section 508 of EAct 1992 enables fleets to earn bankable and tradable credits by acquiring AFVs prior to or in excess of requirements. DOE's implementing regulations for the credit program appear at subpart F of 10 CFR part 490.

In practice, SFP fleets typically generate surplus credits in one of two ways—either by acquiring in a particular model year more of their covered LDVs as AFVs (such as acquiring 100 percent as AFVs instead of the required 75 or 90 percent), or by acquiring AFVs in “excluded vehicle” classes (such as employee take-home vehicles or law enforcement vehicles).<sup>5</sup> As indicated, they are also able to generate credits by acquiring AFVs earlier than required.<sup>6</sup> Fleets may use the surplus credits generated in these ways in future model years to cover shortfalls (banking), or they may sell or trade the credits to other covered fleets.<sup>7</sup> For a fleet that has not met its AFV-acquisition requirement in a particular model year, purchasing or trading for credits is a viable means by which to attain AFTP compliance inasmuch as the fleet can obtain the necessary number of credits and thereby compensate for its failure to acquire the requisite number of AFVs.

The Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388) included an amendment to the EAct 1992 Title V fleet AFV-acquisition requirement, allowing SFP fleets to use biodiesel blends (of at least 20 percent biodiesel, B20) as a partial alternative means of complying with their AFV-acquisition requirements (limited to meeting 50 percent of requirements, except for biodiesel fuel providers). In the Energy Policy Act of 2005 (EAct 2005, Pub. L. 109–58), Congress again amended the Title V fleet program to provide an optional compliance path for covered fleets called “Alternative Compliance.” Under this option, an SFP fleet may apply for an Alternative Compliance waiver that, if granted by DOE, enables the fleet to implement various means of achieving petroleum reductions, including but not limited to the use of alternative fuels, the use of biodiesel blends without either the B20 threshold or the 50 percent cap that apply under Standard Compliance, fuel economy improvements, the purchase of hybrid and other advanced technology (higher efficiency) vehicles, idle time reductions, and a reduction in vehicle

miles traveled, in lieu of complying solely through AFV acquisitions and/or biodiesel use (under Standard Compliance). The addition of this Alternative Compliance option provided additional flexibility to fleets exploring the use of alternative fuels, as well as certain fuel efficiency technologies (e.g., hybrid vehicles, idle reduction) and trip reduction approaches. In fact, the Alternative Compliance option already allows fleets to explore many of the technologies that are the subject of today's proposed rule.

Today's proposal would implement EISA section 133, allocating to covered fleets operating under Standard Compliance credits under section 508 for the acquisition of various types of electric drive vehicles, and for investments in qualified alternative fuel infrastructure, nonroad equipment, and emerging technologies related to specific vehicle types. In developing this NOPR, DOE has been guided by the fact that EISA section 133 specifically amends section 508 of EAct 1992 and requires DOE to revise the manner in which credits may be earned by covered fleets for purposes of achieving SFP fleet compliance. For this reason, DOE is proposing that credits be allocated to those electric drive vehicles identified in section 133 that do not already qualify as AFVs based upon a yardstick of petroleum displacement, rather than simply treating the vehicles as equivalent to AFVs. The section 133-identified vehicles that already qualify as AFVs are already entitled to full credit under the AFTP.

#### *B. Current Status of Alternative Fuel Transportation Program*

Since Model Year (MY) 2000, the AFTP has been highly successful. Through MY 2009, covered SFP fleets acquired nearly 160,000 AFVs. Annually, these fleets typically are acquiring between 10,000 and 14,000 AFVs.

SFP fleets unable to acquire AFVs or without alternative fuel available for AFVs may file for exemptions from the AFV-acquisition requirements, in accordance with the provisions of EAct 1992 sections 501(a)(5) and 507(i). Since MY 2000, DOE has received nearly 350 exemption requests, granting exemptions and thereby relieving the requesting fleets from having to acquire more than 9,600 AFVs.

Covered fleets have used and continue to use the credit program regularly. In the early stages of the AFTP, the primary users of credits were the fleets generating and banking them to provide additional compliance flexibility in future years. Since MY

1997, covered SFP fleets have applied more than 27,000 credits to meet AFV-acquisition requirements. Subsequently, while applying banked credits has remained a significant use of surplus credits, a number of fleets have been selling their credits, with approximately 1,000–1,500 credits now being exchanged each year, and more than 9,500 credits having been exchanged since MY 1999. Overall, covered fleets currently hold over 61,500 banked credits, enough credits for perhaps four or more years of operation of the entire AFTP.

#### *C. Statutory Authority for Proposals Included in This NOPR*

##### 1. EISA

EISA section 133 amended section 508 of EAct 1992 by providing definitions of specific electric drive vehicles. These electric drive vehicles include “fuel cell electric vehicles,” “hybrid electric vehicles,” “medium- or heavy-duty electric vehicles,” “neighborhood electric vehicles,” and “plug-in electric drive vehicles.” (42 U.S.C. 13258(a)) EISA section 133(3) further amended section 508 by directing DOE to allocate credit “in an amount to be determined by [DOE]” for the acquisition of these electric drive vehicles, as well as for “investment in qualified alternative fuel infrastructure or nonroad equipment, as determined by [DOE].” (42 U.S.C. 13258(b)(2)(A)) DOE is also directed to “allocate more than 1, but not to exceed 5, credits for investment in an emerging technology relating to any” of the enumerated electric drive vehicles “to encourage” petroleum and vehicle emissions reductions and technological advancement. (42 U.S.C. 13258(b)(2)(B))

Considered broadly, section 133 requires that DOE allocate some level of credit for additional vehicle types and various investments, further expanding the list of options that covered fleets may use in their efforts to comply with EAct 1992's AFV-acquisition requirements. Importantly, section 133 does not define, nor require DOE to define, the specified vehicle types as AFVs—it merely calls for DOE to allocate some level of credit to these vehicle types.

DOE reiterates that EISA section 133 revised section 508 of EAct 1992, which pertains to SFP fleets. Today's proposed rule therefore addresses SFP fleets only, and not Federal fleets.

The allocations that DOE is proposing today are intended to ensure consistency with the overall approach of the relevant provisions of EAct 1992, which focus on the replacement of

<sup>5</sup> See 10 CFR 490.3.

<sup>6</sup> 10 CFR 490.502(b).

<sup>7</sup> See 10 CFR 490.504 and 10 CFR 490.506, respectively.

petroleum fuels through the use of replacement fuels to the maximum extent practicable.

It is critical to consider the AFTP's existing definitions in order to understand the proposed allocations. As discussed throughout this NOPR, if a given vehicle type already qualifies as an AFV, it is already eligible for full credit under the existing AFTP. If the vehicle is not an AFV, the focus shifts to whether the specific vehicle type is among the electric drive vehicles set forth in EISA section 133 and for which Congress directed DOE to determine a specific credit level. Similarly, only those investments that fit within the definitions provided in this NOPR would receive credit under the AFTP.

In addition to section 133, section 103(a) of EISA made changes to the Energy Policy and Conservation Act's (EPCA, codified at 49 U.S.C. 32901–32919) definitions of the terms “automobile” and “dual fueled automobile.” These definitions are included or referenced in subpart A of the AFTP regulations.<sup>8</sup> As part of the amended statutory definition of “automobile,” EISA section 103(a) introduced and defined a new term, “work truck.” DOE is proposing today to adopt in subpart A these definitions of “automobile” and “work truck,” to revise several of the existing regulatory definitions and provisions, and to delete those that DOE believes are no longer needed.

## 2. Additional Proposed Revisions

As indicated above, DOE also is proposing today various modifications to the existing AFTP that are unrelated to EISA. These proposed modifications, discussed more fully in Part V below, include: Establishing a timeframe for the submission of exemption requests; requiring covered fleets to use their own banked credits before requesting exemptions; mandating that fleets without sufficient AFV acquisitions, biodiesel fuel use credits, or banked credits to meet their compliance requirements include in their annual reports information about any efforts they have made to acquire credits from other fleets; and creating a single due date for the submission of Alternative Compliance waiver applications. Like the existing regulations in 10 CFR part 490, the statutory basis for these proposed modifications lies in Titles III–V of EPCA 1992, as amended.

In section 707 of EPCA 2005, Congress amended section 301(9)(E) of EPCA 1992 to make clear that the “emergency motor vehicles” exclusion

from the term “fleet” includes “vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by the Secretary.”<sup>9</sup> DOE is proposing today to revise the regulatory exclusion at 10 CFR 490.3(e) so that it is consistent with this legislative amendment. DOE is also proposing to incorporate in the regulatory definition of “alternative fuel” language pertaining to liquid fuels domestically produced from natural gas, which Congress added to the section 301 definition in 2000.<sup>10</sup> Both of these proposed changes would merely implement the particular statutory language modifications that Congress made, and thus DOE considers these proposed changes to be non-controversial.

## III. Key Definitions

This section of the NOPR discusses the AFTP definitions, both existing and newly proposed, that are key to DOE's proposed approach to the allocation of credits under EISA section 133, as well as the existing definitions that DOE is proposing today to amend. The rulemaking process associated with today's NOPR is intended to codify the definitions set forth in EISA section 133 for purposes of the AFTP's credit program (Subpart F). As developed pursuant to EPCA 1992, as amended, compliance under the AFTP is determined primarily through the acquisition of AFVs.

### A. Existing Definitions

#### 1. Alternative Fuel

The definition of “alternative fuel” for purposes of EPCA 1992 and its fleet programs is provided in section 301(2) of EPCA 1992,<sup>11</sup> and includes:

- 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 (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule);
- 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;
- Electricity (including electricity from solar energy); and,

- Any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

The corresponding AFTP definition of “alternative fuel” appears at 10 CFR 490.2. The explicit inclusion of electricity as an alternative fuel is particularly relevant to today's proposal.

As indicated above, DOE is proposing to add to the AFTP definition the phrase “including liquid fuels domestically produced from natural gas,” which Congress added to the statutory definition in 2000.

#### 2. Alternative Fueled Vehicle

As provided in section 301(3) of EPCA 1992, an alternative fueled vehicle “means a dedicated vehicle or a dual fueled vehicle.” Thus, vehicles acceptable for the AFTP (*i.e.*, vehicles that receive full credit under the AFTP) must either be “dedicated vehicles,” which are vehicles that operate solely on alternative fuel, or “dual fueled vehicles,” which have some capability for switching back and forth from alternative fuel to conventional fuel (such as a bi-fuel natural gas/gasoline vehicle) or otherwise can operate on a blend of alternative and conventional fuels (such as flexible fuel vehicles). Importantly, Congress has not added to or otherwise modified the definition of an AFV as it applies to SFP fleets since its enactment in 1992.<sup>12</sup>

The corresponding AFTP definition of an AFV appears at 10 CFR 490.2. When DOE promulgated this regulatory definition in 1996, it included language clarifying that flexible fuel vehicles (FFVs) are encompassed within the definition, and also provided a separate definition of the term “flexible fuel vehicle.” DOE explained that it took the latter definition from the Clean Fuel Fleet Program regulations that the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act.<sup>13</sup> The National Highway Traffic Safety Administration (NHTSA), the Federal agency responsible for setting and enforcing the Corporate Average Fuel Economy (CAFE) standards under EPCA, did not and still does not have a regulatory definition of “flexible fuel vehicle.” DOE has determined that the

<sup>12</sup> Congress did, however, previously amend the definition of AFV in the context of Federal fleets, at section 2862 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). See 147 153 Cong. Rec. S12355 (Oct. 1, 2007) (the “purpose” of section 2862 is “[t]o allow additional types of vehicles to be used to meet minimum Federal fleet requirements”). The amended definition does not apply to the AFTP and SFP fleets regulated under it.

<sup>13</sup> 61 FR 10630–31.

<sup>9</sup> See Pub. L. 109–58, section 707.

<sup>10</sup> See Pub. L. 106–554 App. D, Div. B, Title I, section 122, as codified at 42 U.S.C. 13211(2).

<sup>11</sup> 42 U.S.C. 13211(2).

<sup>8</sup> See 10 CFR 490.2.

reference to FFVs in the AFTP definition of “alternative fueled vehicle” and the separate definition of “flexible fuel vehicle” are unnecessary, principally because FFVs qualify as “dual fueled automobiles” under the EPCA definition of that term (codified at 49 U.S.C. 32901(a)(9)). As recently as September 2010, NHTSA confirmed that FFVs “are considered ‘dual fueled [automobiles]’ under [the] EPCA” meaning of that term.<sup>14</sup> Because they are dual fueled automobiles, FFVs are also AFVs. Hence, DOE proposes to streamline the AFTP definition of “alternative fueled vehicle” by deleting the parenthetical reference to FFVs. For the same reason, DOE also proposes to delete the definition of “flexible fuel vehicle,” as well as subsection (3) in the AFTP definition of “dual fueled vehicle.”

### 3. Automobile

Because the AFTP definitions of “dedicated vehicle” and “dual fueled vehicle,” each of which is discussed in more detail below, incorporate by reference the term “automobile,” DOE saw fit in its 1996 final rule to include in 10 CFR 490.2 a definition of “automobile.” DOE noted that the AFTP definition was “adapted from and \* \* \* intended to have the same meaning as ‘automobile’ defined in” 49 U.S.C. 32901(a)(3).<sup>15</sup>

EISA section 103(a) redefined the term “automobile” to include four-wheeled on-road vehicles rated at less than 10,000 pounds gross vehicle weight. To maintain consistency with the revised EPCA definition, DOE is proposing to make similar amendments to the AFTP definition of “automobile.” DOE stresses, though, that while the proposed definition in 10 CFR 490.2 would contain an express gross vehicle weight rating cutoff of less than 10,000 pounds, this revision would have no substantive effect on the AFTP. In other words, the AFTP would continue to be a light duty motor vehicle program, with a covered fleet’s light duty AFV-acquisition requirement in a particular model year hinging on the total number of light duty motor vehicles the fleet acquired during that model year. The regulatory definition of “light duty motor vehicle” would be unchanged, *i.e.*, an LDV would continue to be a light duty truck or light duty vehicle with a gross vehicle weight rating of 8,500 pounds or less, in accordance with

Section 301(11) of EPAAct 1992 (42 U.S.C. Sec. 13211(11)).

Because EISA added a reference to “work truck” in the definition of “automobile,” the proposed AFTP definition of “automobile” will also include a reference to the term “work truck.” DOE is therefore also proposing to add a new definition of this term in the regulations, consistent with the EISA section 103(a) definition of “work truck” as a vehicle between 8,500 and 10,000 pounds gross vehicle weight that is not a medium-duty passenger vehicle. The addition of this definition would not represent a shift from the LDV focus of the AFTP.

### 4. Dedicated Vehicle

The AFTP regulations at 10 CFR 490.2 currently define the term “dedicated vehicle” to mean:

(1) An automobile that operates solely on alternative fuel; or

(2) A motor vehicle, other than an automobile, that operates solely on alternative fuel.<sup>16</sup>

For example, a pure (*e.g.*, battery) electric vehicle (EV) is considered a dedicated vehicle and hence an AFV, as defined above, because electricity, the only fuel on which the vehicle operates, is within the definition of alternative fuel. A hybrid electric vehicle (HEV) that has an engine that operates solely on alternative fuel (*e.g.*, compressed natural gas (CNG)) also would be considered a dedicated vehicle under the AFTP, and thus an AFV. DOE anticipates that such a vehicle may enter the marketplace in the not too distant future.

DOE is proposing to make one minor change to the existing definition of “dedicated vehicle.” DOE believes it is appropriate to address the future possibility that certain vehicles may operate exclusively on more than one alternative fuel. DOE proposes to do this by amending the definition so that it states “operates solely on one or more alternative fuels.” DOE believes this revision is non-controversial.

### 5. Dual Fueled Vehicle

The AFTP regulations at 10 CFR 490.2 currently define the term “dual fueled vehicle” to mean:

(1) An automobile that meets the criteria for a dual fueled automobile, as that term is defined in section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act, 49 U.S.C. 32901(a)(8); or

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

(3) A flexible fuel vehicle.

As discussed in Part III.A.2 above, DOE is proposing to delete subsection (3) on the grounds that it is no longer necessary.

In promulgating the dual fueled vehicle definition in 1996, DOE neglected to point out that Congress had revised and recodified the Motor Vehicle Information and Cost Savings Act (MVICSA) “without substantive change” on July 5, 1994.<sup>17</sup> Nevertheless, DOE did cite to the correct U.S.C. provision containing the definition of “dual fueled automobile,” 49 U.S.C. 32901(a)(8). As a result of a change set forth in EISA section 103(a), this statutory definition now appears in 49 U.S.C. 32901(a)(9).

DOE is proposing to amend the AFTP definition of dual fueled vehicle in accordance with the above. The amended definition would read as follows:

(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.

DOE also takes this opportunity to note that it has always interpreted the definition of dual fueled vehicle in the context of NHTSA’s minimum driving range criteria for dual fueled automobiles. Under those criteria, for a passenger automobile to be considered a dual fueled automobile, it must be able to drive at least 200 miles when operating on the alternative fuel; for a dual fueled electric passenger automobile, the automobile must be able to operate on a full EPA urban test cycle and a full EPA highway test cycle on electricity alone, which means it must meet all speed and acceleration requirements over a total of 17.7 miles.<sup>18</sup> Only motor vehicles that meet these minimum driving range criteria qualify as dual fueled vehicles and hence are considered AFVs under the current AFTP definition.

Although it has not been problematic to date, the dual fueled vehicle determination may become more complicated as plug-in hybrid electric vehicles (PHEV) are commercialized (see Part IV.B.2 below). Except in those

<sup>14</sup> 75 FR 58078, 58111 (Sept. 23, 2010); *See also* 75 FR 25324, 25665 (May 7, 2010); 76 FR 39478, 39499 (July 6, 2011).

<sup>15</sup> 61 FR 10622, 10630.

<sup>16</sup> In addition to “automobile,” as discussed in the text above, section 490.2 of the Program regulations also provides a definition of the term “motor vehicle.” *See* 10 CFR 490.2.

<sup>17</sup> *See* Pub. L. 103–272, §§ 1(a), 6(a).

<sup>18</sup> 49 CFR 538.5 and 538.6. The test cycles consist of 7.5 miles of urban driving and 10.2 miles of highway driving, with charging allowed prior to each test.

instances in which it is clear to DOE that a vehicle is equipped with an engine that can operate on both petroleum and liquid or gaseous alternative fuel, DOE would look to NHTSA, meaning that if NHTSA considers a particular automobile or motor vehicle to be dual fueled under EPCA (*i.e.*, for CAFE purposes), then DOE would treat the vehicle as a dual fueled vehicle and hence an AFV under the AFTP.

#### 6. Electric Motor Vehicle and Electric-Hybrid Vehicle

In its 1996 final rule, DOE adopted in 10 CFR 490.2 the definitions of the terms “electric motor vehicle” and “electric-hybrid vehicle” located in section 601 of EPCA 1992 (42 U.S.C. 13271). This was necessitated by the fact that section 501(c) of EPCA 1992, which directed DOE to establish an option for electric utilities, referred specifically to “electric motor vehicles.” The electric utility option is contained in 10 CFR 490.307.

Because the electric utility option was time limited and the period for the option has long since passed, DOE is proposing to delete section 490.307 from the AFTP regulations and renumber the remaining provisions in Subpart D. Correspondingly, DOE is proposing to remove the “electric motor vehicle” and “electric-hybrid vehicle” definitions because they would be extraneous in the absence of the electric utility option. DOE, which believes

these amendments would not have a major impact, solicits comments on them.

#### 7. Section 133—Identified Vehicles That Already Qualify as AFVs

Of the electric drive vehicle types identified in EISA section 133, several already qualify as AFVs and, for that reason, already are entitled to one full credit under the AFTP. As discussed below, these include certain HEVs, PHEVs, and fuel cell electric vehicles (FCEVs), light duty battery electric vehicles, and medium- or heavy-duty battery electric vehicles. For such vehicles, there is no need for DOE to address the allocation of credit in this NOPR—if and when acquired by covered fleets, these vehicles already are entitled to one AFV-acquisition credit because the vehicles already qualify as AFVs (although in the case of medium- or heavy-duty vehicles, the covered fleet first must meet its light duty AFV-acquisition requirement).

An HEV or PHEV whose engine is capable of operating on alternative fuel (such as E85) is either a dual fueled vehicle (if the engine can operate on alternative fuel and on gasoline or diesel) or a dedicated vehicle (if the engine operates solely on alternative fuel), and, consequently, already an AFV. To date, though, DOE is aware of only a small number of flexible fuel HEVs (*e.g.*, Ford Escapes) that have been built for demonstration purposes. Likewise, a PHEV with a conventional

gasoline engine would be a dual fueled vehicle and therefore already an AFV under the AFTP if it were to qualify as a dual fueled electric automobile under the applicable NHTSA criteria. DOE notes, though, that not all PHEVs are expected to meet the minimum driving range criteria for dual fueled automobiles under 49 U.S.C. 32901(a)(9).<sup>19</sup>

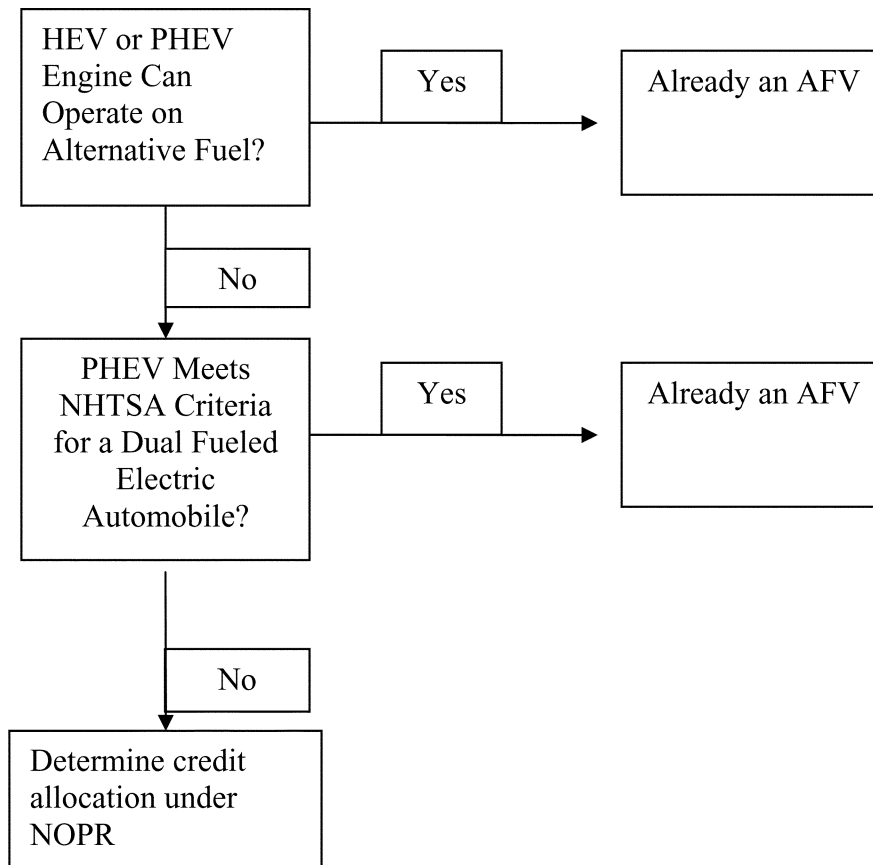
With respect to the HEVs currently on the market, DOE takes this opportunity to reiterate that it provides no credit under Standard Compliance because none of these vehicles qualify as AFVs. Equipped with gasoline-only engines, HEVs available to date “obtain their electric power from their onboard conventional gasoline engine and energy captured through regenerative braking.”<sup>20</sup> Because they cannot operate without gasoline, these vehicles are not dedicated vehicles. Nor do they qualify as dual fueled vehicles, either as that term is presently defined or as it would be redefined under this NOPR. Contrary to what is required by the word “fueled,” the electricity that can propel the vehicle at low speeds for short distances does not emanate from an off-board source (*e.g.*, the electric grid).

Figure 1 below depicts the HEVs and PHEVs that already qualify as AFVs and those HEVs and PHEVs for which credit would be allocated under this NOPR.

<sup>19</sup> See 75 FR 58078, 58104 (Sept. 23, 2010); 76 FR 39478, 39480, 39502–04 (July 6, 2011).

<sup>20</sup> *Id.* at 58087 n.45.

**Figure 1 – Determination of AFV Status for Hybrid Electric Vehicles (HEVs) and Plug-In Hybrid Electric Vehicles (PHEVs)**



FCEVs, as discussed more fully in Parts III.B.1 and IV.B.3 below, use a “fuel cell,” which typically is fueled by hydrogen, an alternative fuel, but which can also be fueled by a petroleum fuel (e.g., gasoline or diesel). An FCEV that operates on alternative fuel is either a dedicated vehicle (if the FCEV’s fuel cell is fueled solely by alternative fuel) or a dual fueled vehicle (if the FCEV’s fuel cell can be fueled by alternative fuel and by gasoline or diesel fuel) and, consequently, already an AFV eligible for one credit under the AFTP. FCEVs that are not AFVs would be allocated credit under today’s NOPR.

Battery electric vehicles are already considered AFVs under section 301 of EPAct 1992 by virtue of electricity’s inclusion within the definition of alternative fuel. Hence, when acquired by covered fleets, they, too, are already eligible for full AFV-acquisition credit under the AFTP. Finally, medium- or heavy-duty battery electric vehicles already are entitled to one credit under the creditable action provisions of 10 CFR 490.502 because they, too, already qualify as AFVs.

In sum, the following qualify as AFVs: (1) HEVs and PHEVs with an engine that operates solely on alternative fuel or one that can operate on alternative fuel and on gasoline or diesel; (2) PHEVs that meet the NHTSA minimum driving range criteria and thus qualify as dual fueled electric automobiles; (3) FCEVs that operate solely on alternative fuel or on alternative fuel and on gasoline or diesel; (4) light duty battery electric vehicles; and (5) medium- or heavy-duty battery electric vehicles. As a result, these vehicles already are entitled to one credit under the AFTP, although in the case of medium- or heavy-duty AFVs, they are not entitled to credit until the fleet has met its light duty AFV-acquisition requirement.

#### *B. New Definitions: EISA Section 133 Vehicles and Actions*

DOE is proposing definitions of key terms for purposes of Subpart F of the AFTP regulations, in accordance with the definitions within EISA section 133, as described in the paragraphs that follow.

#### 1. Fuel Cell Electric Vehicle

A “fuel cell electric vehicle” is defined for purposes of section 508 of EPAct 1992, as amended, as an “on-road or non-road vehicle that uses a fuel cell (as defined in section 803 of the Spark M. Matsunaga Hydrogen Act of 2005 (42 U.S.C. 16152)).” Section 803 of the Hydrogen Act of 2005 defines “fuel cell” as a “device that directly converts the chemical energy of a fuel, which is supplied from an external source, and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.” Typically, FCEVs are actually fuel cell hybrid vehicles that include some form of electric storage medium (such as batteries) to allow for better matching of vehicle generation capabilities to performance demand. Most FCEVs currently under development are fueled by hydrogen, either in compressed or liquefied form, but some that have been developed use onboard reformers to allow fueling with other fuels (e.g., petroleum fuels). DOE is proposing to adopt the definition of “fuel cell electric



vehicle” in Subpart F of the AFTP regulations, but substituting the defined term “motor vehicle” in place of the term “on-road.”<sup>21</sup>

## 2. Hybrid Electric Vehicle

EISA defines a “hybrid electric vehicle” for purposes of section 508 of EAct 1992, as amended, as a “new qualified hybrid motor vehicle (as defined in section 30B(d)(3) of the Internal Revenue Code of 1986).” Section 30B(d)(3) of the Internal Revenue Code (IRC) (26 U.S.C. Sec. 30B(d)(3)) defines “new qualified hybrid motor vehicle” and sets specific conditions for purposes of meeting this definition, including that a motor vehicle be one that “draws propulsion energy from onboard sources of stored energy which are both an internal combustion or heat engine using consumable fuel and a rechargeable energy storage system” and has a maximum available power of a set minimum amount. In the case of a light duty vehicle, the vehicle also must be one that “has received a certificate of conformity under the Clean Air Act and meets or exceeds the [applicable] equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act” as well as “the [applicable] emission standard [established by EPA] under section 202(i) of the Clean Air Act,” among other conditions.<sup>22</sup> In the case of a vehicle with a gross vehicle weight rating of more than 8,500 pounds, the vehicle also must be one that “has an internal combustion engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set [by EPA for] diesel heavy duty engines or otocycle heavy duty engines,” among other conditions.<sup>23</sup>

DOE is proposing today to adopt the EISA definition of “hybrid electric vehicle” in Subpart F of the AFTP regulations.<sup>24</sup>

<sup>21</sup> DOE notes that this definition is not identical to the definition of “fuel cell vehicle” that EPA promulgated as part of its light duty vehicle greenhouse gas emission standards under the Clean Air Act. See 75 FR 25324, 25684 (May 7, 2010). DOE, however, is constrained by the statutory definition set forth in EISA section 133.

<sup>22</sup> See generally Internal Revenue Service, Notice 2006-9—Credit for New Qualified Alternative Motor Vehicles (Advanced Lean Burn Technology Motor Vehicles and Qualified Hybrid Motor Vehicles), available at [http://www.irs.gov/irb/2006-06\\_IRB/ar11.html](http://www.irs.gov/irb/2006-06_IRB/ar11.html).

<sup>23</sup> See generally Internal Revenue Service, Notice 2007-23—Credit for New Qualified Heavy-Duty Hybrid Motor Vehicles, available at [http://www.irs.gov/irb/2007-23\\_IRB/ar08.html](http://www.irs.gov/irb/2007-23_IRB/ar08.html).

<sup>24</sup> DOE notes that this definition is not identical to the HEV definition that EPA promulgated as part of its light duty vehicle greenhouse gas emission

## 3. Medium- or Heavy-Duty Electric Vehicle

EISA defines a “medium- or heavy-duty electric vehicle” for purposes of section 508 of EAct 1992, as amended, as “an electric, hybrid electric, or plug-in hybrid electric vehicle with a gross vehicle weight of more than 8,501 pounds.” For the purposes of consistency with EAct 1992 section 301(11), which defines a light duty motor vehicle as 8,500 pounds or less, DOE proposes to modify EISA’s definition of medium- or heavy-duty electric vehicle to “an electric, hybrid electric, or plug-in hybrid electric vehicle with a gross vehicle weight rating of more than 8,500 pounds.”<sup>25</sup>

## 4. Neighborhood Electric Vehicle

EISA defines a “neighborhood electric vehicle” for purposes of section 508 of EAct 1992, as amended, as “a 4-wheeled on-road or nonroad vehicle that—(A) 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 (B) is propelled by an electric motor and [an] on-board, rechargeable energy storage system that is rechargeable using an off-board source of electricity.” DOE is proposing today to adopt this statutory definition.

## 5. Plug-In Electric Drive Vehicle

EISA defines a “plug-in electric drive vehicle” for purposes of section 508 of EAct 1992, as amended, as “a vehicle that (A) draws motive power from a battery with a capacity of at least 4 kilowatt-hours; (B) can be recharged from an external source of electricity for motive power; and (C) is a light-, medium-, or heavy duty motor vehicle or nonroad vehicle (as those terms are defined in section 216 of the Clean Air Act (42 U.S.C. 7550)).” Section 216 of the Clean Air Act defines the term “motor vehicle” to mean “any self-propelled vehicle designed for transporting persons or property on a street or highway,” and it defines “nonroad vehicle” as a vehicle that is “powered by a nonroad engine and that

standards under the Clean Air Act. See 75 FR 25324, 25684 (May 7, 2010). DOE, however, is constrained by the statutory definition set forth in EISA section 133.

<sup>25</sup> In EISA section 133, Congress provided a definition of “hybrid electric vehicle” (see Part III.B.2 above), but not of the terms “electric vehicle” and “plug-in hybrid electric vehicle,” both of which appear in the definition of a “medium- or heavy-duty electric vehicle.” With respect to “plug-in hybrid electric vehicle,” DOE proposes that PHEVs may be considered a type of “plug-in electric drive vehicle” (see Part III.B. 5 below). As for the term “electric vehicle,” DOE would interpret this term to mean a vehicle that operates solely on electricity (*i.e.*, a battery electric vehicle).

is not a motor vehicle or a vehicle used solely for competition.” DOE is proposing today to adopt EISA’s definition of plug-in electric drive vehicle.

There are two primary forms of plug-in electric drive vehicles—dedicated EVs (*e.g.*, battery electric vehicles) and PHEVs, assuming they have a minimum battery capacity of four kilowatt-hours.<sup>26</sup> For the purposes of this rulemaking, PHEVs are considered similar in many cases to today’s available HEVs, but PHEVs include greater electric storage capacity (and thus more/larger batteries) than HEVs, possess the capability to recharge their electric storage system by “plugging in” to the grid, and often have some duration of electric-only operation. DOE considers a PHEV to be a dual fueled vehicle if it is able to complete the EPA urban and highway test cycles on electricity alone.

## 6. Alternative Fuel Infrastructure

EISA section 133 provides no definition of the term “alternative fuel infrastructure,” merely indicating that DOE should allocate credits for “investment in qualified alternative fuel infrastructure \* \* \* as determined by the Secretary.”

Section 179A(d) of the Internal Revenue Code (26 U.S.C. 179A(d)) defines a similar phrase, “qualified clean-fuel vehicle refueling property,” to mean a property that is:

(A) For the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle, or

(B) for the recharging of motor vehicles propelled by electricity, but only if the property is located at the point where the motor vehicles are recharged.<sup>27</sup>

DOE proposes to base the definition of the term “alternative fuel infrastructure” on the Internal Revenue Code definition of “qualified clean-fuel vehicle refueling property,” clarifying the language, however, regarding the requirement that fueling take place where the infrastructure is located.

In short, “alternative fuel infrastructure” would mean one or more alternative fueling stations or one or more charging or battery exchange stations for EISA section 133-specified electric drive vehicles.

<sup>26</sup> DOE expects that all PHEVs will have a battery capacity of at least four kilowatt-hours, because that is the minimum battery capacity needed for a vehicle to qualify for the \$7,500 Federal tax credit for new qualified plug-in electric drive motor vehicles. See 26 U.S.C. 30D(d)(1)(F)(i).

<sup>27</sup> 26 U.S.C. 179A(d)(3).

#### 7. Alternative Fuel Nonroad Equipment

Similarly, EISA section 133 provides no definition of the term "alternative fuel nonroad equipment." Congress simply instructed DOE to allocate credits for "investment in qualified alternative fuel \* \* \* nonroad equipment, as determined by the Secretary." Therefore, DOE must determine the types of alternative fuel nonroad equipment that would qualify for Program credit within the context of section 133's overall objectives.

DOE proposes to consider as eligible for credit only alternative fuel nonroad equipment that is mobile, such as mobile cargo and material handling equipment (*e.g.*, forklifts) and mobile farm or construction equipment (*e.g.*, tractors, bulldozers, backhoes, front-end loaders, rollers/compactors). A fleet requesting credit would have to certify that the equipment is being operated on alternative fuel, within the constraints of best practices or seasonal fuel availability. DOE requests comments on this point. Consistent with the Program's focus on vehicle acquisitions, no stationary non-road equipment would qualify for credit.

#### 8. Emerging Technology

EISA section 133 likewise provides no definition of the term "emerging technology," although, as discussed in more detail in Part IV.C.3 of this NOPR, the statute explicitly requires that such technology "relat[e] to" at least one of the five vehicle types described earlier in the provision. Based on its experience in deploying advanced technologies, DOE proposes to interpret the term "emerging technology" to mean pre-production or pre-commercially-available vehicles of the five types described in section 133. DOE believes that once these vehicle technologies reach the point of being mass produced or commercially available and thus are beyond the stage of demonstration or initial data collection, the provision of any investment credit under section 508 of EAct 1992 would be inappropriate inasmuch as acquisition credit would then be warranted (see Part IV.C.3 below). DOE requests comments from stakeholders on whether drawing a distinction between pre-production and commercially available in the context of the definition of "emerging technology" is sufficient and appropriate.

### IV. Proposed Allocation of Credit

#### A. General Basis for Allocations

As described in Part I of this NOPR, the EAct 1992 fleet programs use centrally-fueled fleets as launching pads

for AFV technologies to encourage the growth of alternative fuel infrastructure. Through EISA section 133, Congress has expanded the range of vehicles that may earn AFV-acquisition credits under the Standard Compliance path of the AFTP. Congress has directed DOE, and DOE is today proposing, to allocate credit values for those section 133-specified vehicles that do not already qualify as AFVs.

EAct 1992 Title V and the AFTP are designed to encourage the replacement of petroleum fuels with non-petroleum fuels, through the use of AFVs. In implementing the EAct 1992 program for SFP fleets, DOE has maintained an approach that focuses primarily on the petroleum replacement capability of vehicles subject to the program. For these reasons, DOE is proposing to allocate only partial credit to those section 133-identified electric drive vehicles that do not already qualify as AFVs, such as HEVs with an internal combustion engine that operates solely on conventional petroleum fuels.

For those electric drive vehicles identified in section 133 that previously qualified as "alternative fueled vehicles," based on their status as either dedicated vehicles or dual fueled vehicles, full AFV-acquisition credit is already warranted under the AFTP. No further discussion of these vehicles is needed.

DOE believes that non-AFVs should not receive as much credit as AFVs, but rather should receive only partial credit because they do not have as significant an effect on petroleum replacement as do AFVs. For example, consider an HEV that is not an AFV; even if the vehicle achieves twice the efficiency of a comparable vehicle, the vehicle itself is only reducing petroleum consumption by one half, whereas an AFV has the potential to decrease petroleum consumption in full if it is operated solely on alternative fuel. Further, fleets that seek credit for non-AFVs are encouraged to use the AFTP's Alternative Compliance option, which allows extensive use of various technologies including higher efficiency vehicles, all toward achieving compliance with the AFTP.

In today's notice, DOE also proposes to allocate credits for investments by covered fleets in qualified alternative fuel infrastructure (*e.g.*, fueling stations), alternative fuel nonroad equipment (*e.g.*, mobile construction or material/cargo handling equipment), and emerging technologies (*e.g.*, pre-production vehicles), with 1 credit to be earned for every \$25,000 invested. Within each category, the number of investment credits would be capped at

5 credits in a single model year, although for alternative fuel infrastructure investments, the cap would be 10 credits in a single model year when the infrastructure at issue is publicly accessible rather than private. This higher cap for publicly-accessible infrastructure is being proposed to provide a somewhat greater incentive for those investments that DOE believes would make alternative fuel infrastructure more widely available. DOE maintains that this is a key to increasing petroleum substitution, in accordance with EAct 1992's purposes (as implemented through Titles III through V). Congress, in EISA section 133, imposed a five-credit cap on investments in emerging technologies, and DOE believes for reasons of administrative consistency that a comparable credit cap should likewise be placed on the other types of creditable investments. Moreover, DOE is of the view that placing a cap on investments in alternative fuel infrastructure and nonroad equipment would help to limit the degree to which the AFTP's existing surplus of banked credits grows in the future (see Part V.B below).

DOE is proposing that for the purpose of calculating the number of credits earned, fleets should be allowed to aggregate dollar amounts spent in the areas of alternative fuel infrastructure, alternative fuel nonroad equipment, and emerging technology. DOE also proposes the following limitation: that such aggregation be allowed only to the extent that additional funds from a category for which the fleet has already earned the maximum number of credits may not be used to increase the number of credits earned in another category. For example, a fleet that spends \$40,000 on alternative fuel nonroad equipment and \$60,000 on emerging technology may aggregate the funds to total \$100,000 and claim 2 credits for alternative fuel nonroad equipment and 2 credits for emerging technology. In another example demonstrating the proposed limitation, a fleet that spends \$45,000 on alternative fuel nonroad equipment and \$130,000 on emerging technology may tally 5 credits for emerging technology and 1 credit for nonroad equipment; the \$5,000 spent on emerging technology beyond the cap of \$125,000 applicable to emerging technology investment credits may not be used to increase the amount of funds and hence the number of credits earned overall by combining with the investment in the alternative fuel nonroad equipment category. In other words, there is a ceiling on the amount

of funds spent in one category that may be used to increase the number of credits earned in the second or third category. This limitation is necessary to ensure a cap on the number of credits that may be earned for funds spent in any one of the three categories. DOE considered not allowing aggregation of amounts spent. Because DOE is not allowing fractional credits for amounts lower than \$25,000 spent in any one of the categories, DOE hopes that the proposed approach may be viewed as a reward for addressing the need for additional deployment in these categories. DOE welcomes comments on the proposed approach.

DOE is proposing that when fleets report to DOE the total credits they have earned in a model year (*i.e.*, the total of AFV-acquisition and relevant investment credits), fleets should total the credits, including all fractional credits, and then round that aggregate figure to the nearest whole number. This rounding approach is discussed further in Part VI.A below.

#### B. Electric Drive Vehicles

EISA specifies several types of vehicle technologies for which DOE must determine the amount of credit each is to be allocated under the AFTP credit program.

##### 1. Hybrid Electric Vehicles (HEVs)

Currently available HEVs have a conventional gasoline engine and an electric motor that provides a boost or otherwise provides only some motive force. As indicated above, because they are neither dedicated vehicles nor dual fueled vehicles, they have not previously qualified for credit under the AFTP. Current HEVs simply offer higher efficiency than conventionally-fueled vehicles, as represented by mile per gallon (mpg) ratings.

Under the Alternative Compliance option, fleets can comply by using HEVs to help meet their petroleum reduction requirement. For more information on HEVs and Alternative Compliance, see [http://www1.eere.energy.gov/vehiclesandfuels/epact/pdfs/alt\\_compliance\\_guide.pdf](http://www1.eere.energy.gov/vehiclesandfuels/epact/pdfs/alt_compliance_guide.pdf) or the final rule for Alternative Compliance at 72 FR 12958 (March 20, 2007).

HEVs that are not AFVs because they lack an alternative fuel (*e.g.*, E85)-capable engine would receive  $\frac{1}{2}$  credit under today's proposed rule, rather than the full credit that dedicated and dual fueled vehicles already receive.<sup>28</sup> DOE's proposal to allocate  $\frac{1}{2}$  credit is based on the petroleum replacement potential of these vehicles, as well as their energy efficiency (*i.e.*, fuel economy), which effectively dictates their petroleum replacement potential.

DOE assumed the same annual usage (*i.e.*, miles driven per year) for an HEV and a conventional vehicle. For the vast majority of HEVs (other than PHEVs, as described below), the fuel economy improvement that each HEV model achieves versus a conventional vehicle model is limited. DOE examined the efficiency gains and believes that most HEVs generate efficiency gains that would suggest that DOE propose a lower credit value, on the order of  $\frac{1}{4}$  credit or less in some instances. Some HEV models, in fact, achieve fuel economy barely greater than conventional internal combustion engine versions of the same model, while other HEV models actually achieve lower fuel economy than the most fuel efficient models in the same size class.

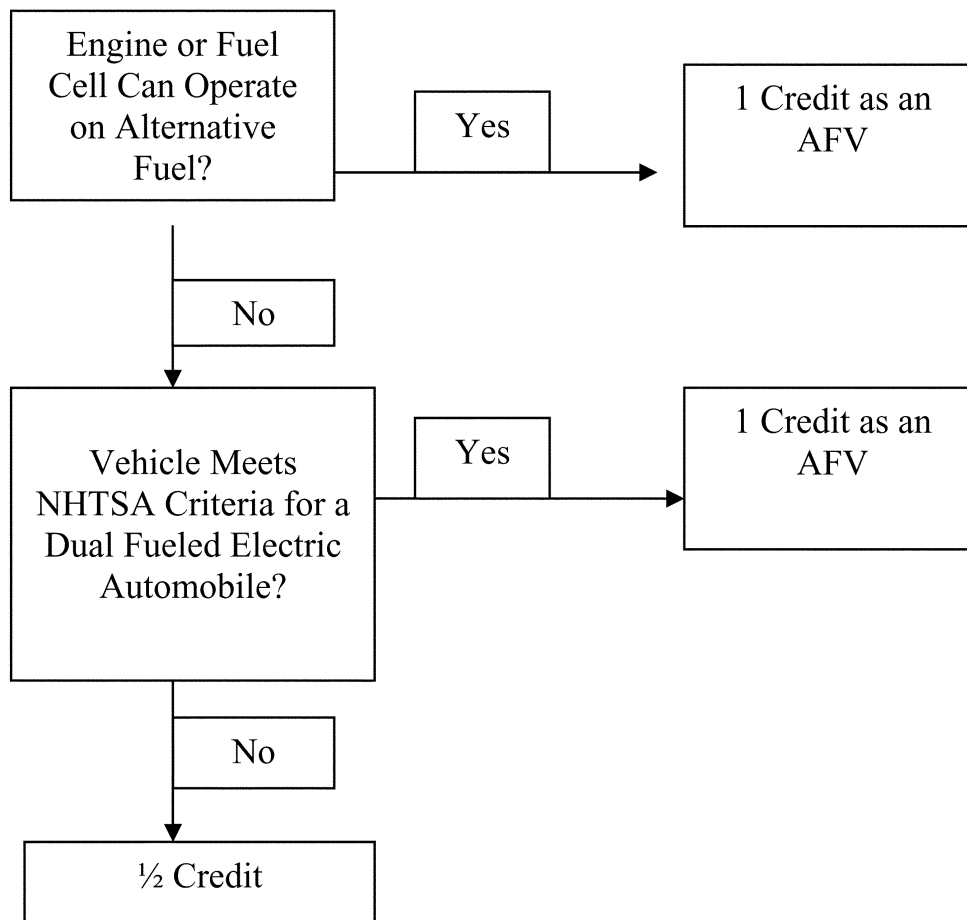
Still other HEVs, however, do achieve a considerably higher efficiency than the most fuel efficient conventional models in the same EPA size class. The most notable of these HEVs are the 2011 Toyota Prius, Mercury Milan Hybrid FWD, and Ford Fusion Hybrid FWD, which are the most fuel efficient midsize HEVs on the market. According to the 2011 Fuel Economy Guide (available at <http://www.fueleconomy.gov>), the Prius achieves 50 mpg "combined" (*i.e.*, city/highway) while the Mercury Milan and Ford Fusion Hybrids each achieve 39

<sup>28</sup> Note that in order to give meaning to the EISA section 133 amendments, covered fleets would earn credits for light duty HEVs under this proposed rule even if they have not yet met their light duty AFV acquisition requirements. While each light duty HEV purchase would increase the fleet's acquisition requirements as a covered LDV purchase at a faster rate than it would offset such requirements, the rule would provide the concomitant benefit of providing immediately available credits. If the rule were to only allow the allocation of credits once the AFV acquisition requirements had been met, an HEV purchase would afford no compliance benefit.

mpg combined. These three models, which together average almost 43 mpg combined, use an average of 2.4 gallons combined (city/highway) to travel 100 miles. This compares to the average of 31 mpg combined, translating into an average 3.2 gallons combined to travel 100 miles, achieved by the top three conventional midsize automatic cars, the Hyundai Elantra (33 mpg combined), Nissan Versa (30 mpg combined), and Kia Forte Eco (30 mpg combined). In view of this approximately 39% fuel economy improvement and 25% fuel reduction, DOE has opted to allocate  $\frac{1}{2}$  credit to all HEVs.

DOE specifically considered proposing a higher credit value for those HEVs that do provide significant efficiency gains and lower values for those HEVs with comparatively smaller efficiency gains, with the increments of credits being 0 (0 to 25% efficiency gains when compared with the most efficient conventional vehicles in their size class),  $\frac{1}{4}$  (25% to 50% efficiency gains), and  $\frac{1}{2}$  (over 50% efficiency gains). In the end, though, DOE believes that a single credit value for all HEVs would be most manageable from an administrative standpoint and represents an approximation of the petroleum reduction of the average hybrid electric vehicle. Although the petroleum displacement achieved by the most efficient midsize HEVs, when compared to the most efficient conventional midsize cars, suggests a credit value closer to  $\frac{1}{3}$ , to provide an incentive for fleets to acquire HEVs, DOE believes  $\frac{1}{2}$  credit for all non-AFV HEVs is warranted. While certain vehicles may therefore earn credit out of proportion to their petroleum savings,  $\frac{1}{2}$  credit would still be appropriate given the AFTP's goal of having fleets serve both as launching pads for new technologies and as entities seeking to achieve petroleum consumption reductions. In addition, it also is anticipated that as hybrid technologies develop, the efficiency of these vehicles should increase.

Figure 2 below provides the credit allocation determination process for HEVs.

**Figure 2. Credit Allocation Determination for HEVs, PHEVs, and FCEVs**

## 2. Plug-In Electric Drive Vehicles

Battery electric vehicles are already entitled to a full credit, as they qualify as dedicated vehicles and, hence, alternative fueled vehicles under EPA's 1992 section 301.

Because all PHEVs are expected to have at least a 4 kilowatt-hour battery, they would qualify as plug-in electric drive vehicles under section 133. Like HEVs, however, PHEVs are anticipated to operate on both electricity and either conventional petroleum fuel or alternative fuel. PHEVs typically have more electrical storage capacity onboard than HEVs, to allow for more significant operation on battery power alone. PHEVs differ from other HEVs, however, in that they are designed to operate in part on electric power obtained from off-board sources. For example, for a PHEV20 (20-mile electric-only range), if the operator's average daily use is 40 miles, half of the vehicle's operation could be supplied by electricity assuming no daytime charging. PHEVs may also hold special promise to enhance fuel efficiency gains over

conventional vehicles and enable the use of renewable energy in either centralized or distributed power generating systems. Thus, PHEVs could contribute substantially both to reducing petroleum use and reducing the associated generation of greenhouse gases. DOE invites public comments on each of these points.

PHEVs that do not already qualify as AFVs, because they are not equipped with an engine that is capable of operating (or one that operates solely) on alternative fuel, nor able to meet the NHTSA criteria for a dual fueled electric automobile, would be treated under this proposed rule in the same manner as HEVs, meaning their acquisition by a covered fleet would result in  $\frac{1}{2}$  credit. In addition to commercially available PHEVs, several organizations currently perform conversions. To qualify for credit under the AFV, any such conversion must be completed within four months of the vehicle's acquisition under 10 CFR 490.202(c) for states and 10 CFR 490.305(c) for alternative fuel providers.

DOE's rationale behind allocating to non-AFV PHEVs the same credit value that would be allocated to non-AFV HEVs,  $\frac{1}{2}$  credit, is that both sets of vehicles are non-AFVs and, further, efficiency gains offered by the former vehicles versus the latter vehicles are relatively small and do not justify disparate treatment. DOE invites comments from stakeholders on this equal treatment approach, and emphasizes that where a commenter believes that a non-AFV PHEV should be allocated more credit than a non-AFV HEV, the commenter should include in its comments a sufficiently detailed explanation, ideally supported by relevant data, articulating why a non-AFV PHEV deserves more credit than a non-AFV HEV.

Figure 2 in section 1 above depicts the credit allocation determination process for PHEVs.

## 3. Fuel Cell Electric Vehicles (FCEVs)

FCEVs with fuel cells that can be powered by hydrogen or some other alternative fuel already qualify as AFVs

and thus already are eligible for full credit under the AFTP. To DOE's knowledge, the majority of FCEVs under development are fueled by hydrogen, but DOE cannot dismiss the possibility of a non-alternative fuel-based FCEV one day reaching the market. As a result, DOE is required by EISA section 133 to establish a credit value for non-AFV FCEVs.

DOE proposes to treat FCEVs that are neither dedicated vehicles nor dual fueled vehicles in the same manner as non-AFV HEVs and PHEVs and allocate them  $\frac{1}{2}$  credit. This determination is based on the fact that current AFV FCEVs typically offer significant efficiency gains over conventional vehicles, but non-AFV FCEVs, while offering similar efficiency gains, would not displace as much petroleum as an AFV operating solely on alternative fuel. DOE solicits comments on this proposed allocation level, and advises stakeholders who believe that more than  $\frac{1}{2}$  credit is warranted to provide specific data in support of their position that FCEVs powered solely by non-alternative fuel (e.g., gasoline or diesel fuel) deserve a higher credit value.

Figure 2 in section 1 above depicts the credit allocation determination process for FCEVs.

#### 4. Neighborhood Electric Vehicles (NEVs)

Most commonly-available NEVs have been produced as a type of low-speed vehicle, limited to a top speed of between 20 and 25 mph. NEVs are typically used for driving short distances on low-speed streets or on campus-like sites (such as schools or power plants). NEVs functionally substitute for only some of the activities for which conventional vehicles are used, and in part serve as substitutes for walking or bicycling.<sup>29</sup> In many areas, NEVs are not able to be licensed for use on public roads. Even in the jurisdictions where they may be licensed, they typically are limited to streets with speed limits of 35 mph or less and can never be driven on highways. To date, the AFTP has treated NEVs, which do not fall under the Clean Air Act section 216(2) definition of

<sup>29</sup> A 2001 DOE study showed that, of the 348 fleet NEVs studied, only 18 NEVs had been acquired to replace previous on-road vehicles, though some of the other NEVs might also have been acquired in lieu of new on-road vehicles (i.e., fleet expansion). The 348 NEVs were driven an average of 9 miles per day. See Idaho National Engineering and Environmental Laboratory, *Field Operations Program—Neighborhood Electric Vehicle Fleet Use* (July 2001) (INEEL Study), at 4, available at <http://aet.inel.gov/pdf/nev/nevstudy.pdf>.

“motor vehicles” as interpreted by EPA,<sup>30</sup> as ineligible for credit as AFVs.

In a 2001 study, DOE found that NEVs are driven an average of 3,410 miles per year.<sup>31</sup> This compares to the average annual use of light duty household vehicles in the U.S. in 2009 of 10,100 miles per year.<sup>32</sup> For light duty business fleet vehicles, however, average annual use in 2008 ranged from 22,968 to 28,020 miles.<sup>33</sup> Therefore, the use of NEVs substitutes for a small percentage of conventional vehicles' applications. While NEVs might serve well as substitutes for motor vehicles in some covered fleets, such as State college campus fleets, their potential for addressing the EPA 1992 goal of petroleum fuel replacement is limited by their capabilities and reduced number of vehicles miles traveled.

A comparison of the data above on average annual miles driven by NEVs and average annual miles driven by business fleets suggests that a credit of no more than  $\frac{1}{8}$  may be warranted. DOE, however, is proposing to allocate  $\frac{1}{4}$  (0.25) credit for each NEV acquired, in an effort to provide a general incentive for covered fleets to eliminate petroleum consumption through the acquisition of these vehicles notwithstanding their limited fuel replacement value. The  $\frac{1}{4}$  credit level may appear small, but the actual resulting value to the acquiring fleet is larger than the  $\frac{1}{4}$  allocated. This stems from the fact that NEVs are not considered motor vehicles under the AFTP and thus are not included within the covered LDV count used to set AFV-acquisition requirements; in other words, unlike the acquisition of a light duty AFV, the acquisition of an NEV does not increase the vehicle count that is the basis for calculating the AFV-acquisition requirements. Thus, the acquisition by a covered fleet of an NEV, rather than a light duty AFV, would provide an additional benefit to the fleet inasmuch as the acquisition of the light duty AFV would itself generate a requirement for the acquisition of 0.75

<sup>30</sup> Section 301(13) of EPA 1992 defines “motor vehicle” to have “the meaning given such term under section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)).” In interpreting section 216(2), which states that a “motor vehicle” is “any self-propelled vehicle designed for transporting persons or property on a street or highway,” DOE defers to EPA, which has found that “a vehicle shall be deemed not a motor vehicle and excluded from the operation of the Act [if the] vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces \* \* \*” 40 CFR 85.1703(a). DOE has therefore historically chosen not to treat NEVs as motor vehicles.

<sup>31</sup> *Id.*

<sup>32</sup> See DOE, *Transportation Energy Data Book: Edition 29* (July 2010), at Table 8.9.

<sup>33</sup> *Id.* at Table 7.3.

(State fleet) or 0.9 (alternative fuel provider fleet) of yet another light duty AFV, meaning the net credit result stemming from the acquisition of the initial light duty AFV would be either 0.25 (1 minus 0.75) or 0.1 (1 minus 0.9) of a credit. In the case of an NEV acquired by a covered fleet, the acquisition would result in a net surplus of  $\frac{1}{4}$  credit.<sup>34</sup>

In addition, DOE believes that for administrative management reasons, the  $\frac{1}{4}$  credit value is the smallest value that should be allocated under the AFTP.

#### 5. Medium- or Heavy-Duty Electric Vehicles

##### a. General

Currently, medium- or heavy-duty electric vehicles are commercially available, though perhaps only in limited numbers outside of the transit bus sector. Conventional medium- or heavy-duty vehicles typically use several times the amount of fuel that conventional LDVs use. Thus, the deployment of higher efficiency or alternative fuel versions of such vehicles would be expected to have significant potential to reduce U.S. petroleum use.

Under the existing AFTP, the acquisition of a medium- or heavy-duty AFV yields one credit, but only after the fleet meets its light duty AFV-acquisition requirements. Medium- or heavy-duty vehicles are not covered vehicles under the AFTP, meaning that, unlike the acquisition of light duty AFVs, the acquisition of medium- or heavy-duty AFVs does not increase the vehicle count that is the basis for calculating the AFV-acquisition requirements. Thus, as with NEVs (see Part IV.B.4 above), under the existing AFTP the acquisition by a covered fleet of a medium- or heavy-duty AFV, rather than a light duty AFV, provides an additional benefit to the fleet inasmuch as the acquisition of the light duty AFV would itself generate a requirement for the acquisition of 0.75 (State fleet) or 0.9 (alternative fuel provider fleet) of yet another light duty AFV, thereby yielding a net credit result stemming from the acquisition of the initial light duty AFV of either 0.25 (1 minus 0.75) or 0.1 (1 minus 0.9) of a credit. In the case of medium- or heavy-duty AFVs, including battery electric vehicles, acquired by a fleet, the acquisition results in a net surplus of one full credit.

<sup>34</sup> Under the existing AFTP, neither AFV-acquisition requirements nor AFV credits are addressed in amounts below one, but fleet aggregates implicitly involve fractional credits for individual acquisitions.

#### b. Hybrid Electric and Plug-In Hybrid Electric Vehicles

EISA section 133 calls for DOE to determine how to allocate credit to medium- or heavy-duty HEVs and PHEVs that do not already qualify for credits under the AFTP as AFVs. As indicated earlier, DOE proposes to define a “medium- or heavy-duty electric vehicle” to mean 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 battery electric vehicles, as dedicated vehicles, already qualify as AFVs and therefore already are eligible for one credit. Similarly, HEVs or PHEVs in excess of 8,500 pounds with an internal combustion engine that can operate (or that operates solely) on alternative fuel, already qualify as AFVs. For medium- or heavy-duty non-AFV HEVs and PHEVs, DOE considered the following options:

- Allocate one credit, accounting for the fact that conventional medium- or heavy-duty vehicles consume more fuel than do conventional LDVs and thus a greater potential impact results from the acquisition of a medium- or heavy-duty non-AFV HEV or PHEV; or

- Allocate ½ credit, accounting for the potentially greater impact (as compared to an LDV) that a medium- or heavy-duty non-AFV HEV or PHEV can have over a conventional medium- or heavy-duty vehicle, but also noting that despite the increased efficiency, such a medium- or heavy-duty non-AFV HEV or PHEV still is not an AFV.

DOE is proposing to allocate ½ credit for the acquisition of medium- or heavy-duty HEVs and PHEVs (as well as medium- or heavy-duty fuel cell electric vehicles) that do not otherwise qualify as AFVs. DOE requests comments on this proposed allocation, and reminds covered fleets that they would still be able to earn biodiesel fuel use credits by using biodiesel blends of B20 or greater in medium- or heavy-duty non-AFV HEVs or PHEVs with diesel engines (or in medium- or heavy-duty fuel cell electric vehicles with diesel-powered fuel cells). DOE also clarifies that ½ credit would be earned only for the acquisition of a medium- or heavy-duty non-AFV HEV or PHEV with an electric drivetrain, as opposed to those that use electric power only to run their onboard equipment while stationary at a site. Thus, a utility-type truck with a plug-in electric bucket system, but no electric drivetrain, would not be eligible for credit under the allocation system proposed today. At the same time, acquisition of such a vehicle may allow

the fleet to reduce idling time, thus saving fuel. In such a case, the fleet could still receive credit for the vehicle by choosing to comply under Alternative Compliance, where petroleum use reductions stemming from idle reduction technologies may be counted toward a fleet’s petroleum reduction requirement.

DOE also requests that commenters address whether the preferred approach of ½ credit should only be available for commercially-available/production vehicles and not for demonstration vehicles. DOE considers demonstration vehicles to be pre-production vehicles, which, as discussed in Part III.B.8 above, constitute “emerging technology,” credit for which is addressed in Part IV.C.3 of this NOPR. Fleets, however, would not be able to earn multiple credits for the same vehicle acquisition (e.g., credit under one of the above acquisition approaches as well as credit for an emerging technology investment). Rather, a fleet would have to choose whether to earn credit for the acquisition itself, or for the investment in emerging technology.

Finally, DOE notes that, like medium- or heavy-duty AFVs, which receive credit only after the particular covered fleet has met its light duty AFV-acquisition requirement (10 CFR sections 490.502 and 490.503), acquired medium- or heavy-duty non-AFVs would not be entitled to ½ credit until the covered fleet has met its light duty AFV-acquisition mandate. DOE seeks to maintain a level playing field for all vehicles with a gross vehicle weight rating of more than 8,500 pounds, regardless of the drive or fuel type, and believes that because the light duty AFV precondition already applies to medium- or heavy-duty AFVs, it also should apply to medium- or heavy-duty non-AFVs that would receive ½ credit under this NOPR. A non-level playing field effectively would mean that covered fleets have an incentive to acquire medium- or heavy-duty non-AFVs over AFVs. To avoid this result, and to draw a clearer distinction between light duty versus medium- or heavy-duty vehicles, DOE proposes revisions to existing 10 CFR 490.502(a)–(b), 490.503(a)–(b), and 490.507(b). DOE invites comments on these modifications.

#### C. Investments

##### 1. Alternative Fuel Infrastructure

To address EISA section 133’s requirement that DOE allocate credits for investments in alternative fuel infrastructure, DOE chooses first to focus on EPA 1992’s original

objectives in its replacement fuel programs. In general, the concept behind the EPA 1992 fleet programs is to use the covered centrally-fueled fleets to catalyze both manufacturer AFV offerings and refueling infrastructure, paving the way for AFV use by other fleets and, ultimately, the general public. While the statutory requirements were set in terms of vehicle acquisitions, the EPA 1992 section 502(a) goal of maximizing replacement fuel use also involves consideration of infrastructure availability. Thus, the development of an alternative fuel refueling infrastructure that ultimately serves as much of the population as possible is important to achieving the program goals.

As explained in Part III.B.6 of this NOPR, DOE interprets the phrase “alternative fuel infrastructure” to mean one or more alternative fueling or charging/battery exchange stations. In determining the allocation of credits for alternative fuel infrastructure investment, DOE is proposing that a covered fleet that installs a new alternative fueling or charging/battery exchange station would be eligible to receive one credit for every \$25,000 invested toward developing that infrastructure. DOE believes that \$25,000 per investment credit is an appropriate dollar figure inasmuch as the installation of an E85 pump and tank historically has cost roughly \$25,000.<sup>35</sup> We also note that the average new LDV costs \$25,000, as discussed in the next section, and as the investment credit proposal provides an alternative to acquiring light duty AFVs, the consistent \$25,000 threshold is appropriate. DOE requests comments from stakeholders on the appropriateness of this dollar figure for purposes of determining the applicable investment credit.

DOE also is proposing to limit the number of credits that may be earned in a single model year to a maximum of 5 credits per fleet if the infrastructure is private, and a maximum of 10 credits per fleet if the infrastructure is publicly accessible. (Additionally, a fleet that installs both public and private infrastructure in a given model year would be limited to a maximum of 10 credits.) The difference is intended to reflect DOE’s preference for alternative fuel infrastructure that can be accessed by the public, as such accessibility

<sup>35</sup> The average of the E85 stations listed on the “Sample E85 Station Costs” Web page of DOE’s Alternative Fuels & Advanced Vehicles Data Center (<http://www.afdc.energy.gov/afdc/ethanol/cost.html>) is approximately \$27,000. This figure has been rounded down slightly for administrative purposes.

would expand alternative fuel refueling options more broadly to other fleets and vehicles.

To be eligible for investment credit, the alternative fuel infrastructure would have to be installed and paid for by the fleet requesting credit, or at least paid for by that fleet. Infrastructure that is installed and paid for or simply paid for by entities or organizations not subject to the requirements of the AFTP would not be eligible for credits.

To receive infrastructure investment credit, DOE would need to know how much money was expended, the period or model year during which the investment was made, and on exactly what infrastructure the investment was spent. Covered fleets would have to apply to DOE through the credit activity reporting mechanism in subpart F of the AFTP regulations and clearly identify the alternative fuel type, specific location, date of initial operation, and level of accessibility of the station. Importantly, the station would have to begin operation during the model year for which credit is sought, and each fleet would be limited to one award of credits per site, per model year. For example, if a covered fleet's infrastructure investment spans more than one year, with the fleet having invested \$12,500 in a new AFV fueling station during one model year and then an additional \$12,500 in that station during the following model year, and with the new station becoming operational during that second year, the fleet would be entitled to 1 investment credit in the second model year. Should the fleet neglect to seek credit during that second model year for its \$25,000 total investment but instead apply for the single credit in a later year, DOE would allocate no credit. Similarly, if the fleet applies for credit in its credit activity report for the first model year, DOE would reject the request on the grounds that the alternative fuel infrastructure did not become operational during that year.

Credits would be awarded for new fueling or charging stations, or for the expansion of existing stations if additional fueling or charging capability is being added (such as an additional dispensing unit at an existing station), in which case the additional capability would have to become operational during the model year for which credit is sought. Simply installing additional electrical outlets, however, would not qualify for investment credit.<sup>36</sup> Nor

would credit be provided for maintenance of or improvements to existing equipment at an existing station. Fleets would have to certify the accuracy of the information provided.

For administrative management reasons, DOE is proposing to allocate only whole number values of credits for investments in alternative fuel infrastructure.

## 2. Alternative Fuel Nonroad Equipment

“Alternative fuel nonroad equipment” eligible for investment credit allocation has been defined in Part III.B.7 of this NOPR to include only mobile equipment that operates on alternative fuel. Stationary equipment would not be eligible to receive credit. DOE anticipates that some stationary equipment may be eligible for credit as “alternative fuel infrastructure,” which would be defined to include charging or battery exchange stations. DOE's view is that credit for investment in such a station is better suited under the alternative fuel infrastructure mechanism as opposed to the alternative fuel nonroad equipment mechanism. For this reason, a fleet seeking credit for investment in a new or expanded charging or battery exchange station would be expected to proceed under the approach set forth for alternative fuel infrastructure. The fleet could not seek investment credit for the new or expanded charging or battery exchange station as alternative fuel nonroad equipment. Further, similar to the requirement for alternative fuel infrastructure, credit would only be provided for new mobile equipment, not maintenance of or improvements to existing mobile equipment.

DOE has preliminarily chosen to base the allocation of credit on the rough value represented by the average price of a new LDV sold in the United States in 2008. According to the latest edition of DOE's Transportation Energy Data Book, this average price was \$23,186 (in 2009 dollars).<sup>37</sup> Converting this value to 2010 dollars (using the Department of Labor's CPI Inflation Calculator), the figure is approximately \$25,000. DOE believes that the appropriate expenditure level for purposes of earning a credit for investment in alternative fuel nonroad equipment is this amount, or \$25,000. DOE believes that this value is a sufficiently high value to demonstrate a significant investment in nonroad equipment rather than rewarding credit for actions a fleet otherwise planned to take. In addition, this amount is equivalent to the other

investment-type credits under today's action, providing for some level of administrative consistency. Therefore, DOE is proposing to allocate 1 credit for every \$25,000 invested in alternative fuel nonroad equipment. Credits would be applied in whole number values, with 1 credit allocated for each \$25,000 threshold achieved, with a maximum of 5 credits earned per fleet in a single model year. To be eligible for consideration of credit, the investment would have to have been made by the requesting fleet. Investments made by organizations not subject to the requirements of the AFTP would not be eligible for credits.

Each fleet would have to apply for alternative fuel nonroad equipment credit through a credit activity report. To receive nonroad equipment investment credit, DOE would need to know how much money was expended, the period or model year during which the investment was made, and on exactly what mobile equipment the investment was spent. Consistent with the proposed definition of alternative fuel nonroad equipment, a fleet requesting credit would have to certify that the equipment is being operated on alternative fuel, within the constraints of best practices and seasonal fuel availability. DOE requests comments on this point.

DOE acknowledges that a covered fleet's investment in alternative fuel nonroad equipment may not necessarily coincide with the fleet's acquisition of the equipment. For consistency, however, DOE is proposing that a fleet would get credit for the year in which the nonroad equipment is put into operation.

For administrative management reasons, DOE is proposing to allocate only whole number values of credits for alternative fuel nonroad equipment investments. DOE specifically considered setting the level for earning credit at twice the proposed level, or 1 credit per \$50,000 invested. DOE is therefore requesting comments upon the appropriate investment level for credit purposes.

## 3. Emerging Technology

As discussed in Part III.B.8 of this NOPR, availability of credits for investments in emerging technology would be based on the development status of the relevant vehicle technologies. In EISA section 133, Congress has instructed DOE to allocate credits for such emerging technology investments so as “to encourage (i) a reduction in petroleum demand; (ii) technological advancement; and (iii) a reduction in vehicle emissions.” In

<sup>36</sup> DOE would distinguish an electrical outlet from charging stations, such as those currently available (See, e.g., [http://www.afdc.energy.gov/afdc/vehicles/electric\\_charging\\_equipment.html](http://www.afdc.energy.gov/afdc/vehicles/electric_charging_equipment.html)).

<sup>37</sup> See DOE, *Transportation Energy Data Book: Edition 30* (July 2011), at Table 10.12.

DOE's view, only by deploying the five vehicle technologies listed in section 133 (hybrid electric vehicles, plug-in electric drive vehicles, neighborhood electric vehicles, fuel cell electric vehicles, and medium- or heavy-duty electric vehicles) before widespread commercial availability (or production) can necessary data from actual users be generated, including data related to performance and operating costs. These types of data can be critical to determining whether a technology needs improvement and if so, how it should be improved to allow wider use. If data show that no improvement is needed, then such data could assist future potential users in deciding whether to select the technology.

Under the emerging technology investment credit allocation, DOE is proposing to allocate no additional credits for the acquisition of a pre-production version of any of the five vehicle types themselves, although DOE's position is that the pre-production vehicle constitutes an emerging technology. DOE is proposing that such pre-production vehicles would yield one credit by virtue of their acquisition (if they qualify as AFVs, or the appropriate level if they qualify as one of the five electric drive vehicles but not as an AFV) or they can yield emerging technology investment credits, but not both. In other words, fleets would not be able to earn duplicate credits for multiple reasons stemming from the same vehicle acquisition (e.g., credit under one of the vehicle acquisition approaches as well as credit for an emerging technology investment).

DOE is proposing that investments in pre-production versions of the five vehicle types would earn 1 credit per \$25,000 invested. DOE solicits comments from fleets and other stakeholders on this proposed level of credit allocation. As with investments in alternative fuel nonroad equipment, the \$25,000 level is based on the average price of a new LDV sold in the United States in 2008. DOE also is proposing to limit the number of credits that may be earned in a single model year under this category of credits to a maximum of 5 credits per fleet.

Under this approach, as an example, a covered fleet spending \$500,000 on the acquisition of 10 pre-production

PHEVs (i.e., \$50,000 per PHEV) could obtain a total of 12 credits; 5 credits for the expenditure of at least \$125,000 to acquire three of the vehicles and 7 credits for the acquisition of the other seven PHEVs. In the above example, if the subject vehicles instead were pre-production non-AFV PHEVs, then the fleet would receive the same 5 credits for the investment of the \$125,000, plus another 3.5 credits (7 × 1/2 credit, subject to rounding rules when totaled) for the remaining seven vehicles.

DOE considered allocating emerging technology investment credit for additional fleet investments (i.e., investments apart from the pre-production vehicle's acquisition) that are required to support incorporation of emerging technology versions of the enumerated electric drive vehicles into covered fleets, as well as for investments in components of the enumerated vehicles. For example, incorporating a given emerging technology electric drive vehicle into a fleet might require the fleet to acquire specialized maintenance equipment to address the new vehicle's needs. DOE solicits comments on this issue and encourages stakeholders, to the extent they believe credit should be allocated for investments in components and/or support equipment, to address in particular the manageability aspect of such an approach.

In summary, DOE is proposing to allocate one credit for every \$25,000 investment in eligible emerging technologies, with a maximum of five credits to be earned per fleet per model year, consistent with other "investment-type" provisions under this proposed rule. DOE did consider whether to allow fleets to earn more than a maximum of five credits annually per technology, however, in an effort to limit the degree to which the system's credits surplus grows, DOE has chosen to allot a maximum of five credits per model year, per fleet, for this category of credits. Eligibility for such credit would only exist while the underlying vehicle technology is still considered "emerging," in accordance with the definition provided in Part III.B.8 of this NOPR. Therefore, an investment that might be eligible for investment credit in one year might not be eligible the

next year, if the underlying vehicle technology moves into commercial production. In addition, to be eligible for consideration of credit, the requesting fleet would have to have made the investment. Investments in emerging technologies by organizations not subject to the requirements of the AFTP would not be eligible for credits (e.g., payments to industry groups or associations or for education outreach, lobbying, or other similar activities for which the fleet has little or no control over the activity).

DOE is proposing to allocate credits in whole number values, with credit allocated for each \$25,000 threshold achieved. As with the other investment-related credits, DOE would not allot fractional credits for investments in emerging technology. Each fleet would have to apply to DOE to receive credit for emerging technology investments. The documentation the fleet provides would be critical to any allocation of credit DOE makes; therefore, fleets requesting credit under this provision should be prepared to supply sufficiently-detailed information from which DOE could verify the specific purposes of the subject investment, as well as the specific amount of the investment and that the investment has not been the subject of credit elsewhere under this program. Fleets would have to certify the accuracy of the information provided. DOE acknowledges that a covered fleet's investment in emerging technology may not necessarily coincide with the fleet's acquisition of the technology. For consistency, however, DOE is proposing that a fleet would get credit for the year in which the emerging technology is put into operation.

The amounts submitted for consideration for credit should not include amounts or activities that are credited elsewhere under the provisions related to acquisition of AFVs, electric drive vehicles, alternative fuel infrastructure, or alternative fuel nonroad equipment.

DOE solicits comments from fleets and other stakeholders on the proposed level of credit allocation (\$25,000/credit).

**Summary Table of Credits**

**PROPOSED CREDIT LEVELS UNDER STANDARD COMPLIANCE FOR ELECTRIC DRIVE VEHICLES NOT CLASSIFIED AS AFVS AND FOR OTHER ACTIONS**

Credit category	Credit allotment	Limitations/other
HEV .....	1/2 credit.	
PHEV .....	1/2 credit.	
FCEV .....	1/2 credit.	



PROPOSED CREDIT LEVELS UNDER STANDARD COMPLIANCE FOR ELECTRIC DRIVE VEHICLES NOT CLASSIFIED AS AFVS  
AND FOR OTHER ACTIONS—Continued

Credit category	Credit allotment	Limitations/other
NEV .....	¼ credit .....	Not included in covered LDV count.
Medium- or heavy-duty HEV/PHEV ....	½ credit .....	Not included in covered LDV count.
Alternative Fuel Infrastructure .....	1 credit per \$25,000 invested * .....	Maximum of 5 credits if private infrastructure, 10 credits if publicly-accessible infrastructure; credit allocated in model year placed into operation.
Alternative Fuel Nonroad Equipment ..	1 credit per \$25,000 invested * .....	Maximum of 5 credits per fleet per model year.
Emerging Technology .....	1 credit per \$25,000 invested, or 1 credit per pre-production vehicle *.	Maximum of 5 credits if counting based on amount invested, per fleet per model year.

\* Aggregation of dollar amounts allowed (see Part IV.A above).

### V. Proposed Modifications to the Existing AFTP

Covered SFP fleets have been complying with the AFTP for almost fifteen years. Since its establishment in 1996, the AFTP has operated smoothly, with tremendous compliance rates. DOE has considered the successes of the AFTP and its applicable requirements in the context of seeking continued efficient and simple AFTP operation within a framework of limited resources. As a result, DOE has identified several areas in which it believes modifications to the existing AFTP can benefit AFTP stakeholders and increase Program efficiencies. DOE seeks comments from stakeholders on each of the proposals set forth below.

#### A. Timeliness of Exemption Request Submittals

On occasion, DOE has received complete exemption requests before and also well past the model year for which the requests would apply. In other instances, DOE has received incomplete exemption requests and, following correspondence between DOE and the submitter, the latter has not provided necessary information to DOE in a timely fashion. The result in these instances is that a complete exemption request was not submitted to DOE until well past the relevant model year.

The existing AFTP does not provide specific time frames in which covered fleets must submit their exemption requests to DOE. The regulations, specifically 10 CFR 490.204 (State fleets) and 490.308 (alternative fuel provider fleets), currently specify neither the earliest date nor a deadline by which exemption requests must be submitted; in the case of States, section 490.204(b) specifically provides that requests for exemptions “may be submitted at any time \* \* \*.”

When an exemption request is submitted before the model year for which the exemption would apply, there is a distinct risk that the submitting fleet will not have in hand

information sufficient to be able to commit to vehicle specifics in its request. Moreover, when an exemption request is submitted before the start of and even during a model year, the fleet’s planned acquisitions often will change subsequent to the request’s submission. For example, the requesting fleet may acquire a different number of LDVs, or a different makeup (*e.g.*, make and model) of LDVs, compared to what was indicated in the fleet’s exemption request. Similarly, a fleet requesting exemptions before the close of a given model year on the basis that alternative fuel is unavailable may find that an appropriate alternative fuel station has opened after submission of its request. Such changes during the model year have resulted in fleets having to resubmit their exemption requests.

DOE believes that submitting an exemption request before the close of the subject model year (*i.e.*, before August 31) often leads to these situations. As required under 42 U.S.C. 13251(a)(5) and 13257(i), exemption requests must “demonstrate[] to the satisfaction of the Secretary” that certain factors apply. In establishing a start date for submissions, DOE hopes to encourage more accurate exemption requests, thus reducing the likelihood that fleets would have to revise and resubmit their requests.

Similarly, exemption requests and responses to DOE requests for clarification or additional information would be limited by a deadline under this NOPR. DOE believes this is appropriate given that a fleet should have an adequate level of certainty regarding the availability of alternative fuels and vehicles for the just-completed model year.

Based on the foregoing, DOE is proposing the following:

■ A covered fleet may submit an exemption request no earlier than September 1 following the subject model year, and the exemption request must be preceded by the fleet’s annual report for that model year.

■ DOE must receive an exemption request no later than January 31 following the subject model year for which the exemption request would apply.

■ For submitted exemption requests on which DOE seeks clarification or additional information, the requesting fleet must respond to DOE within 30 days, or DOE would process the exemption request based solely upon the information it has.

Therefore, covered fleets would have a five-month period in which to seek exemptions from DOE. If a covered fleet were to submit an exemption request during the subject model year (*i.e.*, prior to the model year’s close on August 31) and, therefore, prior to having submitted its annual report, DOE would inform the fleet’s point of contact (POC) by electronic mail that the request was submitted too early and, for that reason, DOE would not consider it unless it were resubmitted after the fleet filed its required annual report. Should a covered fleet submit an exemption request after January 31 following the subject model year (*i.e.*, more than five months after the model year ended), DOE would notify the POC by electronic mail that because the exemption request was submitted too late, DOE will not provide a written determination under section 490.204 or section 490.308. Similarly, if a covered fleet does not respond to a request from DOE for additional information within a timely manner (*i.e.*, 30 days), DOE would process the fleet’s exemption request based on the information DOE already has, which might not be sufficient to support the granting of the request either in whole or in part.

DOE has based this schedule upon the experience it has gained since the inception of the AFTP, and believes that five months is sufficient time for covered fleets to submit their exemption requests. To date, the vast majority of exemption requests have been submitted by fleets after the applicable model year has ended, and, in fact, after

the respective fleet's submission of its required annual report. Only a few isolated cases have occurred outside of the proposed five-month filing period. Thus, no hardship is anticipated by formalizing this schedule.

Moreover, requiring the prior submission of a fleet's annual report, which is due no later than December 31 following the model year (10 CFR Sec. 490.205 and 490.309), should limit the need for DOE to seek clarification or additional information from the requesting fleet. Even those fleets that file their annual report on the December 31 reporting deadline would still have one full month to prepare their exemption requests, although earlier submission of reports is still recommended.

#### *B. Program Credits and Exemption Requests*

Under the AFTP, covered fleets that go beyond compliance under the Standard Compliance method by acquiring more AFVs than they are required to acquire in a given model year may bank credits earned for these additional acquisitions. 10 CFR 490.503(a). These fleets may then draw upon these banked credits as they need them in future model years, or they may sell or trade these credits to other covered fleets that need credits for purposes of complying with their own Standard Compliance obligations. Thus, the purpose of the credit program is to provide flexibility to fleets. Since 1996, covered SFP fleets have generated a significant number of banked credits.

The credit banking system has matured greatly since its inception. Fleets have generated and accumulated more credits than they are using. As of the start of MY 2010, there were over 61,500 banked AFV-acquisition credits in the system. This number of credits is an amount sufficient to keep the AFTP operating without any fleets acquiring AFVs for at least an estimated four years. Clearly, as a group, covered fleets are not having trouble generating AFV-acquisition credits, and this proposed rule, once promulgated, would only increase the number of ways in which fleets can obtain credits under the AFTP.

Despite this surplus of credits, covered SFP fleets annually request exemptions from AFV-acquisition requirements. Since MY 2000, DOE has granted exemptions for over 9,600 AFVs, which were included in nearly 350 exemption requests. In many instances, covered fleets with banked credits request and receive exemptions.

DOE is not required to grant AFV-acquisition exemption requests unless

certain demonstrations are made to its satisfaction. A request for exemptions should be a form of administrative relief of the last resort, in the event a fleet is unable to satisfy its AFV-acquisition requirements through the available compliance avenues, including AFV acquisitions, biodiesel use in medium- and heavy-duty vehicles, and obtaining banked credits from other fleets. Overall, DOE does not believe that exemptions further the replacement of petroleum fuels in accordance with EPA Act 1992. Exemptions should therefore be viewed purely as administrative relief in the event a fleet cannot otherwise meet its AFV-acquisition requirements.

In order to address the surplus of credits and the use of the exemption process, DOE is proposing three revisions. First, DOE is proposing that covered fleets be required to use their own banked credits before requesting exemptions from DOE. With respect to any covered fleet whose annual report reveals an AFV-acquisition deficiency, under today's proposed rule, DOE would not need to receive a specific request from the fleet to apply banked credits towards the existing deficiency. With the proposed coordinated timeframes for submitting exemption requests and model year annual reports, DOE would be able to consider a fleet's available credits when a deficiency is identified in an annual report, and then consider exemption requests as necessary. Pursuant to 10 CFR 490.504, which would become section 490.505, DOE, in response to a fleet's request that its banked credits be counted as AFV acquisitions, would continue to apply the credits in such manner. In the absence of a request, though, DOE would automatically apply a deficient fleet's banked credits towards the credit shortfall. Proposed language to this effect is included in new section 490.505(b). In the case where a requesting fleet has some banked credits but not enough to negate the need for any exemptions, DOE would apply the fleet's banked credits first, reducing the number of exemptions sought.

Second, DOE is proposing to require that deficient fleets without a sufficient number of banked credits to resolve the deficiency provide information in their annual reports regarding any efforts they have made to purchase or trade for credits in the credit market.

Third, DOE is proposing in this rulemaking that exemption requests submitted by a fleet within 90 days of that fleet's sale of banked credits will not be granted.

This NOPR would expand the array of creditable actions available to fleets,

thus making it easier for covered fleets to comply with their AFV-acquisition requirements and simultaneously expanding the compliance options that fleets must explore in advance of pursuing exemptions. DOE believes that going forward there will be fewer justifications for granting exemptions. To date, DOE has granted exemptions as a means to provide fleets flexibility when their efforts to comply have resulted in a shortfall of credits. Today DOE proposes steps that are designed to ensure that fleets use their existing credits for the purpose for which they were generated. DOE seeks comments from stakeholders on applying a fleet's credits prior to granting exemptions, requiring covered fleets to provide information regarding their attempts to purchase or trade for credits in their annual reports, and the restriction on banked credit sales 90 days prior to an exemption request.

In these ways, DOE seeks to limit the growth of the store of credits currently in the AFTP, and in so doing, ensure banked credits have value and further the goals of the AFTP. Reducing the store of credits and ensuring a demand for these credits would help to increase the value of credits and thereby make these credits relevant in a fleet's decision-making regarding how to comply with the AFV-acquisition requirements. A fleet lacking credits may have to consider whether purchasing a market-priced credit is a better financial option than participating in the AFTP's Alternative Compliance option. DOE believes this latter option can save the fleet financial resources by helping the fleet reduce its petroleum consumption. As an option of last resort, a State fleet may still request an exemption based on unreasonable financial hardship (10 CFR 490.204(a)(3)).

#### *C. Alternative Compliance*

As mentioned earlier, Congress created the Alternative Compliance option in 2005, and DOE promulgated its final rule establishing subpart I of 10 CFR part 490 on March 20, 2007. Covered fleets that wish to opt into Alternative Compliance are required to apply for a waiver. 10 CFR 490.805(b)(1) requires that a preliminary intent to apply for a waiver be registered by March 31 prior to the model year for which the waiver is sought. Under 10 CFR 490.805(b)(2), a fleet's complete waiver application is due no later than July 31 if the application is dependent on information regarding the availability of motor vehicle models to be released by auto manufacturers, while under 10 CFR 490.805(b)(3), the complete waiver

application is due by June 30 if it is not dependent on such information. DOE established these alternative due dates to alleviate difficulties associated with preparing an application in the face of new model year vehicle data, which manufacturers generally do not release until summer.

After several years of experience with Alternative Compliance, DOE has determined that it is appropriate to have a single deadline for complete waiver applications. Having one due date is expected to be less confusing to fleets. In addition, it has proven to be difficult for DOE to determine whether a fleet should have submitted its waiver application by the earlier submittal date. Ultimately, DOE encourages covered fleets to submit Alternative Compliance waiver applications and seeks to ensure that interested fleets have sufficient time to submit their applications. Therefore, DOE is proposing to delete the June 30 due date and establish a uniform application deadline of July 31. All waiver applications would be due no later than July 31 prior to the model year for which a waiver is sought. The deadline for filing a notice of intent, which is March 31 prior to the model year for which a waiver is sought, would be unaffected.

Based upon its implementation to date of the Alternative Compliance option, DOE also has realized that the existing regulatory provisions pertaining to the rollover of excess petroleum reductions achieved through Alternative Compliance in a previous model year could be clearer for fleets. Therefore, DOE is proposing revisions to the language in 10 CFR 490.804(c) to clarify the steps for requesting and applying rollover reductions to future model years for which a waiver is sought. Under proposed section 490.804(c)(2)(i), a fleet wishing to roll over for future use the excess petroleum reductions that it achieved in a particular model year would have to make a written request to DOE as part of the fleet's annual report for that year. Similarly, under proposed section 490.804(c)(2)(ii), if the fleet seeks to apply any of the excess petroleum reductions previously rolled over to a later model year for which an Alternative Compliance waiver was also granted, the fleet would have to include a written request as part of its annual report for that later model year.

Finally, DOE is proposing a modification to section 409.809 to address the situation in which DOE has revoked a fleet's Alternative Compliance waiver. The modification would clarify that such a fleet is precluded from requesting any exemptions under Standard Compliance for the model year

of the revoked waiver. DOE previously has explained "that it would not grant exemptions to a State under [section] 490.204 or to a covered person under [section] 490.308 if the State or covered person has been granted an alternative compliance waiver."<sup>38</sup> The proposed revision to section 490.809 would set forth in the regulations DOE's longstanding position that a fleet that has been granted a waiver for a particular model year is not eligible for any exemptions during that model year.

#### D. Other Regulatory Revisions

DOE also is proposing today several minor technical amendments that are designed to make the AFTP regulations internally consistent. These amendments, which DOE believes are non-controversial, clarify the definitions of "capable of being centrally fueled" and "fleet" as they appear in 10 CFR section 490.2, correct an error in 490.308(f), and standardize the use of the terms "alternative fueled," "dedicated", and "dual-fueled" as they appear in the following provisions:

- 10 CFR 490.202(a);
- 10 CFR 490.205(b)(5)(iv);
- 10 CFR 490.305(a); and,
- 10 CFR 490.309(b)(5)(iv).

#### E. Other Issues

DOE also wishes to clarify that alternative fuel provider fleets will continue to receive credit under the AFTP for the acquisition of a light duty AFV irrespective of whether the appropriate alternative fuel is available in the area in which the vehicle is located or operated. 10 CFR 490.306, consistent with section 501(a)(4) of EPA Act 1992, provides that acquired AFVs "shall be operated solely on alternative fuels, except when these vehicles are operating in an area where the appropriate alternative fuel is unavailable." DOE has found that acquisition credits for AFVs, which serve to get vehicles on the road, are valuable inasmuch as they spur demand not only for the vehicles but, just as importantly, for the alternative fuel. If the alternative fuel becomes available, however, section 490.306 requires the fleet to use the fuel in the acquired AFV.

DOE reminds alternative fuel provider fleets that the operating requirement in 10 CFR 490.306 is a continuous one, and encourages fleets to review on a regular basis the availability of alternative fuels in their AFV operating areas, for example through DOE's Alternative Fueling Station Locator, which is available at <http://www.afdc.gov>.

[energy.gov/afdc/locator/stations/](http://www.afdc.gov/afdc/locator/stations/), and to contact their local Clean Cities coalitions (see [http://www.afdc.energy.gov/cleancities/progs/coalition\\_locations.php](http://www.afdc.energy.gov/cleancities/progs/coalition_locations.php)) for the latest information on alternative fuel availability.

Finally, in the context of this issue and exemption requests, DOE reiterates that today's NOPR would increase the number of creditable actions under the AFTP and, consequently, expand the range of compliance options available to all covered fleets. In particular, as discussed earlier, credit would be allocated for the acquisition by fleets of non-AFV HEVs, among other vehicles. With respect to such HEVs, DOE notes both that the vehicles and their fuel (*i.e.*, gasoline) are widely available throughout the country. For this reason, DOE intends to adopt an approach to the granting of exemptions that is similar to DOE's longstanding policy on biodiesel. Under that policy, unless a covered fleet seeking exemptions either indicates in its exemption request that it does not own or operate any or a sufficient number of medium- or heavy-duty diesel vehicles or demonstrates that biodiesel is unavailable to it, DOE limits the number of exemptions granted to no more than one-half of the fleet's AFV-acquisition requirements, inasmuch as biodiesel fuel use credits may account for up to 50% of those annual requirements (10 CFR Sec. 490.705(b)). Because non-AFV HEVs are widely available, DOE would therefore also expect a covered fleet seeking exemptions under these proposed regulations to demonstrate in its exemption request why it was unable to acquire such HEVs and therefore meet at least 50% of its AFV-acquisition requirements with such vehicles (based on the 1/2 credit allocated for each HEV).<sup>39</sup> DOE would limit the number of exemptions granted based on a shortfall of HEV purchases, unless the fleet shows that HEVs were not available in the light duty vehicle type needed by the fleet.

## VI. Proposed Compliance

### A. Credit Values

The approach that DOE is proposing today allocates less than one credit to certain vehicle types, and whole number values of credits for investments in alternative fuel infrastructure, alternative fuel nonroad equipment, and relevant emerging

<sup>39</sup> Note that a covered fleet could potentially meet 100% of its AFV-acquisition requirements through a combination of non-AFV HEV purchases and biodiesel fuel use credits. As noted earlier in this proposed rule, like biodiesel purchases, light duty HEV purchases would earn credits even if a fleet has not yet met its AFV acquisition requirements.

<sup>38</sup> 72 FR 12958, 12962 (Mar. 20, 2007); See also 71 FR 36034, 36036 (June 23, 2006).

technologies. DOE also is proposing that when fleets report to DOE the total credits they have earned in a model year, they should total the credits, including all fractional credits earned for vehicle acquisitions, and round to the nearest whole number. In rounding to the nearest whole number, fractions greater than or equal to one half (0.5) should be rounded up and fractions less than one half should be rounded down. For example, DOE would approve 14 credits for a fleet that submits appropriate documentation supporting its acquisition of AFVs and non-AFVs that total 13½ or 13¾ credits. Similarly, DOE would approve 13 credits for a fleet that submits appropriate documentation supporting its acquisition of AFVs and non-AFVs that total 13¼ credits. This rounding approach to fractional credits is consistent with how fleets already round for purposes of calculating their AFV-acquisition requirements.

#### B. Reporting

As with the existing AFTP, fleet compliance reporting may be accomplished through the Internet. Over the past several years, approximately 75 percent of reporting fleets have consistently submitted their compliance information to DOE through the available Internet online reporting system. Reporting compliance information online serves several purposes. First, reporting is immediate. Second, filing the information online reduces the potential for the introduction of errors through entry and transcription of compliance information. Third, reporting online is less burdensome and a more efficient use of both fleet and DOE resources.

### VII. Opportunity for Public Comment

#### A. Participation in Rulemaking

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments with respect to the subjects and DOE proposals set forth in this notice. DOE encourages the maximum level of public participation possible in this proceeding. Individual consumers, representatives of consumer groups, manufacturers, associations, coalitions, alternative fuel providers, States or other government entities, and others are urged to submit written comments on the proposal. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted.

#### B. Written Comment Procedures

Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Alternative Fuel Transportation Program: Alternative Fuel Transportation Program; Alternative Fueled Vehicle Credit Program (Subpart F) Modification," NOPR, RIN 1904-AB81, and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit written comments cannot provide eight copies, alternative arrangements can be made in advance by calling Mr. Dana O'Hara at (202) 586-8063. Additionally, DOE would appreciate an electronic copy of the comments to the extent possible. Electronic copies should be emailed to [regulatory\\_info@afdc.nrel.gov](mailto:regulatory_info@afdc.nrel.gov). DOE is currently using Microsoft Word.

Before taking final action on today's proposal, DOE will consider all comments and other relevant information received on or before the date specified at the beginning of this NOPR. All comments submitted will be made available in the electronic docket set up for this rulemaking. Therefore, no information desired to be kept confidential should be submitted to the docket. This docket will be available via the DOE EDOCKET through <http://www.regulations.gov>, which may be located using key words or the above noted docket number.

### VIII. Regulatory Review

#### A. Review Under Executive Order 12866

Today's proposed rule has been determined not to be a "significant regulatory action" under section 3(f) of 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 (OIRA) of the Office of Management and Budget (OMB).

#### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) requires the 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. These procedures and policies are available at <http://www.gc.doe.gov/documents/eo13272.pdf>.

DOE has reviewed today's proposed rule under the provisions of the RFA and the procedures and policies published on February 19, 2003. The requirements in 10 CFR part 490 apply only to alternative fuel providers and State government entities that own, operate, lease, or otherwise control 50 or more non-excluded LDVs, at least 20 of which are centrally fueled or capable of being centrally fueled and are used primarily in a metropolitan statistical area (MSA) or consolidated MSA with a 1980 Census population of more than 250,000. DOE has identified certain fleet operators that may qualify as small entities under RFA. Today's action, if finalized, however, would provide additional compliance options and amend the administrative process for demonstrating compliance, and therefore will not have a significant economic impact on a substantial number of small entities. 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).

#### C. Review Under the Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and the regulations implementing the PRA, 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. This proposed rule would contain a collection of information that is subject to review by OMB under the PRA. DOE plans to obtain documentation to support the allocation of credits through use of the AFTP's annual reporting form, DOE/FCVT/101, Standard Compliance Reporting Spreadsheet. OMB Control Number 1910-5101 is currently valid and assigned to the AFTP's annual report(s). As part of this proposed rule, DOE is proposing to collect additional information regarding investments in refueling infrastructure, alternative fuel non-road equipment, and emerging technology, as well as efforts made to procure credits on the credit market.

Proposed § 490.508 ("Credit activity reporting requirements") 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 all covered fleets may seek to earn credits for acquiring electric drive vehicles, but that fewer fleets will seek to earn credits for acquiring and deploying alternative fuel infrastructure, alternative fuel nonroad equipment, and emerging technology. DOE estimates that a State or covered person seeking credits for both acquiring electric drive vehicles and for acquiring and deploying alternative fuel infrastructure, alternative fuel nonroad equipment, and emerging technology would expend 1 additional hour to comply with the reporting requirements of EISA section 508. DOE estimates the total annual costs to a State or covered person that receives credits proposed under today's NOPR are negligible, particularly given that the covered fleet is already submitting an annual report to achieve compliance with Program requirements.

DOE estimates that approximately 10 to 30 fleets request exemptions each model year. Under today's proposed rule, these fleets would have to provide information in their annual reports regarding any efforts they have made to purchase or trade for credits in the credit market. DOE estimates that fleet in this instance would expend 1 additional hour to comply with this requirement. DOE estimates that the total annual costs to a state or covered person complying with this requirement for the purpose of requesting an exemption under the Program, as proposed under today's NOPR, are negligible, particularly given that the covered fleet may already have attempted to acquire credits from another covered fleet.

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.

#### *D. Review Under the National Environmental Policy Act*

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to any rulemaking amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Under this proposed rule, covered fleets would be able to earn credits for the acquisition of specified electric drive vehicles and for investments in alternative fuel infrastructure, nonroad equipment, and relevant emerging technologies, activities for which they may not earn credits under the existing AFTP. The proposed rule has been structured to ensure that the petroleum reductions achieved by the AFTP in the future would be equivalent to those achieved in past years. Because the proposed rule would not change the environmental effect of compliance with 10 CFR part 490, neither an environmental assessment nor an environmental impact statement is required.

#### *E. Review Under 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 Federal 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. Section 3(b) of Executive Order 12988 specifically requires that Federal 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 Federal agencies to review regulations in light of the applicable standards in sections 3(a) and 3(b) to determine whether those standards 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, this proposed rule meets the relevant standards of Executive Order 12988.

#### *F. Review Under Executive Order 13132*

Executive Order 13132, "Federalism," 64 FR 43255 (August 10, 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 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. Therefore, no further action is required by Executive Order 13132.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

DOE reviewed this proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA; Pub. L. 104-4), which requires each Federal agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in the promulgation of a rule that includes a Federal mandate that may 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 (adjusted annually for inflation), section 202 of UMRA requires the agency to prepare a written statement assessing the resulting costs, benefits, and other effects of the rule on the national economy (2 U.S.C. 1532(a) and (b)). UMRA also requires a Federal agency to develop an effective process to permit meaningful and timely input by elected officers of State, local, and tribal governments on any proposal containing a "significant Federal

intergovernmental mandate,” and requires an agency to develop a plan for providing potentially affected small governments with notice and an opportunity for timely input prior to the establishment of any regulatory requirements that might significantly or uniquely affect small governments (2 U.S.C. 1533 and 1534). On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at <http://www.gc.doe.gov>).

Today’s proposed rule provides additional compliance options under 10 CFR Part 490 by expanding credits under the existing AFTP, and therefore contains neither an intergovernmental mandate nor a private sector mandate that may 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 year. Accordingly, no assessment or analysis is required under UMRA.

*H. Review Under the 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. This 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.

*I. Review Under the 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. Review Under 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 OIRA a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, 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. The Statement of Energy Effects must discuss any adverse effects on energy supply, distribution, or use should the proposal be implemented, and reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

As discussed in section VIII.A above, this proposed rule has been determined not to be a “significant regulatory action” under Executive Order 12866. In addition, the proposal is not likely to have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Nor has OIRA designated this action as a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

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

Administrative practice and procedure, Energy conservation, Fuel economy, Gasoline, Motor vehicles, Natural gas, Penalties, Petroleum, Reporting and recordkeeping requirements.

Issued in Washington, DC, on October 5, 2011.

**Henry C. Kelly,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, the Department of Energy is proposing to amend Part 490 of Title 10, Chapter II of the Code of Federal Regulations as set forth below:

**PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM**

1. The authority citation for Part 490 continues to read as follows:

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

2. Section 490.2 is amended by:  
a. Adding “, including liquid fuels domestically produced from natural gas” after the words “natural gas” in the definition of “Alternative Fuel”.

b. Removing the definitions of “Electric-hybrid Vehicle,” “Electric Motor Vehicle,” and “Flexible Fuel Vehicle”.

c. Revising the definitions of “Alternative Fueled Vehicle,” “Automobile,” “Capable of Being Centrally Fueled,” “Dedicated Vehicle,” “Dual Fueled Vehicle,” and “Fleet”.

d. Adding the definition of “Work Truck” in alphabetical order.

The additions and revisions read as follows:

**§ 490.2 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

*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 multi-stage 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 refueled 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.

*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.

*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.

\* \* \* \* \*

*Fleet* means a group of 20 or more light duty motor vehicles, excluding certain categories of vehicles as provided by § 490.3 of this part, 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.

\* \* \* \* \*

*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.

3. Section 490.3, paragraph (e), is revised to read as follows:

**§ 490.3 Excluded 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;

\* \* \* \* \*

**Subpart C—[Amended]**

4. Section 490.202, paragraph (a), is revised to read as follows:

**§ 490.202 Acquisitions satisfying the mandate.**

\* \* \* \* \*

(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;

\* \* \* \* \*

5. Section 490.204 is amended by:

a. Revising paragraph (b);  
b. Redesignating paragraphs (g) through (h) as paragraphs (h) through (i); and

c. Adding a new paragraph (g).

The revision and addition read as follows:

**§ 490.204 Process for granting exemptions.**

\* \* \* \* \*

(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 of this part. A fleet may not request exemptions within 90 days of selling any or all of its banked credits. Any such exemption request will be denied.

\* \* \* \* \*

(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.

\* \* \* \* \*

6. Section 490.205 is amended by:  
a. Revising paragraph (b)(5)(iv); and  
b. Adding a new paragraph (b)(5)(vi).  
The revision and addition read as follows:

**§ 490.205 Reporting requirements.**

\* \* \* \* \*

(b) \* \* \*  
(5) \* \* \*  
(iv) Dedicated vehicle or dual fueled vehicle;

\* \* \* \* \*

(vi) A description of all efforts made to acquire alternative fueled vehicle credits; and

\* \* \* \* \*

**Subpart D—[Amended]**

**§ 490.302 [Amended]**

7. Section 490.302 is amended by removing the reference “section 490.308” in paragraph (e) and adding in its place “ § 490.307.”

8. Section 490.305, paragraph (a), is revised to read as follows:

**§ 490.305 Acquisitions satisfying the mandate.**

(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;

\* \* \* \* \*

**§ 490.307 [Removed]**

9. Section 490.307 is removed.

**§ 490.308 [Redesignated as § 490.307]**

10. Section 490.308 is redesignated as § 490.307 and newly redesignated § 490.307 is amended by:

a. Adding “(1)” after the letter “(a)” in paragraph (a);  
b. Adding new paragraphs (a)(2), and (c)(4); and

c. Removing, in paragraph (f), the word “State’s” and adding in its place, “covered person’s”.

The additions read as follows:

**§ 490.307 Process for granting exemptions.**

(a)(1) \* \* \*

(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 of this part. A fleet may not request exemptions within 90 days of selling any or all of its banked credits. Any such exemption request will be denied.

\* \* \* \* \*

(c) \* \* \*

(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)(1) 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.

\* \* \* \* \*

**§ 490.309 [Redesignated as § 490.308]**

11. Section 490.309 is redesignated as § 490.308, and newly redesignated § 490.308 is amended by:

a. Removing “or section 490.307,” from paragraph (a); and  
b. Revising paragraph (b)(5)(iv);  
c. Adding a new paragraph (b)(5)(vi).

The revision and addition read as follows:

**§ 490.308 Annual reporting requirements.**

\* \* \* \* \*

(b) \* \* \*  
(5) \* \* \*  
(iv) Dedicated vehicle or dual fueled vehicle;

\* \* \* \* \*

(vi) A description of all efforts made to acquire alternative fueled vehicle credits; and

\* \* \* \* \*

**§ 490.310 [Redesignated as § 490.309]**

12. Section 490.310 is redesignated as § 490.309.

**Subpart F—[Amended]**

13. Section 490.500 is revised to read as follows:



**§ 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; or

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

14. Section 490.501 is revised to read as follows:

**§ 490.501 Definitions.**

In addition to the definitions found in § 490.2 of this part, 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 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, 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.

15. Section 490.502 is revised to read as follows:

**§ 490.502 Applicability.**

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

16. Section 490.503 is revised to read as follows:

**§ 490.503 Creditable actions.**

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

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

(2) Acquiring alternative fueled vehicles, including those in excluded categories under § 490.3 of this part, 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 in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part;

(3) Acquiring 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 in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part:

(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 of this part 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 of this part;

(c) Investing, in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part, at least \$25,000 in an emerging technology or alternative fuel infrastructure or alternative fuel non-road equipment, provided that:

(1) The technology, infrastructure, or equipment is put into operation during the year in which the fleet 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 non-road equipment, the equipment is being operated on alternative fuel, within the constraints of best practices and seasonal fuel availability; or

(d) Acquiring, in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part, any of the following vehicles, including those in excluded categories under § 490.3 of this part:

(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(a)(3) and 490.305(a)(3) of this part.

17. Section 490.504 is revised to read as follows:

**§ 490.504 Credit allocation.**

(a) Based on annual credit activity report information, as described in § 490.508 of this subpart, 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 in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part; 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 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 in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part.

(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 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 of this subpart, DOE shall allocate alternative fueled vehicle credit in the amount set forth below for each of the following vehicles that a fleet or covered person acquires in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part:

(1) A hybrid electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle— $\frac{1}{2}$  credit;

(2) A plug-in electric drive vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle— $\frac{1}{2}$  credit;

(3) A fuel cell electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle— $\frac{1}{2}$  credit; and

(4) A neighborhood electric vehicle— $\frac{1}{4}$  credit.

(e) Based on annual credit activity report information, as described in § 490.508 of this subpart, DOE shall allocate one alternative fueled vehicle credit for every \$25,000 that a fleet or covered person invests, in a model year

when acquisition requirements apply under § 490.201 or § 490.302 of this part, 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;

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

(3) An emerging technology, provided that the maximum number of credits under this paragraph (e) 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.

(f) A fleet or covered person may aggregate the amount of money invested in a model year on alternative fuel infrastructure, alternative fuel non-road equipment, and emerging technology such that funds from multiple categories may be used to achieve the \$25,000 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 paragraph (e) of this section.

18. Section 490.505 is revised to read as follows:

**§ 490.505 Use of alternative fueled vehicle credits.**

(a) At the request of a fleet or covered person in an annual report under this part, DOE shall treat each credit as the acquisition of an alternative fueled vehicle that the fleet or covered person is required to acquire under this part. Each credit shall count as the acquisition of one alternative fueled

vehicle in the model year for which the fleet or covered person requests the credit to be applied.

(b) If an annual report shows that the fleet or covered person did not meet its acquisition requirements under § 490.201 or § 490.302 of this part, and the fleet or covered person has credits in its credit account under § 490.506, DOE will apply the number of credits needed from those available to offset the shortfall. Each credit shall count as the acquisition of one alternative fueled vehicle in the model year of the subject annual report.

19. Section 490.506 is revised to read as follows:

**§ 490.506 Credit accounts.**

(a) DOE shall establish a credit account for each fleet or covered person who 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.

20. Section 490.507 is revised to read as follows:

**§ 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 in the **Federal Register**.

21. Section 490.508 is revised to read as follows:

**§ 490.508 Credit activity reporting requirements.**

(a) A covered person or fleet applying for allocation of alternative fueled vehicle credits must submit a credit activity report by the December 31 after the close of a model year to 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 may publish in the **Federal Register**.

(b) This report must include the following information:

(1) 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 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.

(2) 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.

(3) 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.

(4) 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, and the date on which the fleet or covered person purchased the equipment and the date on which it was put into operation.

(5) 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 in paragraph (b)(1) of this section and the amount invested is not included in paragraph (b)(3)(ii) or (b)(4)(ii) of this section; and

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

(6) The total number of alternative fueled vehicle credits requested by the fleet or covered person, calculated by adding the two subtotals under paragraphs (b)(1) and (b)(2) 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.

(7) Purchases of alternative fueled vehicle credits:

(i) Credit source; and

(ii) Date of purchase;

(8) Sales of alternative fueled vehicle credits:

(i) Credit purchaser; and

(ii) Date of sale.

**Subpart I—[Amended]**

22. Section 490.804, paragraph (c) is revised to read as follows:

**§ 490.804 Eligible reductions in petroleum consumption.**

\* \* \* \* \*

(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 fleet's petroleum fuel use reduction requirement under § 490.803(a) of this part in another model year for which a waiver is granted.

(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 of this part for the model year in which the reductions were achieved.

(ii) A fleet seeking to apply, in a later model year for which a waiver was granted, any excess petroleum fuel use reductions rolled over pursuant to paragraph (c)(2)(i) of this section must make a written request to DOE as part of the fleet's annual report required for that model year under § 490.807 of this part. 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) DOE will apply approved rollover reductions to a model year for which a waiver was granted but the fleet's required reduction in petroleum fuel use was not achieved only to the extent that additional reductions attributable to motor vehicles were not reasonably available.

\* \* \* \* \*

23. Section 490.805 is amended by removing paragraph (b)(3) and revising paragraph (b)(2) to read as follows:

**§ 490.805 Application for waiver.**

\* \* \* \* \*

(b) \* \* \*

(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.

\* \* \* \* \*

24. Section 490.809 is revised to read as follows:

**§ 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 of this part from the vehicle acquisition mandate for the model year of the revoked waiver.

[FR Doc. 2011-26761 Filed 10-28-11; 8:45 am]

**BILLING CODE 6450-01-P**