

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 Modification and Other Amendments****AGENCY:** Department of Energy (DOE).**ACTION:** Final rule.

SUMMARY: Pursuant to section 133 of the Energy Independence and Security Act of 2007 (EISA), DOE is finalizing a rule that revises regulations on the Alternative Fuel Transportation Program (AFTP or the Program). This final rule establishes regulations on the allocation of marketable credits for the acquisition of EISA-specified electric drive vehicles and for investments in qualified alternative fuel infrastructure, qualified alternative fuel non-road equipment, and relevant emerging technologies. DOE also is promulgating modifications to the exemption process and the Alternative Compliance option, as well as a number of technical and other revisions that will make the Program regulations clearer.

DATES: This final rule is effective on April 21, 2014.

ADDRESSES: DOE established a docket for this action under Docket ID No. EERE-2011-OT-0066. The docket is available for review at <http://www.regulations.gov>. All documents in the docket, including **Federal Register** notices, supporting materials, and public comments, are listed in the docket index.

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SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction and Background
 - A. General
 - B. Current Status of Alternative Fuel Transportation Program
 - C. Statutory Authority
 - 1. EISA
 - 2. Additional Revisions

- II. Public Comments
- III. Discussion of the Final Rule
 - A. Existing Definitions
 - 1. Alternative Fuel
 - 2. Alternative Fueled Vehicle
 - 3. Automobile
 - 4. Dedicated Vehicle
 - 5. Dual Fueled Vehicle
 - 6. Electric Motor Vehicle and Electric-Hybrid Vehicle
 - 7. Section 133-Identified Vehicles That Already Qualify as AFVs
 - B. New Definitions: EISA Section 133 Vehicles and Investments
 - 1. Fuel Cell Electric Vehicle
 - 2. Hybrid Electric Vehicle
 - 3. Medium- or Heavy-Duty Electric Vehicle
 - 4. Neighborhood Electric Vehicle
 - 5. Plug-In Electric Drive Vehicle
 - 6. Alternative Fuel Infrastructure
 - 7. Alternative Fuel Non-Road Equipment
 - 8. Emerging Technology
 - C. Allocation of Credit
 - 1. General Basis for Allocations
 - 2. Electric Drive Vehicles
 - a. Hybrid Electric Vehicles
 - b. Plug-In Electric Drive Vehicles
 - c. Fuel Cell Electric Vehicles
 - d. Neighborhood Electric Vehicles
 - e. Medium- and Heavy-Duty Electric Vehicles
 - 3. Investments
 - a. Alternative Fuel Infrastructure
 - b. Alternative Fuel Non-Road Equipment
 - c. Emerging Technology
 - 4. Summary of Credit Allocations and Implementation Requirements
 - D. Additional Program Modifications
 - 1. Timeliness of Exemption Request Submittals
 - 2. Program Credits and Exemption Requests
 - 3. Alternative Compliance
 - 4. Other Regulatory Revisions
 - 5. Other Issues
- IV. Compliance
- V. Regulatory Review
 - A. Review Under Executive Order 12866
 - B. Review Under the Regulatory Flexibility Act
 - C. Review Under the Paperwork Reduction Act of 1995
 - D. Review Under the National Environmental Policy Act
 - E. Review Under Executive Order 12988
 - F. Review Under Executive Order 13132
 - G. Review Under the Unfunded Mandates Reform Act of 1995
 - H. Review Under the Treasury and General Government Appropriations Act, 1999
 - I. Review Under the Treasury and General Government Appropriations Act, 2001
 - J. Review Under Executive Order 13211
 - K. Congressional Notification

I. Introduction and Background

This notice of final rulemaking concludes a regulatory action mandated under section 133 of the Energy Independence and Security Act of 2007 (EISA, Pub. L. 110-140). Section 133 calls for DOE to allocate credits to covered State government and alternative fuel provider fleets that acquire various types of electric drive

vehicles, and invest in emerging technologies related to those vehicles, qualified alternative fuel infrastructure, and qualified alternative fuel non-road equipment. These allocations impact the Alternative Fuel Transportation Program (AFTP or the Program) under 10 CFR part 490. Under the Program, covered fleets have two avenues for compliance, Standard Compliance (initiated under the Energy Policy Act of 1992 (EPAct 1992, Pub. L. 102-486)) and Alternative Compliance (an optional path provided in the Energy Policy Act of 2005 (EPAct 2005, Pub. L. 109-58)). In conjunction with these allocations required under EISA, DOE is also finalizing modifications to Standard Compliance and Alternative Compliance under the Program.

On October 31, 2011, DOE published the Notice of Proposed Rulemaking (NOPR) associated with this final rule (76 FR 67288). The 60-day comment period closed on December 30, 2011. DOE received eight sets of timely comments, as discussed in Parts II and III below.

The NOPR included a detailed introduction and background discussion. To provide a full context for this final action, DOE has chosen to restate this background material, with appropriate revisions.

Titles III through V of EPAct 1992, 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 EPAct 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 EPAct 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 EPAct 1992 (42 U.S.C. 13258) and the Program regulations at 10 CFR part 490.

Congress has amended the EPAct 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 on 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 EPCA 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 EPCA 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 this final rule is section 133 of EISA, which amended section 508 of EPCA 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, non-road equipment, and emerging technologies related to those electric drive vehicles. As discussed in more detail below, some of the electric drive vehicles within the definitions provided in section 133 already meet the EPCA 1992 definition of an AFV and therefore already are counted towards a fleet’s light duty AFV-acquisition requirements or receive one credit under the AFTP, as appropriate, while others do not currently meet the AFV definition. In this action, DOE is finalizing 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 finalizing today modifications to several aspects of the existing AFTP. These modifications will enhance the timeliness of exemption requests and revise the deadline for

submitting Alternative Compliance waiver applications. Finally, DOE is making a number of clarifications and revisions to make the AFTP regulations consistent with amendments to EPCA 1992.

A. General

The overall objectives of the fleet programs and other efforts under Titles III–V of EPCA 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.”¹ The requirements of Titles III through V of EPCA 1992 focus on particular fleets, such as SFP fleets (which are the subjects of this rule) and Federal fleets,² as well as voluntary activities, such as those implemented under DOE’s Clean Cities Program.³ The mandated programs for centrally-fueled fleets seek to catalyze maximum use of replacement fuels, and, in particular, alternative fuels.

As indicated above, EPCA 1992 establishes AFV-acquisition requirements for SFP fleets, which DOE codified as the AFTP at 10 CFR 490.1 *et seq.*⁴ Titles III, IV, and V of EPCA 1992 focus on requirements for certain centrally-fueled fleets to acquire AFVs.

EPCA 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 EPCA 1992, the AFTP regulations 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 EPCA 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 credits. Section 508 of EPCA 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).⁵ As indicated, they are also able to generate credits by acquiring AFVs earlier than required. Fleets may use the surplus credits generated in these ways

¹ 42 U.S.C. 13252(a).

² Under section 303 of EPCA 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.

³ Under section 505 of EPCA 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.

⁴ DOE promulgated the AFTP regulations on March 14, 1996. 61 FR 10622.

⁵ See 10 CFR 490.3.

in future model years to cover shortfalls (banking), or they may sell or trade the credits to other covered fleets. 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 an alternative means of complying with a portion of their AFV-acquisition requirements (limited to meeting 50 percent of requirements, except for biodiesel fuel providers). In EAct 2005, Congress again amended the Title V fleet program by providing 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 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 this final rule.

This final rule implements EISA section 133, establishing regulations to allocate 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, non-road equipment, and emerging technologies related to specific vehicle types. In developing this rule, 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 assigning credits to those electric drive vehicles identified in section 133 that do not already qualify as AFVs based on 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 already are counted towards a fleet’s light duty AFV-acquisition requirements or receive one credit, as appropriate.

B. Current Status of Alternative Fuel Transportation Program

Since Model Year (MY) 2000, the AFTP has been highly successful. Through MY 2011, covered SFP fleets acquired more than 201,000 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 1997, DOE has received nearly 390 exemption requests, granting exemptions and thereby relieving the requesting fleets from having to acquire more than 10,225 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 approximately 31,000 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 11,700 credits having been exchanged over the life of the Program. Overall, covered fleets currently hold approximately 70,000 banked credits, enough credits for perhaps four or more years of operation of the entire AFTP if covered fleets did not acquire any AFVs but instead traded and applied banked credits.

C. Statutory Authority

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. This final rule therefore addresses SFP fleets only, and not Federal fleets.

The allocations that DOE is adopting today are intended to ensure consistency with the overall approach of the relevant provisions of EAct 1992, which focus on the replacement of petroleum fuels through the use of replacement fuels to the maximum extent practicable.

To understand the allocations, it is critical to consider the AFTP’s existing definitions. As discussed throughout this final rule, if a given vehicle type already qualifies as an AFV, it is already eligible for either one credit (when it is an excess or early acquisition) under the existing AFTP or, assuming it is an LDV, to be counted towards a fleet’s light duty AFV-acquisition requirements. 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 final rule will receive credit under the AFTP.

2. Additional Revisions

DOE is also finalizing today various AFTP modifications it proposed that are unrelated to EISA. These modifications, discussed more fully in Part III.D below, include establishing a timeframe for the submission of exemption requests and setting a single due date for Alternative Compliance waiver applications. Like the existing regulations in 10 CFR part 490, the statutory basis for these modifications lies in Titles III–V of EPCA 1992, as amended.

II. Public Comments

On October 31, 2011, DOE published in the **Federal Register** its NOPR proposing credit allocations for acquisitions of certain electric drive vehicles and investments in certain infrastructure and technologies, as well as making several other modifications to the Alternative Fuel Transportation Program. The NOPR stated that DOE would consider public comments received on or before December 30, 2011.⁶ DOE received timely written comments from eight organizations, including the American Public Gas Association (APGA), Eaton Corporation, the Edison Electric Institute (EEI), the Electric Drive Transportation Association (EDTA), Florida Power & Light Co. (FP&L), Natural Gas Vehicles for America (NGV America), the National Electrical Manufacturers Association (NEMA), and Securing America's Future Energy (SAFE). All of these comments are available in the public docket for this rulemaking. The specific issues raised by the commenters are addressed in Part III below.

III. Discussion of the Final Rule

In this section of the preamble, DOE discusses the AFTP definitions that are key to DOE's approach to the allocation of credits under EISA section 133, as well as the existing AFTP definitions that DOE is amending through this action.

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),⁷ and the corresponding AFTP definition appears at 10 CFR 490.2. DOE proposed to add to the regulatory definition the phrase "including liquid fuels domestically produced from natural gas," which Congress added to the section 301(2) definition in 2000.⁸ DOE

did not receive any comments on this revision, and is finalizing it as proposed.

2. Alternative Fueled Vehicle

As provided in section 301(3) of EPCA 1992, an alternative fueled vehicle is "a dedicated vehicle or a dual fueled vehicle." Thus, for a vehicle to be counted towards a fleet's AFV-acquisition requirements or receive full (i.e., one) credit under the AFTP, as appropriate, it must either be a "dedicated vehicle," which is a vehicle that operates solely on alternative fuel, or a "dual fueled vehicle," which is a vehicle that has 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 fuel (such as a flexible fuel vehicle). DOE pointed out in the NOPR that Congress has never amended the statutory definition of an AFV as it applies to SFP fleets, though Congress has, through section 2862 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), amended the definition as it applies to Federal fleets.

The corresponding AFTP definition of the term "alternative fueled vehicle" appears at 10 CFR 490.2. When DOE established this definition, it included language in the regulatory text clarifying that flexible fuel vehicles (FFVs) are encompassed within the definition, and also provided a separate definition of the term "flexible fuel vehicle." In the NOPR, DOE set forth that FFVs qualify as "dual fueled automobiles" under the Energy Policy and Conservation Act (EPCA) definition of that term (codified at 49 U.S.C. 32901(a)(9)), and thus also as AFVs. DOE therefore proposed to streamline the regulatory definition of an AFV by deleting the parenthetical reference to FFVs. DOE also proposed to delete the AFTP definition of "flexible fuel vehicle" and subsection (3) in the AFTP definition of "dual fueled vehicle." DOE did not receive any comments on these revisions, and is finalizing them as proposed.

3. Automobile

DOE proposed to amend the AFTP definition of "automobile" by making it consistent with the EPCA definition of the term, which Congress revised in section 103(a) of EISA. Specifically, DOE proposed to define an "automobile" for purposes of the AFTP as "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," with explicit exceptions for vehicles operated only on a rail line, certain vehicles manufactured in different stages by two or more original equipment manufacturers, and work trucks. Importantly, DOE emphasized 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," a covered fleet's light duty AFV-acquisition requirement in a particular model year would continue to hinge on the total number of "light duty motor vehicles" the fleet acquired during that model year. DOE further emphasized that the regulatory definition of the term "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 EPCA 1992 (42 U.S.C. 13211(11)). Consistent with the revised EPCA definition of "automobile," DOE also proposed to add to the AFTP definition of "automobile" a reference to, and a definition of, the term "work truck."

DOE did not receive any comments on the definitions of "automobile" and "work truck," and is finalizing them as proposed. In the interest of clarity, DOE also points out today that it construes "intermediate original equipment manufacturer" and "final-stage original equipment manufacturer," as those terms are used in the second exception to the definition of an "automobile," in accordance with the meanings given those terms by the National Highway Traffic Safety Administration (NHTSA).⁹

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.¹⁰

For example, a 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 an "alternative fuel." A hybrid electric vehicle (HEV) with an engine that operates solely on alternative fuel (e.g., compressed natural gas (CNG)) also

⁹ See 49 CFR 529.3 and 567.3.

¹⁰ In addition to "automobile," as discussed in the text above, section 490.2 of the Program regulations provides a definition of the term "motor vehicle." See 10 CFR 490.2.

⁶ 76 FR at 67288.

⁷ 42 U.S.C. 13211(2).

⁸ See Public Law 106–554 App. D, Div. B, Title I, section 122, as codified at 42 U.S.C. 13211(2).

would be considered a dedicated vehicle under the AFTP, and thus an AFV.

To address the future possibility that certain vehicles may operate exclusively on more than one alternative fuel, DOE proposed to amend the regulatory definition of “dedicated vehicle” so that it states “operates solely on one or more alternative fuels.” DOE, which did not receive any comments on this issue, is finalizing the revision as proposed.

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.

DOE proposed to amend subsection (1) of this definition so that it refers to the correct statutory citation for the dual fueled automobile definition, 49 U.S.C. 32901(a)(9). DOE did not receive any comments on this revision, and is finalizing it as proposed. As discussed in Part III.A.2 above, DOE also proposed, and is finalizing the deletion of subsection (3) on the grounds that it is no longer necessary.

In the NOPR, DOE explained that it has always interpreted the definition of dual fueled vehicle in the context of NHTSA’s minimum driving range criteria. 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 U.S. Environmental Protection Agency (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, albeit with charging allowed prior to each of the two test cycles.¹¹ DOE stressed that only motor vehicles that meet these minimum driving range criteria qualify as dual fueled vehicles and hence are considered AFVs under the AFTP.

In the context of plug-in hybrid electric vehicles (PHEVs), DOE added

that to the extent that questions arose as to whether a PHEV is a dual fueled vehicle, DOE would look to NHTSA, meaning that if NHTSA considers a particular automobile to be dual fueled under EPCA (i.e., for corporate average fuel economy (CAFE) purposes), then DOE would treat the vehicle as a dual fueled vehicle and hence an AFV under the AFTP.

EI and SAFE took issue with DOE’s reliance on the NHTSA minimum driving range criteria as applied to PHEVs. EEI essentially contended that the criteria are outdated and biased against “blended” range PHEVs that EEI claimed manufacturers plan to offer.¹² EEI argued that like PHEVs that have been optimized for all-electric range, PHEVs with blended ranges offer considerable petroleum reduction benefits. EEI requested that DOE assess whether a particular PHEV is a dual fueled vehicle based on the Society of Automotive Engineers’ (SAE) utility factor approach, SAE J2841,¹³ with a PHEV having a utility factor at or above 0.2 qualifying, and a PHEV with a utility factor below 0.2 not qualifying as a dual fueled vehicle. SAFE claimed that DOE is not obligated to apply the minimum driving range criteria, either to PHEVs or to dual fueled vehicles more generally, and urged DOE to adopt a dual fueled vehicle definition that does not have a minimum all-electric range. While initially supporting DOE’s use of the NHTSA minimum driving range criteria (indicating its concurrence with one credit for PHEVs that can complete the urban and highway cycles on electricity alone), EDTA indicated that the existing NHTSA methodology is problematic for blended operation PHEVs and recommended that the methodology be updated.

DOE disagrees with these comments. Congress defined the term “dual fueled vehicle” in section 301(8) of EPCA 1992 (42 U.S.C. 13211(8)), and that definition incorporates the EPCA definition of a dual fueled automobile, which definition, in turn, expressly includes the minimum driving range requirement

¹² DOE’s understanding is that “blended” range PHEVs are typically designed in a manner to maximize overall battery management. As such, “blended” range PHEVs may be designed (though not always) with some level of all-electric range, but that all-electric operation may not necessarily apply to all load or speed conditions (including all conditions required under the EPA urban and highway test cycles). For example, even for a “blended” range PHEV designed with some level of all-electric range, operation purely on electricity may only be available up to a certain vehicle speed or acceleration level.

¹³ See <http://www.sae.org>, specifically SAE J2841, “Utility Factor Definitions for Plug-In Hybrid Electric Vehicles Using Travel Survey Data” (Sept. 21, 2010).

for dual fueled passenger automobiles (49 U.S.C. 32901(a)(9)(D)). DOE cannot ignore, and does not have the authority to revise, the criteria prescribed by NHTSA under 49 U.S.C. section 32901(c).

Moreover, EPA determines whether a particular vehicle meets the NHTSA minimum driving range requirement applicable to dual fueled electric automobiles. DOE relies, and must continue to rely, on EPA and NHTSA for this key information. Once it is determined that a particular PHEV meets the driving range requirement and, thus, qualifies as a dual fueled electric automobile, DOE will treat the vehicle as an AFV and either count it towards the fleet’s AFV-acquisition requirements or accord it one credit (when it is an excess or early acquisition). Conversely, a PHEV that does not meet the minimum driving range requirement will be treated by DOE as a non-AFV PHEV.¹⁴

6. Electric Motor Vehicle and Electric-Hybrid Vehicle

DOE proposed to remove the “electric motor vehicle” and “electric-hybrid vehicle” definitions from 10 CFR 490.2, and to delete section 490.307 from the AFTP regulations on the grounds that the electric utility option contained in that section was time limited and the period for the option had long since passed. DOE explained in the NOPR that the definitions would be extraneous in the absence of the electric utility option. DOE invited public comments on these proposed deletions, but received none. Consequently, DOE is finalizing the amendments as proposed.

Because the deleted definitions of “electric motor vehicle” and “electric-hybrid vehicle” were the sole reasons for listing title VI of EPCA 1992 in section 490.1(a) of the AFTP regulations, DOE also is revising that regulatory provision by deleting the reference to title VI.

7. Section 133-Identified Vehicles That Already Qualify as AFVs

Of the electric drive vehicles identified in EISA section 133, DOE notes that several types of vehicles within those definitions already qualify as AFVs and, for that reason, already are counted towards a fleet’s light duty

¹⁴ For MY 2014 and later PHEVs, DOE encourages covered fleets to review the EPA/DOT (i.e., Department of Transportation) Fuel Economy and Environment label (a/k/a, the fuel economy window sticker, sometimes known as the Monroney label) that is posted on all new LDVs. See 76 FR 39478 (July 6, 2011). If the label contains the statement, “[t]his is a dual fueled automobile,” then the PHEV is a dual fueled vehicle and hence an AFV under the AFTP.

¹¹ 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.

AFV-acquisition requirements or receive one credit under the AFTP, as appropriate. These include certain HEVs, PHEVs, and fuel cell electric vehicles (FCEVs), light duty battery electric vehicles, and medium- or heavy-duty battery electric vehicles.

An HEV or PHEV equipped with an engine that is capable of operating on a liquid or gaseous alternative fuel (e.g., E85 or CNG) is either a dual fueled vehicle (if the engine can operate on the alternative fuel and on gasoline or diesel) or a dedicated vehicle (if the engine operates solely on the alternative fuel), and, consequently, already an AFV. Similarly, a PHEV with a conventional gasoline (or other petroleum-fueled) engine is a dual fueled vehicle and therefore already an AFV under the AFTP if it qualifies as a dual fueled electric automobile under the applicable NHTSA criteria.

FCEVs, as discussed more fully in Parts III.B.1 and III.C.2.c 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 an alternative fuel such as hydrogen) or a dual fueled vehicle (if the FCEV’s fuel cell can be fueled by an alternative fuel, such as hydrogen, and by gasoline or diesel fuel) and, consequently, already an AFV under the AFTP.

Battery EVs (e.g., the Nissan Leaf, Tesla Model S, Ford Focus Electric, Honda Fit EV, and Mitsubishi i-MiEV) are already considered AFVs under section 301 of EPAAct 1992 by virtue of electricity’s inclusion within the definition of alternative fuel. Hence, when acquired by covered fleets, they, too, are already eligible to be counted as AFV acquisitions under the AFTP. Finally, medium- or heavy-duty battery electric vehicles (e.g., the Smith Electric Newton) likewise are entitled to one credit because they, too, already qualify as AFVs (although to receive credit for the medium- or heavy-duty AFV, the covered fleet first must meet its light duty AFV-acquisition requirement, as discussed in Part III.C.2.e below).

In sum, the following already 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 are already entitled to be counted towards a fleet’s light duty AFV-acquisition requirements (assuming they are LDVs) or to receive 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 Investments

As described in the following paragraphs, DOE is finalizing definitions of various terms for purposes of Subpart F of the AFTP regulations, in accordance with the definitions provided in section 508(a) of EPAAct 1992, as amended by EISA section 133.

1. Fuel Cell Electric Vehicle

A “fuel cell electric vehicle” is defined for purposes of section 508 of EPAAct 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 a “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 or other alternative fuels like methanol or natural gas).

DOE proposed adopting in Subpart F of the AFTP regulations the statutory definition of “fuel cell electric vehicle,” albeit with the substitution of “motor vehicle” in place of the term “on-road.” DOE did not receive any comments on the proposed FCEV definition, and is finalizing it in 10 CFR 490.501.¹⁵

2. Hybrid Electric Vehicle

EISA section 133 defines a “hybrid electric vehicle” for purposes of section

¹⁵ DOE notes that the AFTP definition of an FCEV is not identical to the definition of “fuel cell vehicle” found in EPA’s light duty vehicle greenhouse gas emission standards under the Clean Air Act. See 40 CFR 86.1803–01; 75 FR 25324, 25684 (May 7, 2010). However, this final rule is consistent with EISA section 133.

508 of EPAAct 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 (26 U.S.C. 30B(d)(3)) defines the term “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.¹⁶ 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 ottocycle heavy duty engines,” among other conditions.¹⁷

DOE proposed adopting in Subpart F of the AFTP regulations the EISA section 133 definition of “hybrid electric vehicle.” DOE did not receive any comments on the proposed HEV definition, and is finalizing it in 10 CFR 490.501.¹⁸

3. Medium- or Heavy-Duty Electric Vehicle

EISA section 133 defines a “medium- or heavy-duty electric vehicle” for purposes of section 508 of EPAAct 1992, as amended, as “an electric, hybrid electric, or plug-in hybrid electric

¹⁶ 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.

¹⁷ 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.

¹⁸ DOE notes that the AFTP definition of an HEV is not identical to the HEV definition found in EPA’s light duty vehicle greenhouse gas emission standards under the Clean Air Act. See 40 CFR 86.1803–01; 75 FR 25324, 25684 (May 7, 2010). However, this final rule is consistent with EISA section 133.

vehicle with a gross vehicle weight of more than 8,501 pounds.” To be consistent with section 301(11) of EPA Act 1992, which defines a light duty motor vehicle as a vehicle weighing 8,500 pounds or less, DOE proposed to define a medium- or heavy-duty electric vehicle in 10 CFR 490.501 as “an electric, hybrid electric, or plug-in hybrid electric vehicle with a gross vehicle weight rating of more than 8,500 pounds.”

EI recommended that the proposed definition be broadened to include medium- and heavy-duty battery EVs and FCEVs, while EDTA requested that DOE clarify that the proposed definition encompasses medium- and heavy-duty battery EVs, HEVs, PHEVs, and FCEVs.

Except for FCEVs, DOE’s proposed definition of “medium or heavy-duty electric vehicle” expressly included all of the medium- and heavy-duty vehicles mentioned by these commenters, and DOE maintains that no revision or additional clarification is needed. With respect to “medium- or heavy-duty FCEVs,” although DOE proposed to define them separately, it also proposed to treat these vehicles in the same manner as “medium- or heavy-duty electric vehicles”— $\frac{1}{2}$ credit for those that are not AFVs. DOE is finalizing the definitions as proposed.¹⁹

4. Neighborhood Electric Vehicle

EISA section 133 defines a “neighborhood electric vehicle” (NEV) for purposes of section 508 of EPA Act 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.” In the NOPR, DOE proposed to adopt this statutory definition in Subpart F of the AFTP regulations.

EI suggested that the maximum attainable speed of 25 mph be increased, and that the proposed definition be revised further to enable vehicles with more than 4 wheels to qualify. DOE notes that it does not have the authority to modify the definitional criteria Congress established. Consequently, DOE is finalizing the proposed NEV definition in 10 CFR 490.501.

5. Plug-In Electric Drive Vehicle

EISA section 133 defines a “plug-in electric drive vehicle” for purposes of

section 508 of EPA Act 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 is not a motor vehicle or a vehicle used solely for competition.” DOE proposed to adopt in Subpart F of the AFTP regulations the section 133 definition of “plug-in electric drive vehicle.”

DOE explained in the NOPR that there are two primary forms of plug-in electric drive vehicles: (1) Battery EVs; and (2) PHEVs, assuming they have a minimum battery capacity of four kilowatt-hours (kWh).²⁰ 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 therefore use either a different type of battery or simply more/larger batteries than HEVs), possess the capability to recharge their electric storage system by “plugging in” to an off-board source, and typically have the capability for some electric-only operation. As indicated above, DOE considers a PHEV that is equipped with a conventional gasoline (or other petroleum-fueled) engine to be a dual fueled vehicle, and thus also an AFV, if it is able to complete the EPA urban and highway test cycles on electricity alone.

SAFE urged DOE to eliminate from the plug-in electric drive vehicle definition the four kWh minimum battery capacity, contending that the requirement is inappropriate because plug-in vehicles with a lower battery capacity could displace considerably more petroleum than FFVs operating on gasoline. DOE emphasizes in response that it is bound by the EISA section 133 definition of “plug-in electric drive vehicle,” and does not have the authority to modify the criteria set by Congress. If a PHEV with a battery capacity below the four kWh minimum in fact becomes available, DOE notes that although such a vehicle would not

qualify as a plug-in electric drive vehicle and, as a result, would not be eligible for the $\frac{1}{2}$ credit that DOE is allocating today to non-AFV plug-in electric drive vehicles (see Part III.C.2.b below), a covered fleet acquiring such a vehicle would still receive $\frac{1}{2}$ credit because the vehicle would qualify as a non-AFV hybrid electric vehicle (see Part III.C.2.a below). Furthermore, notwithstanding the vehicle’s insufficient battery capacity, if it is equipped with a liquid or gaseous alternative fuel-capable engine, the vehicle, as an AFV, would entitle the acquiring fleet either to count the vehicle as an AFV acquisition or earn one credit (if it is an excess or early AFV acquisition).

6. Alternative Fuel Infrastructure

EISA section 133 provides no definition of the term “alternative fuel infrastructure,” merely indicating that DOE should allocate credit for “investment in qualified alternative fuel infrastructure . . . , as determined by the Secretary.” DOE proposed to base the Subpart F definition of this term on the Internal Revenue Code definition of “qualified clean-fuel vehicle refueling property” (26 U.S.C. 179A(d)), such that “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.

Two organizations, APGA and NGV America, commented on the proposed definition of “alternative fuel infrastructure.” Both expressed their support for it. DOE is finalizing the definition in 10 CFR 490.501, albeit with one minor revision to ensure that stations for NEVs are encompassed within the definition.

7. Alternative Fuel Non-Road Equipment

EISA section 133 also provides no definition of the term “alternative fuel nonroad equipment.” Congress simply instructed DOE to allocate credit for “investment in qualified alternative fuel . . . nonroad equipment, as determined by the Secretary.” DOE proposed to consider as eligible for credit only non-road equipment that is mobile, such as mobile cargo and material handling equipment (e.g., forklifts) and mobile farm, landscaping, or construction equipment (e.g., riding lawnmowers, tractors, bulldozers, backhoes, front-end loaders, rollers/compactors). Consistent with the Program’s focus on vehicle acquisitions, DOE explained that stationary non-road equipment would not qualify.

¹⁹ As discussed in Part III.B.8 below, DOE is adding medium- or heavy-duty FCEVs to the definition of “emerging technology.”

²⁰ DOE reiterates that it expects all PHEVs to have a battery capacity of at least four kWh, because that is the minimum battery capacity needed for a vehicle to qualify for the Federal tax credit for new qualified plug-in electric drive motor vehicles. See 26 U.S.C. 30D(d)(1)(F)(i).

DOE received three comments on the proposed definition of “alternative fuel non-road equipment.” All three commenters (APGA, FP&L, and NGV America) supported the proposed definition. DOE is finalizing it in 10 CFR 490.501. As explained in Part III.C.3.b below, a fleet seeking credit for its investment in such equipment will have to certify that the equipment is being operated on alternative fuel, within the constraints of best practices or seasonal fuel availability. In addition, DOE clarifies today that to be considered mobile, the non-road equipment must be self-propelled. Thus, a generator that is portable by virtue of its placement on a towing skid or trailer does not qualify as alternative fuel non-road equipment notwithstanding its operation on biodiesel. Similarly, a walk-behind lawnmower, even though powered by alternative fuel, is not alternative fuel non-road equipment.

8. Emerging Technology

As with “alternative fuel infrastructure” and “alternative fuel nonroad equipment,” EISA section 133 does not provide a definition of the term “emerging technology,” although the statute indicates that such technology must “relat[e] to” any of the electric drive vehicles that Congress described earlier in section 133. Based on its experience in deploying advanced vehicle technologies, DOE proposed to interpret “emerging technology” to mean pre-production or pre-commercially-available vehicles of the types defined and described in section 133. DOE expressed its belief 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, as amended, would be inappropriate inasmuch as acquisition credit would then be warranted.

NGV America supported the proposed focus on pre-production or pre-commercially available vehicles, but argued for an expansion of the definition’s coverage to include pre-production or pre-commercially available natural gas vehicles, thereby enabling emerging technology investment credit for these vehicles as well. DOE disagrees with such an expansion, and reiterates that Congress made clear in EISA section 133 that emerging technology must “relat[e] to” one of the enumerated electric drive vehicles. DOE does not have the statutory authority to expand the definition’s reach to any other vehicle types.

EEI contended that the term “emerging technology” should not be restricted to pre-production or pre-commercially available vehicles, and should encompass production or commercially available versions of the electric drive vehicles. EEI also stated that NEVs do not further the electric drive vehicle industry’s technological advancement, and for that reason should not be among the vehicle types identified as emerging technology. DOE disagrees with both of these positions. Regarding production (including limited production) or commercially available versions of the electric drive vehicles, DOE reiterates that credit for their acquisition will be provided under the vehicle-specific credit provisions of this final rule (Part III.C.2 below). EEI’s suggested approach would effectively provide double credit for commercially available vehicles—credit for their acquisition as well as investment credit. DOE believes this would be excessive, and notes that it proposed, and today is finalizing, that a covered fleet cannot earn duplicate credits for multiple reasons stemming from the same vehicle acquisition. Instead, the fleet must choose whether to seek credit at the applicable level for the vehicle’s acquisition or under the emerging technology investment crediting provisions. With respect to NEVs, because they are one of the vehicles that Congress described in section 133, DOE maintains that they, too, must be identified in the definition.

DOE is making one substantive change to the definition of “emerging technology” that it proposed. DOE is adding the term “medium- or heavy-duty fuel cell electric vehicle” to the vehicles identified in the definition, to make clear that a pre-production or pre-commercially available version of a medium- or heavy-duty FCEV, like the other listed vehicles (i.e., HEVs, medium- or heavy-duty electric vehicles, NEVs, plug-in electric drive vehicles, and light duty FCEVs), is eligible for emerging technology investment credit.

C. Allocation of Credit

1. General Basis for Allocations

Because the AFTP and Title V of EAct 1992 are designed to encourage the replacement of petroleum fuels with non-petroleum fuels through covered fleets’ acquisition and use of AFVs, DOE proposed to allocate credit to those EISA section 133-identified electric drive vehicles that do not already qualify as AFVs (e.g., HEVs equipped with a petroleum-fueled engine) based on a yardstick of petroleum

displacement, rather than simply treating the vehicles as the equivalent of AFVs. Non-AFVs, DOE posited, should receive partial rather than full credit because they do not have as significant an effect on the potential for petroleum replacement as AFVs. For example, even if a non-AFV HEV achieves twice the efficiency of a comparable non-hybrid vehicle, the non-AFV HEV only reduces petroleum consumption by one half, whereas an AFV operated solely on alternative fuel reduces petroleum consumption in full. For fleets wanting to make use of higher efficiency vehicles and other technologies, the AFTP’s Alternative Compliance option provides a flexible means by which to achieve compliance with the Program.

In accordance with section 133, DOE also proposed to allocate credits for covered fleets’ investments in qualified alternative fuel infrastructure, qualified alternative fuel non-road equipment, and relevant emerging technologies, with 1 credit to be earned for every \$25,000 invested. Within each investment category, DOE proposed a 5-credit cap on the number of credits that could be earned in a single model year, although for the alternative fuel infrastructure category, DOE proposed a 10-credit cap for infrastructure that is publicly accessible. DOE explained that the credit caps would help limit the degree to which the AFTP’s existing surplus of banked credits (see Part III.D below) grows in the future.

FP&L suggested that in allocating credit under section 133, DOE should place additional emphasis on the extent to which a particular covered fleet has demonstrated its support for the EAct 1992 objective of replacing petroleum with replacement fuels to the “maximum extent practicable.”²¹ While DOE believes that such an approach could further encourage the acquisition of AFVs and enhanced use of alternative fuels, thereby fostering an expansion of alternative fuel infrastructure, DOE maintains that its allocation of credit must be done in an equitable and even-handed manner, applied consistently across covered fleets. This necessarily means that the same vehicle acquisition or the same level of investment must yield the same number of credits for different fleets. In DOE’s view, allocating unequal levels of credit to fleets that acquired the same vehicle or invested the same amount would be unfair. Equally important, Congress, through section 508 of EAct 1992 as originally enacted and as amended by EISA section 133, has not authorized DOE to factor into the credit allocation

²¹ 42 U.S.C. 13252(b).

process a fleet's "support" for petroleum replacement.

2. 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. These include HEVs, plug-in electric drive vehicles, FCEVs, NEVs, and medium- and heavy-duty electric vehicles. As indicated above and as described in detail in the NOPR, some versions of these vehicle types may be considered AFVs under the Program, and thus no allocation of credit under EISA section 133 is required. In this section, DOE explains the credit allocations for non-AFV electric drive vehicles that are being finalized in this action.

Several commenters provided comments that applied to more than one electric drive vehicle category, which will be reviewed prior to category-specific comments. NGV America indicated that it was largely supportive of DOE's proposal of partial credits for non-AFV electric drive vehicles "based on the fact that none of the vehicles at issue have the potential to displace as much petroleum as an AFV that operates on alternative fuel."

EDTA suggested that DOE provide additional credit for the acquisition of electric drive vehicle types in the form of an "emerging technology premium." Under EDTA's approach, there would be additional credit provided for "new, limited, or low production" electric drive vehicles, ranging in value from one to five credits per acquisition. This premium would be applicable to all categories of electric drive vehicles, including those that qualify as AFVs, as well as those that do not, and would be available for each electric drive vehicle until some DOE-designated threshold of penetration in covered fleets was achieved. This premium also would be separate and distinct from the credits allocated to investments in emerging technologies (Part III.C.3.c. below). EEI similarly suggested additional credit for electric drive vehicles that qualify as "emerging technologies," ranging from a 2.5 multiplier for light duty vehicles to a 5.0 multiplier for medium- and heavy-duty vehicles. EEI also offered that such additional credits should sunset once certain levels of penetration are reached:

- "Light-duty—50,000 cumulative eligible emerging technology vehicles were acquired in eligible fleets (or 20,000 for a single technology such as HEVs, PHEVs, FCEVs, or BEVs).
- Medium and heavy duty—25,000 cumulative eligible emerging technology

vehicles in eligible fleets (or 10,000 for a single technology as above)."

DOE appreciates the EEI and EDTA suggestions as means by which to encourage and improve the market penetration of new technologies. Nonetheless, DOE rejects the suggestions for several reasons. First, the approaches EEI and EDTA offer do not provide certainty to covered fleets. For example, it may be unclear whether a vehicle acquired would still qualify for the emerging technology premium due to sudden changes in market penetration. If a threshold were reached during the model year, the level of credit available would hinge on when during the model year a fleet submitted its supporting documentation (i.e., before or after the threshold was reached). Second, EDTA did not suggest what might be considered an appropriate penetration level. While EEI did offer possible sunset levels, given that the entire Program typically results in the acquisition of roughly 10,000–14,000 AFVs per model year, the levels EEI proposed could easily be equal to as many as five years' worth of acquisitions by the entire Program. Without further supporting justification, DOE believes that such a level of production cannot still be considered "emerging technology." Third, the approach EDTA and EEI proposed would only apply to electric drive vehicles, and not to other types of AFVs. Applying this premium only to electric drive vehicles would effectively discriminate against other AFV types. In fact, given that EDTA and EEI would apply this premium to all electric drive vehicle categories, this could result in far greater credit being provided for a non-AFV (such as an emerging technology hybrid electric vehicle) than an AFV, which would, as described in this preamble, still be seen as providing a greater potential for petroleum reduction. Therefore, DOE declines to incorporate an "emerging technology premium" into its credit allocation method for electric drive vehicles.

a. Hybrid Electric Vehicles

Currently available light duty HEVs have a conventional gasoline engine and an electric motor that provides a boost or otherwise provides only some motive force. As indicated in the NOPR, because they are neither dedicated vehicles nor dual fueled vehicles, they have not previously qualified for AFV treatment (or excess acquisition 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 or the final rule for Alternative Compliance at 72 FR 12958 (March 20, 2007).

DOE proposed that HEVs that are not AFVs because they lack an alternative fuel-capable engine would receive 1/2 credit, rather than the full credit that dedicated and dual fueled vehicles already receive.²² DOE's proposal to allocate 1/2 credit was 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 found that most HEVs generate efficiency gains that would suggest a credit value on the order of 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. As DOE explained in the NOPR, for MY 2011, the most notable of these HEVs were the 2011 Toyota Prius, Mercury Milan Hybrid FWD, and Ford Fusion Hybrid FWD, which were the most fuel efficient midsize HEVs on the market, and demonstrated an average 39% improvement in fuel economy and a 25% reduction in fuel use. Based on this

²² Note that in order to give meaning to the EISA section 133 amendments, covered fleets will earn credits for light duty HEVs (and, except for medium- and heavy-duty vehicles, all of the other EISA section 133-identified electric drive vehicles) under this final 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 non-excluded 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.

information, DOE proposed to allocate $\frac{1}{2}$ credit to all HEVs. DOE today is finalizing this allocation level.

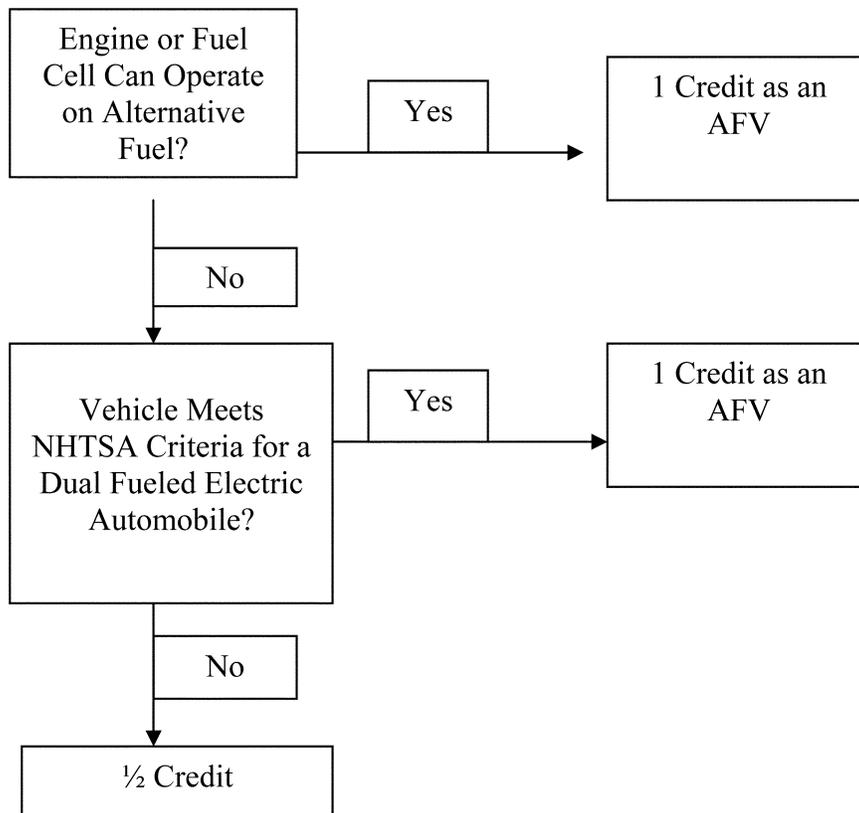
As indicated in the NOPR, DOE specifically considered proposing a higher credit value for those HEVs that provide significant efficiency gains and lower values for those HEVs with comparatively smaller efficiency gains. In the end, though, DOE believed that a single credit value for all HEVs would be most manageable from an administrative standpoint and represents an approximation of the petroleum reduction of the average

hybrid electric vehicle. DOE also concluded that selecting a single value provides greater clarity and certainty for fleets when it comes to determining the credit value for a given hybrid vehicle, easing acquisition and compliance planning. 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 continues to believe that $\frac{1}{2}$ credit for all non-AFV

HEVs is 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 is anticipated that as hybrid technologies develop, the efficiency of these vehicles should increase.

Figure 1 below provides the credit allocation determination process for HEVs (as well as for PHEVs and FCEVs). It is the same credit allocation determination figure that DOE provided in the NOPR.

Figure 1. Credit Allocation Determination for HEVs, PHEVs, and FCEVs



NGV America recommended that non-AFV HEVs should be required to achieve at least a 30% fuel economy improvement over a comparable conventional vehicle in order to receive the $\frac{1}{2}$ credit. Similarly, EEI suggested that non-AFV HEVs be required to achieve some minimum level of efficiency improvement, though it did not specify the percentage improvement over the baseline that should be required. EEI, as well as FP&L, suggested additional modifications to the credit allocations for HEVs,

however, they both indicated that covered fleets acquiring non-AFV HEVs should be allowed to claim the $\frac{1}{2}$ credit or "a higher credit on a sliding scale, based on the rated mile per gallon efficiency (or field measured efficiency)," with a fleet requesting such higher credit needing to submit documentation for approval by DOE.

Although each of these commenters clearly focused on the petroleum reduction potential of HEVs, DOE must reject these proposals. While FP&L focused on DOE's statements in the

NOPR concerning ensuring that the allocation process be "manageable from an administrative standpoint," DOE notes that this was only one of several reasons why DOE is taking this approach. For example, fleets must have some level of certainty concerning the value (credits) of a given acquisition. Also, an award of credits must be fair and equitable across all fleets. The comments, however, would create a relatively uncertain and uneven basis for the award of credits. For example, suggestions of the commenters would

make it such that different fleets could receive different levels of credit for the acquisition of the same vehicle model, depending on model year, because the efficiency of the vehicle versus some conventional baseline may vary from year to year. Further, the approaches offered would create additional administrative burden on reporting fleets and would create a relatively complex framework for earning credits. As a result, DOE is unconvinced that such a framework would be fair, equitable, and worth the additional burden on covered fleets.

Therefore, DOE is finalizing the credit allocation for HEVs that are not AFVs at $\frac{1}{2}$ credit per vehicle.

b. Plug-In Electric Drive Vehicles

As explained above, there are two primary forms of plug-in electric drive vehicles: (1) Battery EVs; and (2) PHEVs, assuming they have a minimum battery capacity of 4 kWh. Battery electric vehicles are already entitled to one credit, as they qualify as dedicated vehicles and, hence, AFVs under EPCA 1992 section 301. Section 133 more directly affects PHEVs. Because all PHEVs are anticipated to have at least a 4 kWh battery, they would qualify as plug-in electric drive vehicles under section 133. Like HEVs, PHEVs would most likely operate on both electricity and either conventional petroleum fuel or alternative fuel. PHEVs differ from other HEVs, however, in that they are designed to operate in part on electric power obtained from off-board sources and typically have more electrical storage capacity onboard. For example, a PHEV20 would have a 20-mile electric-only range, and would be allocated one full credit, assuming it could meet the NHTSA criteria for a dual fueled electric automobile. 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.

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, and do not meet the NHTSA criteria for a dual fueled electric automobile, were proposed to be treated in the same manner as HEVs, meaning their acquisition by a covered fleet would result in $\frac{1}{2}$ credit.

DOE's rationale for allocating to non-AFV PHEVs the same credit value that

would be allocated to non-AFV HEVs, $\frac{1}{2}$ credit, was 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 today is finalizing this allocation level.

In addition to commercially available PHEVs, conversion options are offered by several organizations. To qualify for credit under the AFTP, 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.

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

As they had for HEVs, both EEI and FP&L proposed that fleets be allowed to apply for greater than $\frac{1}{2}$ credit, based on the vehicle's demonstrated fuel efficiency improvement, with EEI also proposing that fleets have the option of requesting greater credit based on the ratio of the all-electric range to the expected average daily driving range. NEMA supported the $\frac{1}{2}$ credit allocation, based on the battery capacities that are currently commercially available. NEMA did, however, suggest that as the all-electric range grows for these vehicles, greater credit (up to one credit per vehicle) be awarded, based on higher ranges specified by DOE. This approach, one based on the credit level being "a function of the expected range in miles of the battery," NEMA stated, would help "encourage rapid innovation of vehicle technologies."

SAFE proposed that all non-AFV PHEVs be allocated one credit "either by eliminating the range requirement for dual fuel vehicles in which one of the fuels is electricity [i.e., the NHTSA minimum drive range criteria], or by treating them as PHEVs but still giving them a full credit." SAFE argued that these vehicles should earn one credit "since the average flexible fuel vehicle—with a lower 'alternative fuel factor' [the portion of a vehicle's energy or operation that comes from non-petroleum fuels]—receives one credit." SAFE also concluded that DOE's reliance on the NHTSA criteria "is inappropriate given the purpose of [the AFTP]" and "shortchanges PHEVs that may not operate in a pure electric mode." SAFE suggested that credit should be "based on the presence of a drive train designed to operate on an alternative fuel and the fuel savings provided by the vehicle, not its minimum all-electric range or any other factors."

In its comments, EDTA indicated that vehicles that achieve the NHTSA minimum driving range should be entitled to one credit, as DOE had explained. EDTA went further, however, recommending that DOE also use "a credit mechanism that recognizes incremental benefits of electrification in the non-AFV PHEVs with varying ranges, but less than [the one credit AFV PHEVs receive]." Under EDTA's proposal, non-AFV PHEVs would be eligible for some level of credit between $\frac{1}{2}$ and 1.

DOE rejects the above arguments supporting greater credit for non-AFV PHEVs. First, as previously stated in Parts I.A, III.C.1, and elsewhere in this preamble, DOE is using petroleum displacement potential, measured against AFVs operating on alternative fuel, as the benchmark for allocating credit. PHEVs that do not meet the NHTSA minimum driving range criteria are simply not expected to achieve petroleum displacement close to what AFVs achieve when operating on alternative fuel. Second, proposals to allow fleets to apply for greater credit than $\frac{1}{2}$ depending on a number of varying factors would result in uncertainty for covered fleets (i.e., the level of credit for a given vehicle could not always be clearly ascertained by a fleet at the time of vehicle acquisition). In addition, the commenters' proposals would require fleets to submit considerably more documentation and would require that DOE undertake case-by-case determinations for potentially every vehicle in each annual report submitted. Third, and most importantly, DOE cannot alter the minimum driving range criteria for dual fueled electric automobiles, which were established by NHTSA pursuant to statute. As explained in Part III.A.5, Congress defined the term "dual fueled vehicle" in section 301(8) of EPCA 1992 (42 U.S.C. 13211(8)), using a definition that incorporates the EPCA definition of a dual fueled automobile. This definition, in turn, specifically includes the minimum driving range requirement for dual fueled passenger automobiles (49 U.S.C. 32901(a)(9)(D)).

In sum, DOE is finalizing the credit level for non-AFV light duty PHEVs at $\frac{1}{2}$ credit per vehicle.

c. Fuel Cell Electric Vehicles

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 one credit under the AFTP. To DOE's knowledge, the majority of FCEVs under

development are fueled by hydrogen,²³ 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.

In the NOPR, DOE proposed 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 ½ credit. This determination was 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 solicited comments on this proposed allocation level.

Both EEI and EDTA again suggested requiring a minimum efficiency level in order to receive ½ credit, plus allowing additional credit on a sliding scale based on efficiency level. EDTA also proposed applying an emerging technology premium to non-AFV FCEVs. For the same reasons as those identified above in Parts III.C.2 and III.C.2.b, DOE is rejecting these requests. In addition, DOE notes that FCEVs are not anticipated to be commercially-available for several more years. Until that time, fleets are free to apply for credit for their investments in emerging technologies, as described under Part III.C.3.c. below. Therefore, DOE is finalizing the credit for non-AFV FCEVs at ½ credit per vehicle, as proposed in the NOPR.

The credit allocation determination process for FCEVs is depicted in Figure 1 above.

d. Neighborhood Electric Vehicles

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.²⁴ 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 “motor vehicles” as interpreted by EPA,²⁵ as ineligible for credit as AFVs. In a 2001 study, DOE found that NEVs are driven an average of 3,410 miles per year.²⁶ This compares to the average annual use of light duty household vehicles in the U.S. in 2009 of 11,300 miles per year.²⁷ For light duty business fleet vehicles, however, average annual use in 2010 ranged from 24,384 to 29,616 miles.²⁸ Therefore, the use of NEVs substitutes for a small percentage of conventional vehicles’ applications.

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 ⅓ may be warranted. DOE, however, proposed allocating ¼ (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 ¼ credit level may appear small, but the actual resulting value to the acquiring fleet is larger than the ¼ allocated. 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. The acquisition of a light duty AFV would generate a requirement for the acquisition of another fractional AFV, meaning the net credit result stemming

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://avt.inel.gov/pdf/nev/nevstudy.pdf>.

²⁵ Section 301(13) of EPA Act 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 Clean Air Act if it] 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.

²⁶ *INEEL Study* at 4.

²⁷ See DOE, *Transportation Energy Data Book: Edition 31* (July 2012), at Table 8.10.

²⁸ *Id.* at Table 7.3.

from the acquisition of the initial light duty AFV is either 0.25 for State fleets (1 minus 0.75) or 0.1 for alternative fuel provider fleets (1 minus 0.9) of a credit. By comparison, an NEV acquisition results in a net surplus of ¼ credit.²⁹

In its comments, EEI suggested that the appropriate credit level for the acquisition of an NEV should be ½ rather than ¼, to be more reflective of the fact that many fleets replace conventional vehicles with NEVs. Conversely, EDTA was supportive of the ¼ credit level “based upon the multiple benefits of NEVs’ zero-petroleum operation and their utility to covered fleets.”

DOE is not persuaded that NEVs warrant a credit level greater than ¼, particularly in light of the benefit provided in terms of compliance as discussed above, and is finalizing the ¼ credit allocation that it proposed.

e. Medium- and Heavy-Duty Electric Vehicles

i. General

“Medium- or heavy-duty electric vehicles,” as that term is defined in this final rule (see Part III.B.3 above), are now commercially available in the U.S., both as original equipment manufacturer vehicles (e.g., the Smith Electric Newton) and as after-market converted vehicles.³⁰ Conventional medium- and heavy-duty vehicles typically use several times the amount of petroleum fuel that conventional LDVs use, so the deployment of higher efficiency or alternative fuel versions of these vehicles contribute significantly to a reduction in our nation’s overall petroleum use.

Under the existing AFTP, the acquisition of a medium- or heavy-duty AFV yields one credit, but only after the fleet has met its light duty AFV-acquisition requirement, and DOE proposed to maintain this approach in the NOPR. As with NEVs, discussed above, the benefit to covered fleets of such purchases in comparison to an LDV acquisition includes not increasing a fleet’s LDV total for purposes of calculating compliance requirements.

²⁹ 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.

³⁰ See, e.g., <http://www.viamotors.com/news/press-releases/pge-via-motors-showcase-a-first-for-utilities-the-extended-range-electric-pickup-truck/>; http://www.greencarreports.com/news/1073783_ford-f-750-plug-in-hybrid-work-truck-not-your-little-leaf-sonny#ixzz10bqAOAXH.

²³ See http://www.fueleconomy.gov/feg/fcv_sbs.shtml (Honda and Mercedes-Benz); http://www.fueleconomy.gov/feg/fcv_links.shtml (various manufacturers); http://www.hyundaiusa.com/about-hyundai/news/Corporate_Tucson_ix_FCEV_Release-20110214.aspx (Hyundai); http://www.toyota.com/about/environment/innovation/advanced_vehicle_technology/index.html (Toyota).

²⁴ 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

ii. Hybrid Electric and Plug-In Hybrid Electric Vehicles

As discussed earlier in this preamble, medium- and heavy-duty battery electric vehicles already qualify as AFVs and thus already are entitled to one credit under the AFTP. Similarly, medium- and heavy-duty HEVs and PHEVs that are equipped with an engine that can operate (or that operates solely) on a liquid or gaseous alternative fuel (e.g., E85 or CNG) already qualify as AFVs eligible for one credit.³¹ In the NOPR, DOE therefore interpreted EISA section 133 as calling for the allocation of credits to “medium- or heavy-duty electric vehicles” that do not already qualify as AFVs (i.e., non-AFV HEVs and PHEVs).

As explained in the NOPR, DOE considered two options for medium- and heavy-duty non-AFV HEVs and PHEVs: (1) Allocate one credit, accounting for the fact that conventional medium- and heavy-duty vehicles consume more fuel than do conventional LDVs, and thus offer a greater potential impact on petroleum reduction compared to an LDV using similar technology; or (2) allocate ½ credit, as such a “medium- or heavy-duty electric vehicle” still is not an AFV and therefore does not displace as much petroleum as a medium- or heavy-duty AFV operating on alternative fuel. DOE proposed the latter credit level in the NOPR.

DOE received a number of comments on its proposed allocation for medium- and heavy-duty non-AFV HEVs and PHEVs. Eaton sought clarification that medium- and heavy-duty hydraulic hybrid vehicles are entitled to credit, while EDTA and EEI, in addition to Eaton, took issue with the proposed electric drivetrain limitation. DOE disagrees with these comments, and emphasizes that in EISA section 133, Congress expressly referred to “electric drive” vehicles. In view of this, DOE concludes that hydraulic hybrid vehicles with a gross vehicle weight rating of more than 8,500 pounds do not qualify for credit as “medium or heavy-duty electric vehicles,” and that a vehicle must have an electric drivetrain for acquisition credit to be warranted. Even though DOE is excluding hydraulic hybrid and electric bucket system technologies from credit under this final rule, fleets are reminded that medium- and heavy-duty vehicles with these technologies may be used to demonstrate petroleum fuel use

reductions under the AFTP’s Alternative Compliance option.

Eaton and EDTA also thought that “medium- or heavy-duty electric vehicles” that are not AFVs should be allocated a minimum of one credit per vehicle, in recognition of the greater petroleum use and emission reductions that accrue from these vehicles. NEMA supported ½ credit for medium- and heavy-duty PHEVs with currently available battery capacities, but urged that incrementally greater credit be allocated as the electric ranges of the vehicles increases. Finally, EEI questioned how DOE would determine whether a medium- or heavy-duty PHEV is an AFV already entitled to one credit or a non-AFV entitled to ½ credit.

After considering the comments, DOE is finalizing the proposed allocation of ½ credit for medium- and heavy-duty non-AFV HEVs. DOE acknowledges the potentially greater petroleum reductions stemming from these vehicles, but reiterates that the vehicles do not qualify as AFVs.

For medium- and heavy-duty PHEVs, although DOE proposed to allocate ½ credit under EISA section 133 for fleet acquisitions of these vehicles, it has now concluded that an allocation under section 133 is not warranted after all because such vehicles already qualify as AFVs and, as a result, are already entitled to one credit under the AFTP. DOE observes that NHTSA, in the Medium- and Heavy-Duty Vehicle Fuel Efficiency Program (49 CFR Part 535) that it promulgated on September 15, 2011,³² considers medium- and heavy-duty PHEVs to be dual fueled vehicles.³³ To maintain regulatory consistency, DOE therefore deems PHEVs with a gross vehicle weight rating in excess of 8,500 pounds to be dual fueled vehicles and, consequently, AFVs for purposes of the AFTP. As such, medium- and heavy-duty PHEVs already are entitled to, and when acquired by covered fleets will be allocated one credit. An allocation under EISA section 133 is unnecessary.

In sum, while DOE proposed allocating ½ credit to medium- and heavy-duty non-AFV HEVs and PHEVs, it is finalizing this allocation under EISA section 133 for the former vehicles and acknowledging that medium- and

heavy-duty PHEVs already qualify as AFVs.

DOE will allocate credit for “medium- or heavy-duty electric vehicles,” whether AFVs or non-AFV HEVs, only after a covered fleet has met its light duty AFV-acquisition mandate. DOE wants 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- and heavy-duty AFVs, it also must apply to medium- and heavy-duty non-AFVs that will receive ½ credit under this action. A non-level playing field effectively would create an incentive for covered fleets to acquire medium- and heavy-duty non-AFV HEVs over AFVs.

NGV America and APGA urged DOE to eliminate the need for a covered fleet to meet its light duty AFV-acquisition requirement before receiving credit for the medium- and heavy-duty AFVs and non-AFVs it acquired. DOE contends that removing this requirement would be inconsistent with statutory authority and the overall statutory scheme of the Program. The AFTP vehicle acquisition requirements are set forth in EAct 1992, section 501(a) for alternative fuel provider fleets, and section 507(o) for State fleets, respectively. These sections specify the number of AFVs that must be acquired as a percentage of “new light duty motor vehicles” acquired by a fleet. The only acquisition requirement under the AFTP is therefore inherently a light duty vehicle requirement. The provision for allocating credit for other than light duty vehicles appears in EAct 1992 section 508(b), as amended. This section states that “[t]he Secretary shall allocate a credit to a fleet or covered person that is required to acquire an alternative fueled vehicle under this subchapter, if that fleet or person acquires an alternative fueled vehicle in excess of the number that fleet or person is required to acquire” Thus, for an acquisition under section 508(b) to be *in excess* of what is required of a fleet, the light duty acquisition target must have already been met under sections 501(a) or 507(o), as applicable. DOE continues to maintain, as it has since the inception of the AFTP, that the acquisition of a medium- or heavy-duty vehicle does not and cannot satisfy the mandate to purchase light duty AFVs imposed on a fleet by EAct 1992.

³² 76 FR 57106 (Sept. 15, 2011).

³³ See 49 CFR 535.4 (defining the term “dual fueled vehicle” and stating that “a plug-in hybrid electric vehicle is considered a dual fueled vehicle”). NHTSA likewise treats medium- and heavy-duty vehicles that operate on gasoline and E85 to be dual fueled vehicles. In other words, the minimum driving range requirement set forth in 49 CFR 538.5 is inapplicable to medium- and heavy-duty vehicles.

³¹ See, e.g., 49 CFR 535.4 (defining, for purposes of the NHTSA Medium- and Heavy-Duty Vehicle Fuel Efficiency Program, the term “dual fueled vehicle”).

3. Investments

a. Alternative Fuel Infrastructure

In addressing EISA section 133's requirement that DOE allocate credit for fleets' investments in alternative fuel infrastructure, DOE believes it makes sense to focus on the original objectives of the EPCA 1992 fleet programs. In general, the concept behind the 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 are in terms of vehicle acquisitions, the EPCA section 502(a) goal of maximizing replacement fuel use also involves consideration of infrastructure availability. Thus, the development of alternative fuel refueling infrastructure that ultimately serves as much of the population as possible is important to achieving the overall programmatic goals.

As explained in Part III.B.6 above, DOE is defining the phrase "alternative fuel infrastructure" to mean one or more alternative fueling or charging/battery exchange stations, a definition expressly supported by APGA and NGV America. In allocating credit for alternative fuel infrastructure investments, DOE has determined that a covered fleet that makes a financial investment in a new alternative fueling or charging/battery exchange station will receive one credit for every \$25,000 invested toward developing the infrastructure. DOE believes \$25,000 per investment credit is an appropriate dollar figure inasmuch as the installation of an E85 pump and tank historically has cost roughly \$25,000.³⁴ Moreover, as discussed in Part III.C.3.b below, the cost of a new light duty AFV, for which a covered fleet earns an AFV acquisition credit, is approximately \$25,000. Because investing in alternative fuel infrastructure effectively is an alternative to acquiring light duty AFVs, DOE believes the consistent \$25,000 threshold is appropriate.

NEMA supported the \$25,000 figure, while EEI argued that fleets should receive alternative fuel infrastructure investment credit based on the number of stations installed, not the amount of money invested. EEI suggested one credit per private station and two credits per public station. Focusing in particular on electric vehicle charging stations, EDTA and NEMA recommended that fractional credits be

allocated for investments below the \$25,000 threshold. These organizations posited that if covered fleets do not receive any credit for alternative fuel infrastructure investments under \$25,000, they will not be adequately encouraged to invest in charging stations.

In DOE's view, an allocation approach based on the level of financial investment is inherently more balanced in that it rewards greater financial expenditures with a higher number of credits. Installation of an alternative fueling station that costs \$100,000 will yield the investing fleet 4 credits, whereas under EEI's suggested approach the fleet would earn only 1 credit for a private station or 2 credits for a publicly accessible station. DOE reiterates its belief that the appropriate dollar figure for purposes of allocating credit is an amount based on the approximate cost of installing an E85 pump and tank or acquiring a new light duty AFV. DOE also maintains that establishing the \$25,000 value as a base level below which no credit may be earned is equally appropriate, given that this value is sufficiently high to demonstrate a significant investment in alternative fuel infrastructure rather than simply serve as a reward to fleets for actions they otherwise planned to take. In addition, as set forth in 10 CFR 490.504(g), DOE notes that fleets may aggregate the monetary sums invested in a particular model year to reach an applicable investment credit threshold.

After reviewing the comments received on the allocation of fractional credits for investments, DOE has concluded that it will not allocate fractional credits for any of the investment credits. The AFTP is based on the acquisition of individual vehicles (LDVs and AFVs), and correspondingly, the AFTP's accounting and annual reporting mechanisms treat the vehicles as individual units. In the area of investments, DOE has identified a specific dollar amount, \$25,000, as the basis on which to measure a unit for credit equivalency purposes. The approach set forth in the proposed rule and finalized today is based on this dollar amount rather than an absolute measurement of every dollar invested. DOE will record the investment of an amount equal to a unit (\$25,000), not any discrete amount of dollars. In addition, DOE notes that if it were to track each dollar invested and award fractional credits, the burden of accounting and data collection on both reporting entities and DOE would be greatly increased.

DOE proposed 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. APGA and NGV America expressed support for the establishment of a higher credit maximum for public alternative fuel infrastructure. DOE is maintaining the credit distinction proposed in the NOPR. It encourages the building of alternative fuel infrastructure to which the general public has access, as such accessibility expands the alternative fuel refueling options for the broadest range of vehicles. For a fleet that installs both public and private infrastructure in a given model year, a 10-credit maximum will apply, with up to 10 credits being offered for public stations, and 5 credits for private stations.³⁵

EDTA and EEI requested that DOE raise the annual per fleet cap to 25 credits, while NEMA argued that an annual cap on alternative fuel infrastructure investment credits is unjustified. DOE understands that fleets' needs and opportunities are subject to variation, but stresses that it has a responsibility to balance competing interests: enable fleets to earn credits and at the same time ensure the proper functioning of the AFTP's credit system. As explained in Part III.D.2 below, the Program currently has approximately 70,000 banked credits in the system and DOE wishes to avoid the devaluation of credits currently in fleets' accounts. DOE therefore declines EDTA's and EEI's suggestion that the maximum be increased as well as NEMA's suggestion to eliminate the annual cap.

To be eligible for credit, the alternative fuel infrastructure investment must have been made (i.e., the infrastructure must have been paid for) by the fleet requesting credit. Infrastructure installed and paid for or simply paid for by entities or organizations that are not subject to the AFTP is ineligible for investment credit. DOE clarifies, however, that a covered fleet may earn credit for investments that it makes in alternative fuel infrastructure owned or operated by another entity, and that regardless of the type of alternative fuel offered, all dollar amounts associated with the installation

³⁵ For example, a fleet that invests \$250,000 in one or more public stations will earn 10 credits, while a fleet that invests \$125,000 in one or more private stations will earn 5 credits. In the event a fleet invests \$125,000 in public stations and an additional \$125,000 in private stations, it will be entitled to 5 and 5 credits, respectively, for a total of 10 credits. Finally, if a fleet invests \$250,000 in public stations as well as \$25,000 in a private station, it will be capped at 10 credits for the applicable model year.

³⁴ See DOE's *Alternative Fuels Data Center* Web site at http://www.afdc.energy.gov/afdc/fuels/ethanol_infrastructure.html.

of the infrastructure will be treated equally.

To allocate infrastructure investment credit to a particular fleet, DOE will 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 must seek credit through the credit activity reporting mechanism (10 CFR 490.508) and clearly identify the alternative fuel type, specific location, date of initial operation, and level of accessibility of the station. Importantly, credit may be sought only for the model year in which the station begins operating, and each fleet will 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, the fleet is entitled to 1 investment credit in the second model year. If the fleet neglects to seek credit during that second model year for its \$25,000 total investment but instead applies for the single credit in a later year, DOE will allocate no credit. Similarly, if the fleet applies for credit in its credit activity report for the first model year, DOE will reject the request on the grounds that the alternative fuel infrastructure did not become operational during that year.

Credits will be allocated 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 must have become operational during the model year for which credit is sought. Simply installing additional electrical outlets, however, will not qualify for investment credit.³⁶ Nor will credit be provided for maintenance of or improvements to existing equipment at an existing station. Fleets will have to certify the accuracy of the information provided.

b. Alternative Fuel Non-Road Equipment

As discussed in Part III.B.7, DOE is defining "alternative fuel non-road equipment" to include only mobile, non-road equipment that operates on

alternative fuel. Stationary equipment (e.g., a generator) is ineligible for alternative fuel non-road equipment investment credit. As with alternative fuel infrastructure, investment credit will only be provided for new mobile equipment, not for maintenance of or improvements to existing mobile equipment.

DOE has decided to base the allocation of credit on the rough value represented by the average price of a new light duty AFV sold in the United States in 2010. According to the latest edition of DOE's Transportation Energy Data Book, the average price of a new LDV was \$24,296 (in 2010 dollars).³⁷ Understanding that there is little, if any, price differential between a new LDV and a new flexible fuel vehicle, the average price of a new LDV is approximately \$25,000 after conversion to 2012 dollars (using the Department of Labor's CPI Inflation Calculator). DOE believes the appropriate expenditure level for purposes of earning a credit for investment in alternative fuel non-road equipment is this amount (i.e., \$25,000).

No commenters objected to this monetary value. DOE believes that \$25,000 is a sufficiently high value to demonstrate a significant investment in qualified non-road equipment rather than simply serve as a reward to fleets for actions they otherwise planned to take. In addition, this amount is equivalent to the alternative fuel infrastructure investment credit under this action, providing for some level of administrative consistency.

In sum, DOE is allocating 1 credit for every \$25,000 that a covered fleet invests in alternative fuel non-road equipment. Credits will be allocated in whole number values, with 1 credit allocated for each \$25,000 threshold achieved, with a maximum of 5 credits per fleet in a single model year. To be eligible for credit, the investment must have been made by the requesting fleet. Investments made by organizations that are not subject to the AFTP are ineligible for credit.

Two commenters, EEI and FP&L, contended that fleets should receive credit based on the number of pieces of alternative fuel non-road equipment acquired in a model year, not the amount of money invested. DOE disagrees, and points out that section 508(b)(2)(A)(ii) of EPCA 1992, as amended by EISA section 133, directs DOE to allocate credit for covered fleets' "investment in qualified . . . alternative fuel nonroad equipment." Whereas Congress specified that credit be

allocated for the "acquisition of" electric drive vehicles, it stipulated that credit be allocated for the "investment in" alternative fuel non-road equipment. DOE interprets the allocation of credit for dollars invested as being based on the "investment in" such equipment, and therefore declines to implement the commenters' suggestion of doing so by number of pieces of equipment acquired. Under the approach DOE is taking, all alternative fuel non-road equipment will be treated equally, whereas under a per piece approach, a \$25,000 piece of equipment would yield the same number of credits, one, as a \$10,000 or less expensive piece of equipment.

EEI and FP&L further recommended that there be no annual cap on the number of credits a fleet can earn from its alternative fuel non-road equipment investments. Alternatively, EEI requested that DOE raise the annual per fleet maximum from 5 to 25 credits. EDTA also requested that the annual cap be increased. For the same reasons set forth in Part III.C.3.a above regarding devaluation of the current credit market, DOE rejects these recommendations.

APGA and NGV America argued that a covered fleet should earn credit even when the alternative fuel non-road equipment in which it invested is owned by another entity. DOE does not agree, principally because it considers a fleet's investment in alternative fuel non-road equipment to be somewhat analogous to the acquisition of an AFV. To maintain programmatic consistency, DOE is adopting the same guiding principle for investments in alternative fuel non-road equipment. Under the Program, a covered fleet can earn AFV acquisition credit only through its own AFV acquisitions; it cannot generate credits from the AFVs acquired by other organizations (with the one exception being an approved State plan).³⁸

This is different from the approach DOE is taking with respect to alternative fuel infrastructure investments. DOE believes the overall goal of the replacement fuel provisions of EPCA 1992 is to increase the availability of alternative and replacement fuels to all potential users. Investments made in infrastructure can help make this happen, regardless of who the ultimate owner of the infrastructure is. In the case of non-road equipment, however, the use of the equipment is, like an AFV, more specific to the fleet that owns it. In addition, to qualify for non-road equipment investment credit, DOE is requiring that the investing fleet verify that the equipment is being

³⁶ DOE will distinguish a basic 120V electrical wall outlet from Level 1 or Level 2 charging stations or DC (direct-current) fast charging stations, such as those currently available (see, e.g., <http://www.pluginamerica.org/accessories>; http://www.afdc.energy.gov/fuels/electricity_infrastructure.html).

³⁷ See DOE, *Transportation Energy Data Book: Edition 31* (July 2012), at Table 10.12.

³⁸ See 10 CFR 490.203.

operated on alternative fuel. From a compliance perspective, it is far more straightforward for a fleet to verify, and for DOE to audit, information on the non-road equipment that the fleet owns. Ensuring the accuracy of information pertaining to non-road equipment in which a fleet invested but that is owned by others would simply be too tenuous.

Under the regulations being finalized today, a covered fleet must seek alternative fuel non-road equipment investment credit through its credit activity report. To allocate credit, DOE will 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 definition of alternative fuel non-road equipment, a fleet requesting credit must certify that the equipment is being operated on alternative fuel, within the constraints of best practices and seasonal fuel availability.

DOE acknowledges that a covered fleet's investment in alternative fuel non-road equipment may not necessarily coincide with the fleet's acquisition of the equipment. As with alternative fuel infrastructure, a fleet should seek credit in the model year in which the non-road equipment is put into operation. A fleet may combine the monetary amount invested in a particular model year in alternative fuel non-road equipment and alternative fuel infrastructure and/or emerging technology for the purpose of achieving an applicable investment credit threshold.

c. Emerging Technology

As discussed in Part III.B.8, credit for investments in emerging technology will be based on the development status of the relevant vehicle technologies. In EISA section 133, Congress 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 DOE's view, only by deploying the vehicle technologies listed in section 133 (i.e., 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. If data show that no improvement is needed, then such data could assist future potential users in deciding whether to select the technology.

DOE proposed that investments in pre-production versions of the EISA-specified vehicle types would earn 1 credit for each \$25,000 invested in one or more pre-production vehicles, up to a 5 credit limit (correlating with \$125,000 invested), with expenditures on any *remaining* pre-production vehicles potentially counting as light duty AFV acquisitions.

EDTA and EEI suggested either that the credit cap be raised to 25 or that there be no fleet-specific credit cap, but rather a Program-wide cap. Regarding the imposition of a credit cap and what the appropriate cap level should be, DOE again stresses that imposing a cap on the number of credits that may be earned is critical to ensuring proper functioning of the Program's credit system. As for a Program-wide cap, DOE believes that such a cap would be inherently unfair, as only some fleets would be able to obtain credits for their investments in emerging technologies. Therefore, DOE is rejecting the suggestion of a Program-wide credit cap for investments in emerging technology.

EEI also commented that DOE should apply a multiplier for credits for light duty emerging technology vehicles (x 2.5) and also for medium-duty and heavy-duty emerging technology vehicles (x 5.0). DOE recognizes the importance of emerging technology vehicles as the means by which new advanced technology vehicles and alternative fuel vehicles reach production. Nonetheless, through EPA section 508(b)(2)(B), Congress specifically authorized DOE to allocate credits for emerging technology in an amount of more than 1 but not to exceed 5. Therefore, DOE lacks authority to provide additional credits beyond that which DOE proposed. Within the context of this limitation, this final rule establishes that an investment of a minimum of \$125,000 in an emerging technology (i.e., a pre-production vehicle) yields 5 credits.

In this final rule, DOE is making one minor change to what it proposed, namely that to earn any emerging technology credits, a \$50,000 threshold must be met, at which point 2 credits will be allocated. DOE has selected the \$50,000 threshold for several reasons. First, Congress specifically authorized DOE to provide more than 1 and not more than 5 credits for this category of investment. Therefore, DOE cannot provide 1 credit for \$25,000 invested, but wishes to maintain the \$25,000 increments that are consistent across all investment categories in this rule. Moreover, the typical emerging technology investment will likely be far more than \$25,000, so this change

should be of little consequence in most cases. Once the \$50,000 threshold is met, each of the next \$25,000 increments achieved will earn 1 additional credit, up to a total of 5 credits (or \$125,000). Finally, as with investments in alternative fuel non-road equipment, the \$25,000 increment is based on the average price of a new light duty AFV sold in the United States in 2010, and consistent with the other investment-related credits, DOE will not allot fractional credits for investments in emerging technology. To illustrate the above criteria, a covered fleet spending \$500,000 on the acquisition of 10 pre-production light duty PHEVs (i.e., \$50,000 per PHEV) may 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 light duty PHEVs (assuming they are AFVs). If, however, a single investment of \$45,000 were made, for example, no credits would be allocated because the \$50,000 threshold was not met.

Fleets requesting credit under this provision will need to provide detailed information in order for DOE to verify the specific purposes of the subject investment, the number of credits the investment would qualify for, and that the investment has not been the subject of credit elsewhere under this program. Furthermore, eligibility for credits is dependent on the underlying vehicle technology still being considered "emerging," in accordance with the definition discussed in Part III.B.8 above. 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. 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, a fleet will get credit for the year in which the emerging technology is put into operation. In addition, to be eligible for consideration of credit, the requesting fleet will have to have made the investment. Investments in emerging technologies by organizations not subject to the requirements of the AFTP will 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). Fleets will have to certify the accuracy of the information provided.

4. Summary of Credit Allocations and Implementation Requirements **Summary Table of Credits**

Set forth below is a table summarizing the credit allocations under this action.

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	Not included in covered LDV count. Not included in covered LDV count. Maximum of 5 credits if private infrastructure, 10 credits if publicly-accessible infrastructure; credit allocated in model year placed into operation. Maximum of 5 credits if per fleet per model year.
PHEV	1/2 credit	
FCEV	1/2 credit	
NEV	1/4 credit	
Medium- or heavy-duty HEV	1/2 credit	
Alternative Fuel Infrastructure	1 credit per \$25,000 invested*	
Alternative Fuel Non-road Equipment.	1 credit per \$25,000 invested*	Maximum of 5 credits if counting based on amount invested, per fleet per model year.
Emerging Technology	2 credits for initial \$50,000 invested and 1 credit per \$25,000 thereafter, or 1 credit per pre-production vehicle*.	

* Aggregation of dollar amounts allowed.

As indicated in the NOPR and as explained above, to receive credit for investments under EISA section 133, a covered fleet must provide DOE with a credit activity report. The credit activity report will also serve as the mechanism through which DOE will apportion credit for a fleet's acquisition of any of the electric drive vehicles being allocated credit under this final rule. As specified in the regulatory text, for each such acquired vehicle, a covered fleet must include in its credit activity report the make and model, model year, vehicle identification number, and date of acquisition. These vehicle-specific details are virtually identical to the data that covered fleets already provide, as part of their Standard Compliance annual reports, for the AFVs they acquire each year.

Since the Program's inception, rather than formally requiring covered fleets to submit a credit activity report in order to obtain credits for excess (or early) AFV acquisitions, DOE has enabled fleets seeking to bank AFV credits as a result of these acquisitions (e.g., a light duty or a medium- or heavy-duty AFV acquired over and above the fleet's light duty AFV-acquisition requirement) to submit the necessary information to DOE as part of their annual reports. Upon verification of the information, DOE has proceeded to add the appropriate number of banked credits to the respective fleet's credit account.

Under this final rule, covered fleets seeking to bank excess (or early) credits under Standard Compliance will no longer be able to submit only an annual report by the December 31 reporting

deadline. Rather, any fleet seeking the allocation of credit under Subpart F of the AFTP regulations will have to provide DOE with a credit activity report. This includes not only fleets seeking credit for any of the investments (alternative fuel infrastructure, alternative fuel non-road equipment, emerging technology) and/or any of the electric drive vehicle acquisitions (non-AFV light duty HEVs, non-AFV light duty PHEVs, non-AFV light duty FCEVs, NEVs, non-AFV medium- or heavy-duty FCEVs, non-AFV medium- or heavy-duty HEVs) addressed in this action, but also fleets seeking to bank credits for their excess (or early) AFV acquisitions. In addition, DOE is adding regulatory language to make clear that fleets involved in a credit transfer and fleets that requested the application of banked credits likewise must provide DOE with a credit activity report. Credit transfer details have always been included in the credit activity reporting provision, and with regard to the application of banked credits, the new language merely reconciles the credit activity reporting provision with the AFTP's annual reporting requirements.

To minimize the reporting burden on covered fleets, DOE has revised its online annual reporting system (http://www1.eere.energy.gov/vehiclesandfuels/epact/annual_report.html) and the annual report form (Form DOE/FCVT/101: Standard Compliance Reporting Spreadsheet) so that the credit activity report is now incorporated in (i.e., a part of) the annual report. Importantly, this modification will not result in DOE receiving any information (except with

regard to the EISA section 133 electric drive vehicles and investments) that it does not already receive from covered fleets. Corresponding revisions have been made to the regulatory provisions on annual reporting.³⁹

D. Additional Program Modifications

In the interest of ensuring continued efficient operation of the Program, DOE proposed a number of modifications that it believed would benefit stakeholders (i.e., covered fleets) and increase Program effectiveness. DOE today is finalizing most of these AFTP modifications, as discussed below.

1. Timeliness of Exemption Request Submittals

Based on the experience it has gained since the AFTP's inception, DOE proposed to establish a five-month timeframe for the submission of exemption requests. Specifically, DOE proposed that a covered fleet may submit an exemption request no earlier than September 1 following the model year for which the exemption is sought and no later than January 31 following that model year. DOE also proposed to make clear that an exemption request must be preceded by the fleet's annual report, and that if DOE seeks clarification or additional information pertaining to a submitted exemption

³⁹ Specifically with respect to 10 CFR 490.205(b)(5)(iv) and 10 CFR 490.308(b)(5)(iv). DOE encourages covered fleets to submit a photocopy of the label that automobile manufacturers have been obligated to attach to the fuel compartment of their dual fueled automobiles since September 1, 2006. See EPCA 2005 section 759 (codified at 49 USC 32905(f)).

request, the concerned fleet must respond within 30 days of DOE's inquiry. DOE proposed these changes to enhance the accuracy of exemption requests and minimize the need either for fleets to revise and resubmit their requests or for DOE to have to follow up with the requesting fleet.

Only one commenter, EEI, addressed DOE's proposed modifications on the timeliness of exemption requests. EEI supported the proposed changes. Hence, DOE is finalizing the five-month timeframe within which a covered fleet may seek exemptions under Standard Compliance, the necessity for a fleet's exemption request to be preceded by its annual report, and the 30-day period for a fleet to provide clarification or additional information in response to a DOE inquiry.

Going forward, if a covered fleet submits an exemption request during the subject model year (i.e., at any time prior to the model year's close on August 31), DOE will inform the fleet's point of contact (POC) by electronic mail that the exemption request is premature and will not be considered unless it is resubmitted after September 1 and also after the fleet has filed its required annual report. Similarly, if a covered fleet submits an exemption request after January 31 following the subject model year, DOE will inform the POC by electronic mail that because the exemption request was submitted after the expiration of the five-month period, DOE considers the request invalid and, thus, will not provide a written determination under the applicable regulatory provisions. Finally, if a covered fleet does not respond to a DOE inquiry for additional information within 30 days, DOE will process the fleet's exemption request based on the information DOE already has, which may not be sufficient to support the granting of the exemption request either in whole or in part.

DOE expects no hardship to result from these changes. Additionally, DOE maintains that those covered fleets that file their annual reports by the December 31 annual reporting deadline will have at least a full month, which in DOE's view is sufficient time, to prepare and submit an exemption request, although early submission of annual reports remains highly recommended.

2. Program Credits and Exemption Requests

In the NOPR, DOE explained that the purpose of the alternative fueled vehicle credit program in Subpart F of the AFTP regulations is to provide compliance flexibility to SFP fleets. DOE pointed out that since the AFTP's creation, fleets

have generated a significant number of banked credits. In fact, there are currently approximately 70,000 banked AFV credits in the system. Given that the average aggregate annual AFV-acquisition requirement for covered fleets operating under the AFTP's Standard Compliance method typically ranges from 10,000 to 14,000 AFVs, DOE estimates that the credits currently in the system would be sufficient to keep the AFTP operating—without covered fleets acquiring any AFVs—for at least four years. DOE also explained in the NOPR that covered fleets with a positive credit account balance often request exemptions from DOE.

In an effort to limit the future growth of the store of banked AFV credits currently in the system and thereby ensure that those credits continue to have value for the fleets possessing them, DOE proposed three separate AFTP revisions. First, DOE proposed to add language to the regulatory provision on the use of AFV credits that would require covered fleets to use their own banked credits before requesting exemptions from DOE. Second, DOE proposed to require that a deficient fleet without sufficient banked credits to resolve the deficiency include in its annual report a description of all efforts made to acquire AFV credits on the credit market. Third, DOE proposed to add language stating that a fleet may not submit an exemption request within 90 days of selling or trading any of its banked AFV credits. These proposals were based on DOE's view that a request for exemptions amounts to administrative relief of the last resort (i.e., relief when a fleet cannot otherwise meet its annual AFV-acquisition requirements), and sought to ensure that existing AFV credits get used for the very purpose for which they were generated.

Three organizations (APGA, EEI, and FP&L) commented on these proposed changes. APGA agreed with DOE that there are an excessive number of banked credits in the system, and supported the proposal to require fleets to use their banked AFV credits before seeking exemptions. APGA also requested clarification of the annual reporting provision if deficient fleets would not be obligated to acquire credits. EEI and FP&L opposed the proposed changes. EEI contended that the revisions would hurt those fleets with fewer banked credits, and stated that the existing banking mechanism is important when AFVs that meet the business needs of a fleet are unavailable in a model year. FP&L argued that fleets should be rewarded for over-compliance, and opined that the acquisition of AFVs

beyond the mandated levels serves to encourage the manufacture of AFVs.

Based on the weight of the comments received and after consideration of the benefits of the three proposed credit provisions discussed above, DOE today is choosing not to finalize the proposed qualifications for the granting of exemptions. DOE has determined that the proposals would offer more rigorous compliance requirements without a sufficient benefit to the efficacy of the Program.

3. Alternative Compliance

As explained in the NOPR, DOE believes it is appropriate to have a single due date for complete Alternative Compliance waiver applications. DOE therefore proposed to remove 10 CFR section 490.805(b)(3) and establish in section 490.805(b)(2) a uniform application deadline such that all waiver applications would be due no later than July 31 prior to the model year for which a waiver is sought. DOE pointed out that the deadline for filing a notice of intent, March 31 prior to the model year for which a waiver is sought, would be unaffected by this change.

The lone commenter to address this proposed revision, EEI, supported it. DOE is therefore finalizing the uniform Alternative Compliance waiver application deadline of July 31.

Based on its implementation to date of the Alternative Compliance option, DOE also proposed amendments to 10 CFR section 490.804(c) to clarify the steps for requesting the roll-over of excess petroleum reductions and/or the application of banked rollover reductions. DOE received no comments on these revisions, and is finalizing them.

Under this final rule, a fleet wishing to roll over for future use the excess petroleum reductions that it achieved in a particular model year must make a written request to DOE as part of the fleet's annual report for that model year, and DOE subsequently will inform the fleet of the amount that has been rolled over (i.e., banked). If a fleet seeks to apply any of its banked excess reductions to its petroleum reduction requirement in a later model year for which an Alternative Compliance waiver was also granted, the fleet likewise must include a written request as part of its annual report for that later model year. Before making a decision on a fleet's request to apply rollover reductions, DOE may request additional information from the fleet. In the past, for example, DOE has queried whether a fleet that failed to meet its petroleum reduction requirement owned/operated any FFVs or other AFVs, and if so,

whether it used E85 or some other alternative fuel (besides neat biodiesel). Such alternative fuel usage would reduce the quantity of banked gasoline gallon equivalents needed to be applied to offset the fleet's shortfall.

Finally, in the NOPR, DOE proposed a modification to 10 CFR section 409.809 to address the situation in which DOE has revoked a fleet's Alternative Compliance waiver. No organization commented on this revision, so DOE is finalizing it. Under revised section 490.809, a fleet whose waiver has been revoked is ineligible for any exemptions during that model year.

4. Other Regulatory Revisions

As part of the NOPR, DOE proposed to make the "emergency motor vehicles" exclusion in 10 CFR section 490.3(e) consistent with the statutory language in section 301(9)(E) of EPA Act 1992, as amended, and to make minor technical amendments to several other AFTP regulatory provisions. DOE did not receive comments on any of these proposed changes, and is finalizing them.

With respect to the emergency motor vehicles exclusion, DOE reminds SFP fleets that for a particular vehicle to be excluded, the fleet must submit a written exclusion request in accordance with DOE's established guidance.⁴⁰ The minor technical amendments being finalized today clarify the definitions of "capable of being centrally fueled" and "fleet" in 10 CFR section 490.2, correct an incorrect reference to a State's rather than a covered person's exemption request, and standardize the use of the terms "alternative fueled," "dedicated," and "dual fueled" in various regulatory provisions.

5. Other Issues

This final rule increases the number of creditable actions under the AFTP and, as a result, expands the range of available compliance options. In particular, credit will now be allocated to fleets for the acquisition of non-AFV HEVs, among other vehicles. DOE notes that non-AFV HEVs and the fuel on which they operate (i.e., gasoline) are widely available throughout the country. For this reason, DOE's prospective approach to the granting of exemptions under the applicable regulatory provisions will be similar to its 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 annual AFV-acquisition requirements, inasmuch as biodiesel fuel use credits may account for up to 50% of those annual requirements (10 CFR 490.705(b)). Because non-AFV HEVs are widely available, DOE will also expect a covered fleet seeking exemptions for MY 2014 or thereafter to demonstrate in its exemption request why it was unable to acquire such HEVs and therefore meet at least 50% of its annual AFV-acquisition requirements with such vehicles (due to the 1/2 credit allocated for each non-AFV HEV).⁴¹ Unless the fleet shows that HEVs were not available in the light duty vehicle type needed by the fleet, DOE will limit the number of exemptions granted based on a shortfall of non-AFV HEV acquisitions.

IV. Compliance

The approach that DOE is establishing today allocates less than one credit to certain vehicle types, and whole number values of credits for investments in alternative fuel infrastructure, alternative fuel non-road equipment, and relevant emerging technologies. DOE also is directing that when fleets report to DOE the total credits they have earned in a model year, they must 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.

Additionally, DOE notes that the section 133 credit provisions adopted in this final rule will apply to acquisitions

and purchases in MY 2014 and all subsequent model years.

V. Regulatory Review

A. Review Under Executive Order 12866

This 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 a 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 this 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 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 used the small business size standards to determine whether any small entities would be impacted by the proposed rule. Electric co-operatives and municipal utilities are classified under NAICS Code 221112, "Fossil Fuel Electric Power Generation." In this category, small entities are those for which the total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. The same threshold applies for other types of electric power generation, including hydroelectric (Code 221111) and "other" electric power generation (Code 221119). Natural gas suppliers

⁴⁰ See DOE, "Documentation Guidelines for Emergency Repair and Restoration Vehicle Exclusions" (Sept. 2009), available at http://www1.eere.energy.gov/vehiclesandfuels/epact/pdfs/section_707_guidance.pdf.

⁴¹ Note that beginning in MY 2014, a covered fleet could potentially meet 100% of its annual AFV-acquisition requirements through a combination of non-AFV HEV acquisitions and biodiesel fuel use credits.

(Code 221210) have a separate threshold, 500 employees. Analysis of the electric utilities and natural gas suppliers regulated under the Program identified at least 3 small entities that are required to report under the regulations.

This final rule amends the process for demonstrating compliance in a number of ways, including primarily:

(1) Offering credits for a variety of acquisitions and expenditures that did not previously receive credit, including the purchase of hybrid electric vehicles and investments in qualified alternative fuel infrastructure, non-road equipment, and emerging technologies related to specific vehicle types; and

(2) Better aligning the timeframe for document submissions with the vehicle model year to obviate the need for amended reporting.

Based on the scope of the rule provided above, DOE concludes that it will not have a significant economic impact on a substantial number of small entities. This rule provides additional compliance options under 10 CFR part 490 by expanding credits under the existing AFTP, and therefore provides covered small entities additional flexibility in complying through acquisition of vehicles and investments to the extent that such acquisitions and investments are consistent with the business needs of the small entities. DOE's certification and supporting statement of factual basis has been 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.

The information collection requirements associated with the AFTP's annual report(s) were previously approved under OMB Control Number 1910-5101. This rule includes an additional collection of information that is subject to review by OMB under the PRA, specifically documentation to support the allocation of credits through use of the AFTP's annual reporting form, DOE/FCVT/101, Standard Compliance Reporting Spreadsheet. OMB has approved this additional information collection under existing OMB Control Number 1910-5101. Under this final rule, specifically 10

CFR 490.508 ("Credit activity reporting requirements"), DOE will collect information regarding electric drive vehicle acquisitions and investments in refueling infrastructure, alternative fuel non-road equipment, and emerging technology when fleets choose to submit such information in support of their compliance requirements and in seeking to bank credits for such acquisitions and investments.

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 investing in alternative fuel infrastructure, alternative fuel non-road equipment, and emerging technology. DOE estimates that a covered fleet seeking credits for both acquiring electric drive vehicles and for investing in alternative fuel infrastructure, alternative fuel non-road equipment, and emerging technology would expend 1 additional hour to comply with the reporting requirements of 10 CFR 490.508.

DOE estimates the total annual costs to a covered fleet that seeks credits under this final rule are minimal, particularly given that the fleet is already submitting an annual report to achieve compliance with Program requirements, and that information it would submit for the acquisition of one vehicle type would simply replace information it would otherwise submit for a different vehicle type.

D. Review Under the National Environmental Policy Act

DOE has determined that this 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 rule, covered fleets would be able to earn credits for the acquisition of specified electric drive vehicles and for investments in alternative fuel infrastructure, non-road equipment, and relevant emerging technologies, activities for which they may not earn credits under the existing AFTP. The 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 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 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 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. This rule provides additional compliance options under 10 CFR part 490 by expanding credits under the existing AFTP, and therefore provides covered state fleets additional flexibility in complying through

acquisition of vehicles and investments to the extent that such acquisitions and investments are consistent with the business needs of the covered state fleets. Therefore, no further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

DOE reviewed this 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 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>).

This 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 rule

that may affect family well-being. This 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 this 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 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 Part V.A above, this rule has been determined not to be a “significant regulatory action” under Executive Order 12866. In addition, this final rule provides additional compliance options under the AFTP that support reduced petroleum use in vehicle fleets. As such, the rule will not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Additionally, OIRA has not designated this action as a significant energy action. Accordingly,

DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

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 March 12, 2014.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 490 of Title 10, 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.*

Subpart A —[Amended]

■ 2. Section 490.1 is amended by revising paragraph (a) to read as follows:

§ 490.1 Purpose and scope.

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

* * * * *

■ 3. 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 fueled at least 75 percent of the time at a location that is owned, operated, or controlled by the fleet or covered person, or at a location that is under contract with the fleet or covered person for fueling purposes.

* * * * *

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, 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.

- 4. 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, as determined by DOE;

* * * * *

Subpart C—[Amended]

- 5. 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;

* * * * *

- 6. Section 490.204 is amended by:

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

The revision and additions 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.

* * * * *

- (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.

* * * * *

- 7. Section 490.205 is amended by:

- a. Revising paragraphs (b)(4), (b)(5)(iv), (b)(5)(v), and (c); and
- b. Adding new paragraphs (b)(5)(vi) through (vii).

The revisions and additions read as follows:

§ 490.205 Reporting requirements.

* * * * *

(b) * * *

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

(5) * * *

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

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

(vi) Acquisition date; and

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

* * * * *

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

* * * * *

Subpart D—[Amended]

§ 490.302 [Amended]

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

- 9. 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]

■ 10. Section 490.307 is removed.

§ 490.308 [Redesignated as § 490.307]

■ 11. 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.

* * * * *

(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) 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]

■ 12. 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);

■ b. Revising paragraphs (b)(4), (b)(5)(iv), (b)(5)(v), and (c); and

■ c. Adding new paragraphs (b)(5)(vi) through (vii).

The revisions and additions read as follows:

§ 490.308 Annual reporting requirements.

* * * * *

(b) * * *

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

(5) * * *

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

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

(vi) Acquisition date; and

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

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

* * * * *

§ 490.310 [Redesignated as § 490.309]

■ 13. Section 490.310 is redesignated as § 490.309.

Subpart F—[Amended]

■ 14. 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 as identified in this subpart; or

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

■ 15. Section 490.501 is revised to read as follows:

§ 490.501 Definitions.

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

Alternative Fuel Infrastructure means property that is for:

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

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

Alternative Fuel Non-road Equipment means mobile, non-road equipment that

operates on alternative fuel (including but not limited to forklifts, tractors, bulldozers, backhoes, front-end loaders, and rollers/compactors).

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

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

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

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

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

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

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

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

Plug-in Electric Drive Vehicle means a vehicle that—

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

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

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

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

■ 16. 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.

■ 17. 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, by:

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

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

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

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

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

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

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

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

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

(3) In the case of alternative fuel non-road equipment, the equipment is being

operated on alternative fuel, within the constraints of best practices and seasonal fuel availability; or

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

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

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

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

(4) A neighborhood electric vehicle.

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

■ 18. 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, DOE shall allocate:

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

(2) One-half of an alternative fueled vehicle credit for each medium- or heavy-duty fuel cell electric vehicle that is not an alternative fueled vehicle and each medium- or heavy-duty electric vehicle that is not an alternative fueled vehicle, either or both of which a fleet or covered person acquires in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire under § 490.201 or § 490.302.

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

year when acquisition requirements apply.

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

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

(1) A hybrid electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle— $\frac{1}{2}$ 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, DOE shall allocate one alternative fueled vehicle credit for every \$25,000 that a fleet or covered person invests, as described in § 490.503(c), in:

(1) Alternative fuel infrastructure that is:

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

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

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

(f) Based on annual credit activity report information, as described in § 490.508 of this subpart, DOE shall allocate two alternative fueled vehicle credits for the first \$50,000, and one

alternative fueled vehicle credit for every \$25,000 thereafter, that a fleet or covered person invests, as described in § 490.503(c), in emerging technology, provided that the maximum number of credits under this paragraph (f) shall not exceed five for the model year, and provided further that the amount for which credit is allocated under this paragraph has not been the basis for credit allocation under paragraphs (a), (b), or (d) of this section.

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

■ 19. Section 490.505 is revised to read as follows:

§ 490.505 Use of alternative fueled vehicle credits.

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

■ 20. 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 that obtains an alternative fueled vehicle credit.

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

■ 21. 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 on its Web site or in the **Federal Register**.

■ 22. Section 490.508 is added to subpart F to read as follows:

§ 490.508 Credit activity reporting requirements.

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

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

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

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

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

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

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

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

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

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

light duty alternative fueled vehicles by this part;

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

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

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

(x) The acquisition of neighborhood electric vehicles.

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

(i) Investment in alternative fuel infrastructure;

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

(iii) Investment in an emerging technology.

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

(i) Vehicle make and model;

(ii) Model year;

(iii) Vehicle Identification Number; and

(iv) Acquisition date.

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

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

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

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

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

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

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

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

(iii) A detailed description of the alternative fuel non-road equipment, including the name and address of the manufacturer, the type(s) of alternative

fuel on which the equipment is capable of being operated, a certification that the equipment is being operated on that alternative fuel, the date on which the fleet or covered person purchased the equipment, and the date on which it was put into operation.

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

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

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

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

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

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

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

(9) Purchases of alternative fueled vehicle credits:

(i) Credit source; and

(ii) Date of purchase;

(10) Sales of alternative fueled vehicle credits:

(i) Credit purchaser; and

(ii) Date of sale.

Subpart I—[Amended]

■ 23. 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 petroleum fuel use reduction requirement under § 490.803(a) in a model year for which a waiver is granted and for which the fleet experiences a shortfall.

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

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

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

have applied and the total balance of rollover reductions (in GGE) the fleet possesses.

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

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

(4) Excess petroleum reductions are not tradable.

* * * * *

■ 24. 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.

* * * * *

■ 25. 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 from the vehicle acquisition mandate for the model year of the revoked waiver.

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