

**§ 490.605**

convenience of the user, the revised text is set forth as follows:

**§ 490.604 Penalties and fines.**

(a) *Civil Penalties.* Whoever violates § 490.603 of this part shall be subject to a civil penalty of not more than \$8,000 for each violation.

\* \* \* \* \*

**§ 490.605 Statement of enforcement policy.**

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

**§ 490.606 Proposed assessments and orders.**

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

**§ 490.607 Appeals.**

(a) In order to exhaust administrative remedies, on or before 30 days from the date of issuance of a proposed assessment and order to pay, a person must appeal a proposed assessment and order to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

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

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

(2) Appellant shall have right to a trial-type hearing on contested issues of fact only if the hearing officer concludes that cross examination will ma-

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terially assist in determining facts in addition to evidence available in documentary form; and

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

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

**Subpart H—Biodiesel Fuel Use Credit**

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

**§ 490.701 Purpose and scope.**

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

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

**§ 490.702 Definitions.**

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

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

*Qualifying volume* means—

(1) 450 gallons; or

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

**§ 490.703 Biodiesel fuel use credit allocation.**

(a) DOE shall allocate to a fleet or covered person one credit for each