

Rules and Regulations

Federal Register

Vol. 64, No. 96

Wednesday, May 19, 1999

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

RIN 3206-A153

Authorization of Solicitations During the Combined Federal Campaign

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule giving the Director the discretion to authorize solicitations upon written request during the Combined Federal Campaign (CFC). In extraordinary circumstances, solicitations in support of victims in cases of emergencies or disasters may be approved. The intended effect of this rule is to enable the Federal workforce to respond to emergencies or disasters of catastrophic proportions which may occur during the CFC.

DATES: Final rule effective: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Becky Kumar, Office of General Counsel, Office of Personnel Management, (202) 606-2885.

SUPPLEMENTARY INFORMATION: The devastation in Central America caused by Hurricane Mitch in late October and early November of 1998 resulted in over 10,000 deaths and destroyed the homes and communities of many thousands more. This tragedy provided the impetus for OPM to review its regulations governing the solicitation of the Federal workforce and to conclude that there is a need for further flexibility in its regulations in order to respond to emergencies and disasters of catastrophic proportions.

The CFC regulations prohibit solicitations of the Federal workforce apart from those conducted as part of

the Combined Federal Campaign. The CFC was designed to be the one concentrated period during which Federal employees may be solicited to contribute to all eligible organizations. The rationale for limiting the CFC to a single period during the year is to provide Federal employees with a means of contributing to a wide variety of worthy voluntary organizations, but to accomplish this with minimal disruption to the work of the Government.

The regulations contain an exception for solicitations requested in writing on behalf of victims of emergencies and disasters, with the limitation that no such solicitations may occur between September 1 to December 15, the period of the CFC. In our review of this matter, we have determined that, on rare occasions, it may be necessary to authorize a solicitation during this time period. Natural disasters are not subject to time constraints, and extraordinary occurrences may necessitate extraordinary relief measures. OPM believes that this time period is of continuing concern in the future, since, according to the National Oceanic and Atmospheric Administration, the Atlantic hurricane season runs from June 1 through November 30 each year and the Pacific hurricane season runs from May 15 through November 30. Both of these periods overlap with the CFC.

On November 30, 1998, OPM published an interim rule allowing the Director to authorize solicitations during the CFC for victims of disasters or emergencies, upon written request and a showing of extraordinary circumstances. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as the final rule.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 950

Administrative practice and procedure, Charitable contributions, Government employees, Military personnel, Nonprofit organizations.

Accordingly, under the authority of E.O. 12353, 47 FR 12785 (1982), the interim rule amending 5 CFR part 950, published on November 30, 1998 (63 FR 65637), is adopted as final without any changes.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99-12551 Filed 5-18-99; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

RIN 1904-AB-00

[Docket No. EE-RM-99-BIOD]

Alternative Fuel Transportation Program; Biodiesel Fuel Use Credit

AGENCY: Department of Energy.

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) is today publishing an interim final rule required by the Energy Conservation Reauthorization Act of 1998 (ECRA), which amended Title III of the Energy Policy Act of 1992 (EPACT) to allow fleets that are required to purchase alternative fueled vehicles under Titles III, IV and V of EPACT to meet these requirements, in part, through the use of biodiesel fuel use credits. The rule establishes procedures for fleets and covered persons to request credits for specified biodiesel fuel use and implements ECRA's credit eligibility and allocation provisions. By publishing this rule, DOE is giving fleets and covered persons, who are otherwise required under EPACT to purchase an alternative fueled vehicle, the option of purchasing and using 450 gallons of biodiesel in vehicles in excess of 8,500 lbs. gross vehicle weight instead of acquiring an alternative fueled vehicle.

DATES: This interim final rule is effective June 18, 1999. DOE will

consider any public comments that are received on or before July 19, 1999.

ADDRESSES: Written comments (5 copies) should be sent to: Paul McArdle, U.S. Department of Energy, EE-34, Docket No. EE-RM-99-BIOD, 1000 Independence Ave., SW, Washington, DC 20585. Comments will be available for public inspection at DOE's Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul McArdle, Office of Energy Efficiency and Renewable Energy, EE-34, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9171.

SUPPLEMENTARY INFORMATION:

I. Introduction

- A. Overview of DOE's Alternative Fuel Transportation Program
- B. Prior Administrative Action on Biodiesel

II. Section-by-Section Discussion of Interim Final Rule

III. Public Comment

IV. Regulatory and Procedural Requirements

- A. Review Under Executive Order 12866
- B. Review Under Executive Order 12612
- C. Review Under the Regulatory Flexibility Act
- D. Review Under the National Environmental Policy Act
- E. Review Under the Paperwork Reduction Act
- F. Review Under Executive Order 12988
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Congressional Notification

I. Introduction

Section 7 of the Energy Conservation Reauthorization Act of 1998 (ECRA), Pub. L. 105-388, adds section 312 to Title III of the Energy Policy Act of 1992 (EPACT), 42 U.S.C. 13211-13219. Section 312 allows Titles III and V fleets and covered persons, which are required to acquire certain annual percentages of alternative fueled vehicles, to use biodiesel fuel use credits to meet, in part, these acquisition requirements (although Title IV is included as one of the Titles that is covered in ECRA, this inclusion appears to be a drafting error since Title IV has no mandated acquisition requirements for fleets and covered persons). DOE is required to allocate one credit to fleets and covered persons for using in certain vehicles 450 gallons (or "qualifying volume") of the biodiesel component of a motor fuel containing at least 20 percent biodiesel by volume.

Although the "qualifying volume" is denominated in gallons of neat biodiesel

(B-100), which is a fuel composed of 100 percent biodiesel by volume, a fleet or covered person can also be allocated a biodiesel fuel use credit through the use of motor fuels containing at least 20 percent biodiesel by volume. So for example, if a fleet wished to qualify for the credit using B-100, it would need to purchase and use 450 gallons of B-100 to receive one biodiesel fuel use credit. Alternatively, if a fleet wanted to qualify for the credit using B-20 (a motor fuel containing 20 percent biodiesel and 80 percent petroleum diesel by volume) it would need to purchase and use 2,250 gallons of B-20, since each gallon of B-20 contains one-fifth of a gallon of biodiesel ((2,250 gallons of B-20) * (1/5) = 450 gallons of B-100).

The allocation of each biodiesel fuel use credit requires the full purchase and use of 450 gallons of biodiesel. No rounding of the biodiesel fuel use credit upward is allowed. For example, if a fleet or covered person purchased and used 1,200 gallons of biodiesel, an initial credit calculation would indicate 2.67 credits. However, since ECRA requires that 450 gallons are needed to achieve each biodiesel fuel use credit, the fleet or covered person could only be allocated two biodiesel fuel use credits, using this example. The use of the biodiesel fuel use credit as the equivalent of acquiring one alternative fueled vehicle is also restricted to the model year in which it is generated and cannot be carried forward like alternative fueled vehicle acquisition credits generated under Subpart F.

The legislation, however, authorizes the Secretary to collect data which could support a determination to increase the qualifying volume of biodiesel required to allocate a biodiesel fuel use credit. Any increase in the qualifying volume would be set equal to the average annual alternative fuel use in light duty vehicles by fleets and covered persons. If the data support an increase, the Secretary is to issue a rulemaking to determine if the qualifying volume should be increased.

Additionally, the vehicles in which the fuel is used must weigh more than 8,500 pounds gross vehicle weight rating. Fleets and covered persons must own or operate these vehicles. Credits will be allocated only for the biodiesel fuel purchased after the enactment of ECRA, i.e., November 13, 1998.

The legislation prohibits the allocation of biodiesel fuel use credits for the purchase of biodiesel when the biodiesel is used in alternative fueled vehicles that are utilized to satisfy the EPACT alternative fueled vehicle purchase requirements, or when biodiesel fuel use is required by Federal

or State law. With the exception of biodiesel fuel providers, allocated credits can be used to satisfy up to 50 percent of a fleet's or covered person's alternative fueled vehicles requirements. For example, if a fleet's, or covered person's, alternative fueled vehicle acquisition requirements for a given model year were 20 alternative fueled vehicles, that fleet would only be able to use up to 10 biodiesel fuel use credits as a contribution to its acquisition requirements. To achieve the 10 biodiesel fuel use credits the fleet or covered person could purchase and use 4,500 gallons of B-100 (10 credits). In this example, any biodiesel purchases beyond 4,500 gallons would not generate any additional credits. Alternatively, the fleet could also be granted the 10 credits through the purchase and use of 22,500 gallons of B-20, since each gallon of B-20 has one-fifth of a gallon of biodiesel ((22,500 gallons of B-20) * (1/5) = 4,500 gallons of B-100).

Today's rule adds a new Subpart H to DOE's Alternative Fuel Transportation Program rules at 10 CFR part 490. Some of the provisions in current Part 490, such as definitions of fleet and covered persons, are also applicable to Subpart H. However, the biodiesel credits provisions under Subpart H cannot be considered a credit under Subpart F. Because of the relationship of Subpart H to the overall Alternative Fuel Transportation Program, a brief overall summary of 10 CFR part 490 is discussed.

A. Overview of DOE's Alternative Fuel Transportation Program

10 CFR part 490 sets forth regulations that implement title V of EPACT, 42 U.S.C. 13251-13264. The regulations mandate alternative fueled vehicle acquisition requirements for certain alternative fuel providers and State government fleets. Part 490 is one of a variety of EPACT programs designed to promote alternative and replacement fuels that reduce reliance on imported oil, decrease greenhouse gas emissions, lessen pollutant emissions and help realize EPACT's 10 percent and 30 percent petroleum replacement fuels goals in the years 2000 and 2010, respectively.

Title III of EPACT requires Federal fleet acquisitions of alternative fueled vehicles. Title IV includes specific authority for a financial incentive program for States, a public information program, and a program for certifying alternative fuel technician training programs. In addition to the mandates for the purchase of alternative fueled vehicles that apply to certain alternative

fuel providers and State government fleets, Title V provides for a possible similar mandate for certain private and municipal fleets. DOE issued an Advanced Notice of Proposed Rulemaking in the **Federal Register** on April 17, 1998, to solicit comments on whether alternative fueled vehicle acquisition requirements for certain private and local government fleets should be promulgated under the terms of section 507(g) of EPACT (63 FR 19732). Title VI provides for a program to promote electric motor vehicles.

The types of vehicles that satisfy the alternative fuel provider and State government fleet mandates in Title V are determined in part by the definition of "alternative fuel" in Title III, section 301(2). That definition provides: "'Alternative fuel' means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum, and would yield substantial energy security benefits and substantial environmental benefits." 42 U.S.C. 13211(2).

EPACT also defines the term "replacement fuel." Section 301(14) provides: "the term 'replacement fuel' means the portion of any motor fuel that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers, or any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits." 42 U.S.C. 13211(14).

B. Prior Administrative Action on Biodiesel

DOE considered the allocation of credits for use of biodiesel fuel in the rulemaking that implemented the alternative fuel provider and State government fleet mandates. After considering public comments on the issue of whether biodiesel was an alternative fuel, DOE concluded that neat biodiesel (B-100), a fuel that is 100 percent biodiesel by volume, is included in the definition of

"alternative fuel." Section 301(2) of EPACT expressly refers to fuels derived from biological materials. With respect to the credit program under section 508 of EPACT (Subpart F of 10 CFR part 490), DOE concluded that credits could be given in certain circumstances for the purchase of medium- and heavy-duty alternative fueled vehicles, as provided in Subpart F, but multiple credits based on the amount of fuel consumed were not allowable.

During the rulemaking to implement the alternative fuel provider and State government fleet mandates, proponents of biodiesel fuel also requested DOE to include B-20, a fuel that is 20 percent biodiesel and 80 percent petroleum diesel by volume, in the list of alternative fuels. DOE declined on the grounds that the comments did not provide sufficient supporting information to warrant including this issue within the scope of the rulemaking. The final rule was published on March 14, 1996 (61 FR 10653).

On September 10, 1996, the National Biodiesel Board (NBB) and a number of co-petitioners submitted to DOE a petition requesting DOE to initiate a rulemaking to amend the definition of "alternative fuel" in the regulations by adding, without limitation, B-20. In response to the NBB petition, DOE, on July 15, 1997, issued a notice in the **Federal Register** (62 FR 37897) inviting interested members of the public to comment on the petition and to attend a public workshop on July 31 and August 1, 1997 at which the petition and related policy issues were discussed. On November 16, 1999, NBB and the co-petitioners withdrew their petition.

II. Section-by-Section Discussion of Interim Final Rule

This section of the Supplementary Information contains explanatory material for some of the ECRA and interim final rule provisions, in order to provide interpretive guidance to States and persons that must comply with this part.

The biodiesel fuel use credit is also available to Federal fleets that are required under Title III, Section 303 of the Energy Policy Act of 1992, to purchase certain percentages of alternative fueled vehicles. Federal fleet purchase requirements are also stipulated in Executive Order 13031 (61 FR 66529). Under Executive Order 13031, Federal agencies, as part of their annual budget submission to the Office of Management and Budget, are required to submit a report on their compliance with section 303 of EPACT. A copy of

the report is also submitted to DOE and the General Services Administration (GSA). DOE and GSA cooperatively analyze the agency alternative fueled vehicle reports and acquisition plans, and jointly submit a summary report to the OMB. Section 8 of ECRA also amended section 310 of EPACT to require each Federal agency to report annually to the Congress on compliance with the alternative fuel purchasing requirements for Federal fleets, including a plan with specific dates for achieving compliance. Federal agencies will also be required to publicly disseminate such reports in the **Federal Register** and on the Internet.

Federal agency alternative fueled vehicle acquisition compliance data are currently submitted to DOE under the Federal Energy Management Program (FEMP). DOE plans on amending the FEMP reporting form to allow for the allocation of biodiesel fuel use credits for Federal fleets. Like State and alternative fuel provider fleets, Federal fleets will be required to report the quantity of biodiesel purchased for use in vehicles weighing in excess of 8,500 lbs. gross vehicle weight. Federal fleets seeking to utilize the biodiesel fuel use credit should follow the requirements laid out below in 10 CFR Part 490 Subpart H, as well as any other guidance issued by DOE. The only difference for the Federal fleets will be that their reporting year is for the fiscal year, October 1 through September 30, as opposed to a model year, September 1 through August 31, which applies to State and alternative fuel provider fleets, as well as private and municipal government fleets if DOE determines that such fleets should be covered under the Alternative Fuel Transportation Program.

Section 490.702 Definitions. This section contains definitions of biodiesel and qualifying volume that are in section 312(f) of ECRA. The term 'biodiesel' is defined as 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.

The term "qualifying volume" is set equal to 450 gallons. If DOE determines, after the rulemaking, that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, DOE may set a qualifying volume that is equal to the average annual alternative fuel use determined by its collection of data under section 490.703.

Section 490.703 Biodiesel Fuel Use Credit Allocation. This section prescribes the conditions and exceptions under which DOE may allocate an alternative fueled vehicle acquisition credit to a fleet or covered person for each "qualifying volume" of the biodiesel component of a fuel containing at least 20 percent biodiesel by volume. The allocation of such a credit is restricted to vehicles owned or operated by the fleet or covered person that have a gross vehicle weight rating of more than 8,500 lbs.

Paragraph (b) of this section states the statutory exceptions to allocation of biodiesel fuel credits. No credits may be allocated when the biodiesel purchased is for use in an alternative fueled vehicle, as defined in Section 490.2. This exception is designed to prevent fleets and covered persons from utilizing the biodiesel fuel use credit to claim an additional alternative fueled vehicle acquisition credit on an alternative fueled vehicle which has already received credit by virtue of its acquisition for use in a covered fleet. Additionally, no alternative fueled vehicle acquisition credit shall be awarded if the biodiesel purchased is required by Federal or State law.

Section 490.704 Procedures and Documentation. Paragraph (a) of this section specifies the office within DOE that will receive requests for biodiesel fuel credits, and paragraph (b) covers the documentation that must accompany a request. To ensure proper credit allocation, a fleet or covered person under this section must provide written documentation to DOE supporting the allocation of a biodiesel fuel use credit. The written documentation must be submitted by the December 31 after the applicable model year. The initial model year for use of the biodiesel fuel use credit began on November 14, 1998, the enactment of ECRA, and will close on August 31, 1999 for State and alternative fuel provider fleets and September 30, 1999 for Federal fleets. Future model years, beginning with the 2000 model year, for use of the biodiesel fuel use credit, however, will be complete 12-month years.

Such documentation must include meeting the annual reporting requirements of section 490.704, as well as section 490.205 for State fleets and section 490.309 for alternative fuel provider fleets. The form referenced in paragraph (a) is the annual reporting form DOE/OTT/101, Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets. It will be amended to include the documentation

requirements of section 490.704. Documentation requirements include listing the quantity of biodiesel purchased for use in vehicles weighing in excess of 8,500 lbs. gross vehicle weight for the model year covered in the report.

Section 490.705 Use of Credits. Section 490.705 delineates the use and limits of the biodiesel fuel use credit. At the request of a fleet or covered person, DOE shall, for the model year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under Subpart C (State fleets), Subpart D (alternative fuel provider fleets), and Title III of EPACT (Federal fleets). The use of the biodiesel fuel use credit to serve as the acquisition of one alternative fueled vehicle is restricted to the model year, or the fiscal year in the case of Federal fleets, in which the biodiesel is purchased and cannot be carried forward like alternative fueled vehicle acquisition credits generated under Subpart F. The House of Representatives Commerce Committee Report addressed these restrictions, stating that biodiesel fuel use credits "may only be used by the fleet or covered person that earned the credits and only in the year the credit is issued, so they cannot be traded or banked."¹

Credits allocated under subsection 490.703 may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under Subpart C (State fleets), Subpart D (alternative fuel provider fleets), and Title III of EPACT (Federal fleets). This limitation would also apply to private and municipal government fleets if DOE determines that such fleets should be included in the Alternative Fuel Transportation Program. The 50 percent limitation in section 490.705 does not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in sections 490.301 and 490.303. Biodiesel alternative fuel providers may satisfy up to 100 percent of their alternative fueled vehicle acquisition requirements through the use of biodiesel fuel use credits.

Section 490.706 Procedure for Modifying the Biodiesel Component Percentage. This section includes a cross-reference to the procedures a person may use to request DOE to exercise the authority provided in section 312(a)(3) of ECRA to lower the minimum 20 percent biodiesel volume requirement for reasons related to cold

start, safety, or vehicle function considerations. DOE expects petitions to change the percentage requirement to be supported by data demonstrating the need for lowering the percentage.

Section 490.707 Increasing the Qualifying Volume of the Biodiesel Component. This section allows DOE to collect the data required to make a determination that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents. Such a data collection effort would be used by DOE to propose an increase in the 450 gallon qualifying volume necessary to generate credits under the Section 490.701 biodiesel fuel use credit. A DOE proposal to increase the qualifying volume would have to be done through a rulemaking that provides public notice and opportunity for comment. DOE does not, at this time, plan on proposing an increase in the qualifying volume. If the data that become available on alternative fuel use by EPACT alternative fueled vehicles indicate that average alternative fuel use is higher than 450 gallons, DOE will consider proposing an increase in the qualifying volume level.

III. Public Comment

This rule prescribes procedures and contains interpretive guidance for implementing the biodiesel fuel use credit provisions of ECRA, section 7. An opportunity for prior public comment is not required by the Administrative Procedure Act, 5 U.S.C. 553, or any other law for this type of rule, nor does DOE see any need for prior public comment as a matter of policy. The rule contains straightforward procedures for requesting credits, necessary cross-references to other provisions in the Part 490 Alternative Fuel Transportation Program, and implementing provisions that closely track the statute.

Although DOE is making this rule effective 30 days after publication, it is nevertheless interested in any written data, views, or comments that interested persons may have with respect to the rule. DOE will take appropriate action after considering the comments. DOE invites public comments by the deadline in the DATES section at the beginning of this notice. Written comments (5 copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Biodiesel Fuel Use Credit Interim Final Rule, Docket Number EE-RM-99-BIOD". In the event any person wishing to submit a written comment cannot provide five copies, alternative arrangements may be made in advance

¹ H.R. Rep. No. 105-727, Pt. 3, at 33 (1998).

by calling Ms. Andi Kasarsky at (202) 586-3012. All comments submitted will be available for examination in the Rule Docket File (EE-RM-99-BIOD) in DOE's Freedom of Information Reading Room at the address indicated at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that are believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The DOE will make its own determination of any such claim.

IV. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12612

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action. The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined there are no federalism implications that would warrant the preparation of a federalism assessment. The interim final rule will not have a substantial direct effect on States, the relationship between the States and Federal Government, or the distribution of power and responsibilities among various levels of government.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires preparation of an initial regulatory flexibility analysis for every rule for which the law

requires publication of a general notice of proposed rulemaking unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Today's interim final rule is not subject to a legal requirement for a general notice of proposed rulemaking. Accordingly, DOE did not prepare a regulatory flexibility analysis for this rule.

D. Review Under the National Environmental Policy Act

The Department has determined that this rule is covered by Categorical Exclusion in paragraph A5 to Subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under the Paperwork Reduction Act

This interim final rule contains a collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. More specifically, DOE plans to obtain documentation to support allocation of credits by use of the annual reporting form DOE/OTT/101, Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets. DOE proposes to amend that form to include the documentation requirements of § 490.704. Fleets claiming credits must, for the model year in which the biodiesel fuel is purchased, report the quantity of biodiesel purchased for use in vehicles weighing in excess of 8,500 lbs. gross vehicle weight.

The title, description, and respondent description of the collection of information for the existing Alternative Fuel Transportation Program are shown as follows with an estimate of the annual reporting and record keeping burden. Included in the estimate are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and providing the information. DOE does not expect any change in the existing burden with the addition of the availability of the biodiesel fuel use credit to affected fleets. Should fleets utilize the biodiesel fuel use credit, DOE believes that the increased burden of reporting biodiesel fuel use credits would be counterbalanced by a reduced burden of reporting the number of alternative fueled vehicles acquired.

Collection Title: Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets.

Type of Review: Revised collection.

OMB Number: 1910-5101.

Type of Respondents: States and alternative fuel provider firms.

Estimated Number of Respondents: 1,000.

Estimated Total Burden Hours: 12,000.

Frequency of Responses: Annually.

DOE invites comments on: (1) The need for the proposed collection of information; (2) the accuracy of DOE's burden estimates, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

As provided in 5 CFR 1320.5(c)(1), collections of information addressed in an interim final rule are subject to the procedures in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection in this rule by July 19, 1999 to Paul McArdle, Office of Energy Efficiency and Renewable Energy, (EE-34), U. S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 and to the DOE Desk Officer, OMB, NRD, Room 10202, 725 17th Street, NW, Washington, DC 20503.

At the close of the 60-day comment period, DOE will review the comments received, revise the information collection as necessary, and submit these provisions to OMB for review. DOE will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. DOE will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current, valid OMB control number.

F. 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 Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The interim final rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress 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. 801(2).

List of Subjects in 10 CFR Part 490

Administrative practice and procedure, Energy conservation, Fuel, Motor vehicles.

Issued in Washington, DC on April 28, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the Preamble, Part 490 of Title 10, Chapter II, Subchapter D of the Code of Federal Regulations, is amended as follows:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

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

Authority: 42 U.S.C. 7191, 13211-13212, 13235, 13251, 13257, 12260-12263.

2. Subpart H—Biodiesel Fuel Use Credit is added to read as follows:

Subpart H—Biodiesel Fuel Use Credit

Sec.

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

§ 490.701 Purpose and scope.

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

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

§ 490.702 Definitions.

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

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

Qualifying volume means—

- (1) 450 gallons; or
- (2) If DOE determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use.

§ 490.703 Biodiesel fuel use credit allocation.

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

- (1) Each qualifying volume of the biodiesel component of a fuel was purchased after November 13, 1998;
- (2) The biodiesel component of fuel is used in vehicles owned or operated by the fleet or covered person; and
- (3) The biodiesel component of the fuel is used in vehicles weighing more than 8,500 pounds gross vehicle weight rating.

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

- (1) For use in alternative fueled vehicles; or
- (2) Required by Federal or State law.

§ 490.704 Procedures and documentation.

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

(b) Each request for a credit under this subpart must be submitted on or before the December 31 after the close of the applicable model year and must include written documentation stating the quantity of biodiesel purchased, for the given model year, for use in vehicles weighing in excess of 8,500 lbs. gross vehicle weight;

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

§ 490.705 Use of credits.

(a) At the request of a fleet or covered person allocated a credit under this subpart, DOE shall, for the model year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under sections 490.201, 490.302 and 490.307, and Title III of the Energy Policy Act of 1992.

(b) Except as provided in paragraph (c) of this section, credits allocated

under this subpart may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under sections 490.201, 490.302 and 490.307, and Title III of the Energy Policy Act of 1992.

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

§ 490.706 Procedure for modifying the biodiesel component percentage.

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

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

§ 490.707 Increasing the qualifying volume of the biodiesel component.

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

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

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

§ 490.708 Violations.

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

[FR Doc. 99-12571 Filed 5-18-99; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM152; Special Conditions No. 25-144-SC]

Special Conditions: Boeing Model 717-200 Airplane; Operation Without Normal Electrical Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 717-200 airplane. This airplane will have novel or unusual design features associated with its electronic flight and engine control systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Gerry Lakin, FAA, Standardization Branch, ANM-113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-1187, facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1994, the Los Angeles Aircraft Certification Office received an application from the McDonnell Douglas Corporation, now a wholly owned subsidiary of The Boeing Company, informing the FAA of their intention to seek an amendment to FAA Type Certificate No. A6WE to add the new Model MD-95-30, which was later renamed the Boeing Model 717-200.

The Boeing Model 717-200 is a derivative of the DC-9/MD-80/MD-90 series of airplanes, Type Certificate No. A6WE, and is scheduled to be certificated in September 1999. The Boeing Model 717-200 is a low-wing, pressurized airplane with twin, body-mounted, jet engines that is configured for approximately 100 passengers. The airplane has a maximum takeoff weight of 121,000 pounds, a maximum landing weight of 104,000 pounds, a maximum operating altitude of 37,000 feet, and a range of 1500 nautical miles at a cruise speed of Mach 0.76. The overall length of the Boeing Model 717-200 is 124 feet, the height is 29 feet, 1 inch, and the wing span is 93 feet, 4 inches. Features have been added to the Boeing Model 717-200 to provide cost-efficient performance and decreased crew workload. These features include an advanced flight compartment, BMW/Rolls-Royce BR715 engines, an advanced auxiliary power unit (APU), advanced environmental systems, and an updated interior.

The advanced flight compartment includes an electronic instrument system, with six liquid crystal displays,

to show navigation, engine, and system data. For decreased crew workload, the Boeing Model 717-200 has a flight management system and an autoflight system, with Category IIIa autoland capability. A central fault display system allows maintenance personnel access to fault data to perform return-to-service tests.

The Boeing Model 717-200 is equipped with two electronically controlled BMW/Rolls-Royce BR715 high-bypass ratio engines capable of supplying up to 21,000 pounds of thrust. For reverse thrust, the engine has fixed pivot door type thrust reversers.

The advanced APU is a simple design with a single-stage compressor and turbine. The APU uses modular components for increased reliability and decreased maintenance and is controlled by an electronic control unit.

The Boeing Model 717-200 has a simplified pneumatic system to supply bleed-air for the airplane systems. The dual cabin pressure control system has automatic control, with a manual backup.

The passenger compartment interior has overhead stowage compartments, forward and aft lavatories, and two forward service galleys. The interior also has a full-grip lighted handrail attached to the overhead stowage compartments, for safety and convenience. Class C cargo compartments are located in the lower forward and aft ends of the airplane.

Type Certification Basis

Under the provisions of § 21.101, The Boeing Company must show that the Model 717-200 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A6WE or the applicable regulations in effect on the date of application for the change to the Model 717-200. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A6WE are as follows:

The type certification basis for the Boeing Model 717-200 airplane is 14 CFR part 25, effective February 1, 1965, as amended by Amendments 25-1 through 25-82, except for certain reversion to earlier amendments for parts of the airplane not affected by these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing Model 717-200 because of a novel or unusual design feature,