

# Exemption Requests under the EPA State & Fuel Provider Fleet Program; 10 C.F.R. §§ 490.308 and 490.204

September 2009

The opportunity for covered fleets to request exemptions should serve only as administrative relief of the last resort, in the event a fleet is unable to satisfy its AFV-acquisition requirements through the normally available compliance alternatives. These alternatives include the purchase and use of biodiesel to the maximum extent allowed, redeeming banked AFV-acquisition credits, and purchasing or trading for such credits.

This document is intended to help covered fleets better understand:

1. How to file a request for an exemption from alternative fuel vehicle (AFV)-acquisition requirements under the Energy Policy Act of 1992 (EPart);
2. What information and documentation the U.S. Department of Energy (DOE) needs to process the exemption request; and
3. Important policies relevant to the filing of exemption requests.

Pursuant to EPart, DOE established the Alternative Fuel Transportation Program (Program) and associated regulatory requirements. The Program encompasses the State and Alternative Fuel Provider Fleet Program, which requires those covered state government and alternative fuel provider fleets operating under Standard Compliance (SC) to acquire a specific percentage of AFVs annually. This document addresses requests for exemptions from the AFV-acquisition requirement.

Requests for exemptions from AFV-acquisition requirements may be based on a lack of available alternative fuels and/or a lack of available AFVs.<sup>1</sup> In addition, state government entities may request exemptions on the basis of unreasonable financial hardship. Covered fleets must apply to DOE to receive exemptions, and DOE reviews these requests on a case-by-case basis.

#### COMPONENTS OF A COMPLETE EXEMPTION REQUEST

DOE strongly recommends that fleets pursuing exemptions develop an exemption request as shown in DOE's *Sample Exemption Request under Standard Compliance*, which is available on the Program web site at <http://www1.eere.energy.gov/vehiclesandfuels/epact/exemptions.html>. Following this form will help ensure all needed information is provided, thereby speeding DOE's review and promoting a faster response to each exemption request fleets submit.

The following is a suggested checklist of the most relevant information DOE seeks in evaluating an exemption request:

- Fleet name and address, along with the appropriate contact name and contact information;
- Model year (MY) for which the fleet is seeking exemption(s);
- Number of covered, light-duty vehicles (LDVs) that the fleet acquired or anticipates acquiring during the given MY;

- AFV-acquisition requirement for the given MY;
- Total AFVs the fleet acquired or anticipates acquiring during the given MY;
- Total volume of biodiesel (in gallons of B100) purchased, or anticipated to be purchased, for use in blends of B20 or higher during the given MY;
- Total number of existing medium- and/or heavy-duty fleet diesel vehicles;
- Total number of banked credits to be applied or acquired;
- Number of exemptions requested, including (a) Identification of the vehicles for which exemptions are being sought; and (b) On what grounds the exemption is sought (i.e., lack of available alternative fuel, lack of available AFV models, etc.) for the given MY;
- If available, the vehicle profile, including (a) Acquisition date; (b) Make; (c) Model; (d) Vehicle identification number (VIN); (e) Fuel configuration (e.g., gasoline, diesel, compressed natural gas, E-85 ethanol, etc.); (f) Location (i.e., street, city, state, and ZIP code); and (g) Gross vehicle weight rating (GVWR) of the vehicles for which exemptions are being sought for the given MY;
- Appropriate documentation to support the basis for which exemption is sought, as described below.
  - o **Lack of Available Alternative Fuel:** An exemption request based on lack of available alternative fuel also should provide, as appropriate:
    - A map of the fleet's service or operating territory;
    - A map indicating the distance of all alternative fueling sites available within a 25-mile radius of each vehicle location for which exemptions are requested. Such a map may be obtained using DOE's Alternative Fueling Station Locator at <http://www.afdc.energy.gov/afdc/locator/stations/>; and
    - Justification supporting any claim that alternative fuel is unavailable as a result of a lack of station accessibility due to unreasonable travel time to a fueling station, limited hours of operation, lack of access to private stations, etc.
  - o **Lack of Available AFV Model:** Covered fleets submitting an exemption request based on lack of available AFVs also should provide, as appropriate:
    - Proof of lack of availability of a particular AFV model in the type of LDV the fleet needs. If regional vehicle dealers do not offer AFVs, include documentation from those dealers. If no original equipment manufacturers (OEMs) offer the type of vehicle for which your fleet seeks the exemption, indicate this. For information on available LDV AFVs offered by OEMs, see the most recent Fuel Economy Guide available at <http://www.fueleconomy.gov>; and
    - Three (3) years of historical documentation demonstrating that your fleet regularly has

acquired the vehicles for which exemptions are requested.

- **Unreasonable Financial Hardship (UFH; available to covered State fleets only):** DOE considers UFH to be the exemption of very last resort. Covered State fleets submitting an exemption request based on UFH should provide:

- ❑ Explanation of why an UFH exemption is warranted;
- ❑ Detail steps taken to redeem banked credits, acquire credits, and/or use biodiesel in its medium- and/or heavy-duty vehicles to the maximum extent possible;
- ❑ Total fleet budget for LDV acquisitions and, if known, the number of LDV acquisitions budgeted; and
- ❑ The purchase price differential between an AFV and a comparable conventional LDV and whether that differential was factored into the budget.

If questions arise in preparing your fleet's exemption request, please contact DOE before submitting your request, at (202) 586-9171, or at [regulatory.info@nrel.gov](mailto:regulatory.info@nrel.gov).

All exemption requests should be emailed to [regulatory.info@nrel.gov](mailto:regulatory.info@nrel.gov), and mailed in triplicate to:

**Regulatory Manager  
Vehicle Technologies Program  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585  
Phone: (202) 586-9171**

#### **DOE EXEMPTION REVIEW PROCESS**

Once DOE receives a **complete** exemption request, DOE has 45 working days to respond. If DOE receives an incomplete exemption request, DOE will contact the fleet to request missing information. DOE places incomplete exemption requests on hold, and the fleet will have 30 days from the date of DOE's request for additional information to submit *all* of the necessary documentation. DOE's 45-working day evaluation window begins when all information is in hand. If a fleet does not provide DOE all requested information within the 30-day holding period, DOE will evaluate the exemption request based on the information in hand.

DOE will provide written notification of its final determination for each exemption request received. Exemptions may be granted in whole, in part, or may be denied. Exemption request decisions are final and will not be reconsidered.

#### **NOTABLE DOE EXEMPTION REQUEST POLICIES**

##### Appeals

The Program's exemption request determinations are final. If a fleet disagrees with the Program's final determination, it may

submit an appeal to the DOE Office of Hearings and Appeals (OHA). The appeal must be filed within 30 days of the date of DOE's decision letter, and must be filed to the following address:

**Office of Hearings and Appeals  
U.S. Department of Energy  
1000 Independence Ave, SW  
Washington, DC 20585**

##### Biodiesel as a Compliance Option

DOE believes that biodiesel is a viable option for all fleets unless a fleet provides DOE with information clearly indicating otherwise. As a result, exemption requests **must** address the fleet's use and/or capacity to use biodiesel fuel blends in any medium- and heavy-duty on-road fleet vehicles.

For fleets seeking exemptions, the only justifications for not using biodiesel are that the fleet lacks medium- or heavy-duty diesel vehicles or that proof that fuel suppliers will not make biodiesel fuel available in the fleet's service area. Additional information on how to obtain credit toward compliance with EAct fleet requirements using biodiesel may be found on the Program's website at the following link:

<http://www1.eere.energy.gov/vehiclesandfuels/epact/biodiesel.html>.

##### AFV-Acquisition Deficits

DOE will not process an exemption request in a particular MY for any fleet having an outstanding AFV-acquisition deficiency from a prior MY. After the fleet formally notifies DOE in writing and explains what steps the fleet has taken to correct the outstanding deficiency, DOE will review the exemption request. The fleet's explanation must address the steps taken to acquire AFV-acquisition credits through purchase or trade with another covered fleet, or justification as to why a credit transaction was not completed.

##### Future AFV Acquisition in Place of a Previous Vehicle Exemption

DOE may require a covered fleet to acquire AFVs in place of all or some of the vehicles exempted in future model years.

##### When to Submit an Exemption Request

Covered fleets should submit an exemption request no earlier than September 1 of the MY for which the exemption is sought and no later than January 31 following the MY for which the exemption is sought.

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<sup>i</sup> Exemption requests should not be confused with a request for an exclusion from the Program. Generally, a fleet may be excluded if it does not have 50 or more light-duty vehicles, of which at least 20 are used primarily within any single Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA).