

Draft Guidance: Documentation Requirements for Waiver Requests under EPACT 2005 Section 701

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Introduction

At a minimum, 75 percent of light duty motor vehicles acquired by Federal fleets in major metropolitan areas must be alternative fueled vehicles (AFVs) (42 U.S.C. 13212(b)(1)(D)). Furthermore, Section 701 of the Energy Policy Act of 2005 (EPACT 2005) requires Federal agencies to use only alternative fuel in all of its dual fueled vehicles—such as ethanol flex-fuel vehicles (FFVs) or bi-fuel gasoline/gaseous fuel vehicles—except where the vehicles have received a waiver from the U.S. Department of Energy (DOE)¹ (42 U.S.C. 6374(a)(3)(E)). The Section 701 requirement applies to all AFVs in the U.S. and Puerto Rico in Federal fleets covered by EPACT 1992.

The purpose of this document is to provide guidelines to help agencies understand the requirements of Section 701 and how to apply for waivers from DOE. This guidance describes the process through which DOE's Federal Energy Management Program (FEMP) will evaluate requests for alternative fuel use waivers by Federal agencies. It also describes information DOE will require from agencies applying for waivers. This document will be made available at http://www1.eere.energy.gov/femp/pdfs/701_guidance.pdf.

General Guidance

Applicability

Section 701 applies to alternative fuel use in dual fueled vehicles in covered agencies. Dual fueled vehicles, which currently comprise greater than 90 percent of AFVs in the Federal fleet, include flex-fuel gasoline/ethanol (FFV), bi-fuel gasoline/natural gas (compressed and liquefied), and bi-fuel gasoline/liquefied petroleum gas (LPG) vehicles². Therefore, waiver requests only apply to fuel use in vehicles that are capable of operating on one of the following fuels:

- Blends of 85 percent or more of ethanol with gasoline (E85)
- Natural gas and liquid fuels domestically produced from natural gas
- Liquefied petroleum gas (propane)

Since more than 90 percent of the AFVs covered by this requirement are FFVs, it is anticipated that most of the waiver requests submitted will be for this type of vehicle.

The Section 701 requirement applies to all AFVs in the U.S. and Puerto Rico in agencies covered by EPACT 1992. Vehicles that are excluded from the requirements of EPACT 1992 (such as emergency, law enforcement, and military tactical vehicles) are also excluded from the Section 701 alternative fuel use requirement. To ensure consistency with Section 701, ***agencies will no longer receive EPACT AFV acquisition credit for exempted emergency and law enforcement vehicles beginning in fiscal year (FY) 2010.***

However, it is important to note that alternative fuel used in exempted emergency and law enforcement AFVs is counted as part of the Federal agency's "alternative fuel consumption" reported under Executive Order (E.O.)

¹ This requirement is commonly referred to as the Section 701 requirement.

² Although flex-fuel gasoline/methanol vehicles are considered dual fueled AFVs, these vehicles are being phased out due to concerns with the M85 fuel. Therefore, DOE does not expect waiver requests for the use of M85 (blends of 85 percent or more of methanol with gasoline) in M85 FFVs. Given that Section 701 places waiver consideration, in part, in terms of comparison to gasoline, DOE will only consider waivers for dual fueled vehicles for which gasoline is the conventional fuel. Further, alternative fuels that are not used in dual fueled AFVs are not covered by this provision. This includes biodiesel, coal-derived liquid fuels, hydrogen, electricity, P-series fuels, and fuels (other than alcohol) derived from biological materials.



13423. Not only is this approach consistent with the existing approach under E.O. 13423, but DOE believes such a definition provides a strong incentive for Federal agencies to use alternative fuel to the maximum extent possible.

Basis of Waivers

Under the Section 701 requirement (42 U.S.C. 6374(a)(3)(E)(i)(I) and (II)), a covered agency may qualify for a waiver for vehicles operated by the agency in a particular geographic area in which:

- the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to DOE by the head of the agency; or
- the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified to DOE by the head of the agency.

Generally, for the purpose of the Section 701 requirement DOE has interpreted these requirements such that:

1. **Alternative fuel is not reasonably available** if it cannot be obtained within a 15-minute drive or within five miles (one way) from the vehicle's garaged location.
2. **Alternative fuel is unreasonably expensive** if it costs more per gallon than gasoline at the same station. Since the energy density of E85 is approximately 27 percent lower than that of gasoline, parity in costs per gallon between E85 and gasoline would likely result in increased fuel costs for an agency.

With regard to the guidance on availability, dual fueled vehicles that have access to alternative fuel along the vehicle's usual travel route are expected to use that fuel, even if that infrastructure is more than five miles away from the vehicle's garaged location. In some locations, the capability may exist for agencies to contract with a local alternative fuel provider to fuel fleet AFVs via "wet hosing." Wet hosing allows a fleet to be refueled by mobile refueling trucks that typically bring alternative fuel to an agency's garaged fleet location or other convenient refueling location, often after working hours. This may be a viable option for fleet locations where gaining access to alternative fuels is particularly time consuming. If wet hosing capability exists at a fleet location, agencies should acquire fuel in this manner, even if they are more than five miles or 15 minutes from an alternative fueling station. Additionally, if the alternative fuel provider is supplying alternative fuel via wet hosing to some AFVs at an agency site, and if the fuel supplier has the capacity to supply all AFVs at an agency site with alternative fuel, then an agency should not submit 701 waivers for any AFVs at that site – they should all be wet hosed.

One consolidated waiver request per covered agency will be considered by DOE FEMP per FY. Waivers are due to DOE by June 30th of the prior FY for which the waiver is requested. Waiver requests must be submitted to and reviewed by DOE before a waiver is granted.

DOE may approve the waiver request for all, some, or none of the local fleets included in an agency's petition. All documentation supporting an agency's waiver request under this provision may be audited by DOE. The purpose of the audit will be to confirm the lack of available alternative fuel and/or the unreasonable price of the alternative fuel, as reflected in the waiver request. The following guidance describes the required justification and process for submitting a waiver request.



Determining Whether Your Vehicle Qualifies for a Waiver Request

Covered agencies are expected to use DOE's Alternative Fuel Station Locator (<http://www.eere.energy.gov/afdc/fuels/stations.html>) and to contact the Defense Energy Support Center (DESC) to determine the availability of E85 at their fleet locations prior to applying to DOE for a Section 701 waiver for E85 FFVs. DESC assists military and civilian agencies in contracting for E85 (85 percent ethanol and 15 percent gasoline) in many (but not all) fleet locations in the United States. DESC contracts include standards to ensure the quality of the delivered fuel. Through its large purchase volume, DESC is typically able to provide these fuels to agencies at a reasonable cost.

Covered agencies should determine which (if any) of its vehicles qualifies for a waiver under the two criteria—availability and expense—discussed above. If the agency determines that vehicles are eligible for a waiver, the agency should first determine if there may be other means to obtain alternative fuel for the vehicles at that location before submitting a waiver request. DOE requires that data supporting waiver requests be submitted using the Federal Automotive Statistical Tool (FAST) available at <https://fastweb.inel.gov>.

Waiver based on fuel not reasonably available. In the spring of each year, DOE will either (1) provide agencies with a tool that will allow them to easily determine proximity of alternative fuel infrastructure to dual fueled vehicle locations, or (2) offer to conduct this analysis using fleet vehicle data submitted to DOE by the agency. It is important that agencies provide vehicles' garaged addresses when conducting this analysis, since more exact location data (as opposed to just ZIP code location) improves an agency's ability to justify waiver requests based on availability of alternative fuel. For each dual fueled vehicle or group of dual fueled vehicles, agencies are required to enter the following information into FAST:

All waivers must include the following information to populate FAST Section 701 waiver request data fields:

- vehicle type
- fuel type
- average miles per gallon
- model year
- vehicle location (ZIP code suffices until further notice; DOE is considering requiring address and/or latitude and longitude coordinates which would improve waiver determination accuracy)
- number of vehicles
- waiver reason
- expected miles driven
- expected alternative fuel use (percent)

Waiver based on fuel unreasonably expensive. Waivers based on the unreasonable cost of alternative fuel will be evaluated based on its price compared with gasoline at stations providing alternative fuel. If the fuel is more expensive per gallon than gasoline at the same station, the agency may apply for a Section 701 waiver based on unreasonably expensive alternative fuel. In addition to the waiver information required above, waiver requests due to fuel cost provide the following information:

- station name, location (street address, city, state, and ZIP code) and phone number
- fuel price data (documentation of gasoline and alternative fuel prices collected approximately once a week for at least 5 weeks)



This information should be submitted to DOE and NREL at federal_fleets@ee.doe.gov and federal_fleets@nrel.gov. Also, agencies must enter the date of the e-mail submission in the appropriate comment section in the Section 701 portion of the Federal Automotive Statistical Tool (FAST).

Submitting a Waiver Request

Each covered agency may submit only one waiver request each FY. Covered agencies shall submit the request via the FAST system (<https://fastweb.inel.gov>) by June 30th of the prior FY for which they are requesting waivers. FAST automatically rolls up and summarizes local fleet submissions into one report for review and approval by the agency. Once approved by the agency in FAST, the list of vehicles is sent through FAST to DOE for approval. Note that DOE requires that all information listed above be provided to receive consideration for your waiver request.

In addition to submitting the AFVs included in the waiver request through FAST, each agency is required to submit to DOE a plan for addressing the need for waivers (alternative fuel availability and/or cost issues), including plans for reducing needed waivers, and a cover letter signed by the appropriate agency representative. The cover letter should include:

- total number of AFVs in the agency's fleet
- number of AFV waiver requests by waiver type (alternative fuel unavailable and/or unreasonably expensive)
- short narrative indicating that a plan to reduce the number of future waiver requests is being provided under separate cover

Note that compliance with Section 701 will be reported to the Office of Management and Budget (OMB) and reflected on OMB's Transportation Scorecards and agency performance in meeting these requirements. OMB requires that agencies demonstrate an annual reduction in waivers from the previous year. DOE recommends copying an agency's Senior Transportation Official or Senior Energy Official on this letter. Agencies should send the agency's plan and cover letter to DOE electronically at federal_fleets@ee.doe.gov, and a courtesy copy to federal_fleets@nrel.gov. Hard copies are not required.

Reminders will be sent to covered agencies via e-mail each spring. Agencies must request waivers annually, since the availability and cost of alternative fuels and other circumstances are expected to change from year to year. DOE may modify this guidance based on information and experience. Therefore, each affected agency should review this guidance annually before filing requests for waivers to determine if any modifications have been made. Updates to this guidance will be posted online at http://www1.eere.energy.gov/femp/pdfs/701_guidance.pdf.

In addition:

- Each agency is responsible for ensuring alternative fuel is used in its dual fueled vehicles except in those vehicles for which waivers have been approved.
- Waivers should not be submitted for dual fueled vehicles that may occasionally use conventional fuel due to unforeseen or unplanned circumstances (e.g., an on-site FFV with access to E85 that was taken on a long distance trip and could not obtain E85 throughout the trip). Fleets should **maximize** alternative fuel use and not submit waivers for occasional conventional fuel use (such as once every 10 fill-ups).
- Waiver requests should not be considered approved until DOE provides an approval e-mail (or letter). DOE may reject a waiver request, approve a waiver request, or approve a waiver request in part and reject in part.



Appendix: EPACK 2005 Section 701 Language

Section 701. Use of Alternative Fuels by Dual-Fueled Vehicles

Section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to read as follows:

- (E)(i) Dual-fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency qualifies for a waiver of such requirement for vehicles operated by the agency in a particular geographic area in which—
- (I) The alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or
 - (II) The cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified to the Secretary by the head of the agency.
- (ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved from the use of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.

