

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

April 2009

Federal Fleet Activity  
Federal Energy Management Program  
U.S. Department of Energy

FEMP Document  
#2006.200



U.S. Department of Energy  
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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)<sup>1</sup> (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](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) vehicles<sup>2</sup>. 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.***

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<sup>1</sup> This requirement is commonly referred to as the Section 701 requirement.

<sup>2</sup> Although flex-fuel gasoline/methanol vehicles are considered dual-fuel 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-fuel 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.



## **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.

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.

One consolidated waiver request per covered agency will be considered by DOE FEMP per FY. Waivers are due to DOE by June 30<sup>th</sup> 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:

- 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. For each vehicle (or group of vehicles with proximity to relevant fueling station) the agency must submit to DOE the following information:

- AFVs (number, by fuel type)
- AFV location (street address, city, state, and ZIP code)
- local fleet point-of-contact
- 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](mailto:federal_fleets@ee.doe.gov) and [federal\\_fleets@nrel.gov](mailto: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 30<sup>th</sup> 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](mailto:federal_fleets@ee.doe.gov), and a courtesy copy to [federal\\_fleets@nrel.gov](mailto: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](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.



## Appeals Process

Agencies that disagree with DOE’s determination may appeal the decision using the process outlined below. Waiver appeals fall into four general categories described below. Agencies should provide a list of the dual fueled vehicles included in any appeal, including number by dual fueled vehicle location and fuel type.

Appeal Category	Potential Reason for Appeal	Appeals Process
Alternative fuel is <b>greater than 5 miles away</b> from a garaged fleet.	Although DOE’s ZIP code analysis indicates that the fuel is available close by, the actual garage location of the vehicle is further than 5 miles from the fuel.	For each vehicle (or group of vehicles) affected, provide street address and ZIP code of the vehicle(s) garage location and location of nearest infrastructure.
Alternative fuel is <b>less than 5 miles away</b> from the vehicle(s)’ location, but the <b>Federal fleet does not have access</b> to the fuel	Privately-owned alternative fuel stations may restrict access to the Federal fleet.	For each vehicle(s) affected, provide documentation of attempts to approach alternative fuel supplier for access.
Alternative fuel is <b>less than 5 miles away</b> from the vehicle(s)’ garaged location, but fleet <b>vehicles frequently operate away from their garaged location.</b>	Fleet vehicles often operate away from the garaged location where alternative fuels are not available.	For each fleet requesting an appeal, provide an approximate percentage of the time vehicles are away from the garaged location <u>for extended periods of time</u> . * Provide documentation that there is no alternative fuel available in (or en route to) those areas away from the garaged location.
<b>Other exceptions</b>		Provide a justification (with supporting documentation) of why the waiver is warranted.

\*Note that vehicles operating away from fleet headquarters during the day but returning to headquarters in the evening could use alternative fuel by fueling in the morning or evening, prior to or after returning from field work.

Waiver appeal requests shall be submitted by e-mail to DOE at [federal\\_fleets@ee.doe.gov](mailto:federal_fleets@ee.doe.gov) with a copy to [federal\\_fleets@nrel.gov](mailto:federal_fleets@nrel.gov). DOE FEMP will analyze agency waiver submissions and provide waiver determination results to agencies as soon as practicable.



## Appendix: EPACT 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.

