



Memorandum

Subject: **ACTION:** Expiration of Exemption for
Some Low Emission and Energy-
Efficient Vehicles in High Occupancy
Vehicle Lanes

Date: AUG 26 2019

From: Martin C. Knopp *Mart C Knopp*
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In Reply Refer To:
HOTM-1

To: Division Administrators
Directors of Field Services

Title 23 U.S.C. 166(b)(5)(B) authorizes an exemption from the minimum high occupancy vehicle (HOV) occupancy requirement for electric/gas hybrid vehicles¹, referred to as low emission and energy efficient vehicles (LEEEVs). The LEEEV exemption expires on September 30, 2019. Please remind your State department of transportation of the statutory expiration of the LEEEV exemption **and that effective September 30, 2019, LEEEVs are required to be treated as either a single occupant vehicle (SOV) or HOV.**

State departments of transportation may continue to exempt alternative fuel vehicles (as defined in 23 U.S.C. 166(f)) operating solely on any of several alcohol based fuels, natural gas, liquefied petroleum gas (LPG), hydrogen, solar, biofuels, or plug-in electrics as defined under 26 U.S.C. 30D(d)(1) of the Internal Revenue Code (qualifying plug-in electric drive motor vehicles that are propelled to a significant extent by an electric motor which draws electricity from a battery with a capacity of greater than 4 kWh and can be externally recharged). These include plug-in electric hybrids that are propelled by an electric motor drawing electricity from a battery with the capacity as noted above that are externally recharged. A list of vehicles that meet this description, based on the applicability of the Federal Electric Vehicle Tax Credit is maintained by the U.S. Department of Energy, at

<https://fuelconomy.gov/feg/taxevb.shtml>. States seeking additional guidance in interpreting 26 U.S.C. 30D(d)(1) and classifying plug-in electric vehicles should contact the Internal Revenue Service. Under 23 U.S.C. 166(b)(5)(A), States are authorized to implement this exemption through September 30, 2025.

The expiring exemption under 23 U.S.C. 166(b)(5)(B) applies to all remaining LEEEVs that are NOT alternative fuel or plug-in vehicles. It is our understanding that the expiration only affects a few States, and some of those States already have plans

¹ Non-plug-in hybrids use regenerative braking to recharge their battery-assisted engines.

established in their management of the HOV lanes for this change in exemption. For any remaining States where this poses a future non-compliance issue after September 30, 2019, please work with your State partner and approve a plan of corrective action to attain compliance.

Please direct questions to Neil Spiller at Neil.Spiller@dot.gov or 202-366-2188.