

**DEPARTMENT OF ENERGY****Office of Energy Efficiency and Renewable Energy****10 CFR Part 490**

[Docket No. EE-RM-95-110]

RIN 1904-AA64

**Alternative Fuel Transportation Program**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Notice of Proposed Rulemaking and Public Hearings.

**SUMMARY:** The Department of Energy today proposes rules required by the Energy Policy Act of 1992 in order to implement statutorily-imposed alternative fueled vehicle acquisition requirements that become effective by operation of law on September 1, 1995, when model year 1996 begins. These statutory requirements apply to certain alternative fuel providers and some State government vehicle fleets. The proposed rules principally cover: (1) Required interpretations necessary for affected entities to determine whether and to what extent the statutory requirements apply; (2) required procedures for exemptions and administrative remedies; and (3) a program of marketable credits to reward those who voluntarily acquire vehicles in excess of mandated requirements or before the requirements take effect, and to allow use of such credits in order to demonstrate compliance with those requirements.

**DATES:** Written comments (8 copies and, if possible, a computer disk) on the proposed rule must be received by the Department on or before May 1, 1995.

Oral views, data, and arguments may be presented at public hearings which are scheduled as follows:

1. March 23, 1995, beginning at 9:30 a.m. in Chicago, Illinois.
2. March 30, 1995, beginning at 9:30 a.m. in Berkeley, California.
3. April 4, 1995, beginning at 9:30 a.m. in Washington, DC.

Requests to speak at a hearing should be submitted to the Department no later than 4 p.m. on:

1. March 20, 1995 for the March 23, 1995 Chicago, Illinois, hearing.
2. March 27, 1995 for the March 30, 1995 Berkeley, California, hearing.
3. March 30, 1995 for the April 4, 1995 Washington, DC, hearing.

The length of each oral presentation is limited to 10 minutes.

**ADDRESSES:** Written comments (8 copies) and requests to speak at a public

hearing should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-33, Docket Number EE-RM-95-110, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586-3012. The public hearings will be held at the following locations:

1. Chicago—University of Illinois at Chicago, Chicago Circle Center Building (Student Union), Room 605 (6th floor), 750 S. Halsted Street, Chicago, IL.

2. Berkeley—Lawrence Berkeley Laboratory, 1 Cyclotron Road, Building 50 Auditorium, Berkeley, CA 94720.

The Lawrence Berkeley Laboratory (LBL) Shuttle stops at Center Street and Shattuck Street as well as the BART station and downtown public parking lots.

3. Washington, DC—U.S. Department of Energy, Forrestal Building, Auditorium, 1000 Independence Avenue, SW, Washington, DC 20585.

Copies of transcripts from hearings and written comments may be inspected and photocopied in the DOE Freedom of Information Reading Room, Room 1E-190, (202) 586-6020, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking see the "Opportunity for Public Comment" section found in the Supplementary Information section of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed rule: Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE-33), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586-6116. Josephine B. Patton, Esq., U.S. Department of Energy, Office of General Counsel (GC-72), 1000 Independence Avenue SW., Washington, DC 20585. (202) 586-9507.

For information concerning the public hearings and submitting written comments: Andi Kasarsky, (202) 586-3012.

**SUPPLEMENTARY INFORMATION:**

- I. Introduction
- II. Section-By-Section Analysis
- III. Opportunity for Public Comment
- IV. Review Under Executive Order 12612
- V. Review Under Executive Order 12778
- VI. Review Under Executive Order 12866
- VII. Review Under the Regulatory Flexibility Act
- VIII. Review Under the Paperwork Reduction Act
- IX. Review Under the National Environmental Policy Act
- X. Impact on State Governments

**I. Introduction**

Pursuant to title V of the Energy Policy Act of 1992 (Act) (Pub. L. 102-486), the Department of Energy (Department or DOE) today proposes rules required by law to implement statutorily-imposed alternative fueled vehicle acquisition requirements that take effect by operation of law on September 1, 1995, when model year 1996 begins. These statutory requirements establish that specified percentages of vehicles acquired by covered fleets must be alternative fueled vehicles. These requirements apply to certain alternative fuel providers and some State government fleets. The statutory percentages for model year 1996 are 30 percent for affected alternative fuel providers and 10 percent for affected State government fleets, and these percentages increase over time. This notice of proposed rulemaking principally covers: (1) Required interpretations of statutory provisions essential for affected entities to determine whether and to what extent the mandatory vehicle acquisition requirements apply; (2) procedures for exemptions and administrative remedies; and (3) a program of marketable credits to reward voluntary acquisition of alternative fueled vehicles in excess of mandatory requirements or before the requirements take effect, and to allow use of such credits as an alternative means of compliance. This notice also summarizes, and is accompanied by, a detailed cost impact analysis for public review.

**A. Background**

A primary goal of the Energy Policy Act of 1992 (the Act) (Pub. L. 102-486) is to enact a comprehensive national energy policy that strengthens U.S. energy security by reducing dependence on imported oil. Currently, the United States consumes seven million barrels of oil more per day than it produces. Section 502 of the Act (42 U.S.C. 13252) provides goals of a 10 percent displacement in U.S. motor fuel consumption by the year 2000 and a 30 percent displacement in U.S. motor fuel consumption by the year 2010 through the production and increased use of replacement fuels. Section 504 of the Act (42 U.S.C. 13254) allows the Secretary to revise these goals downward. According to the latest projections by the Energy Information Administration, the transportation sector will consume 13.1 million barrels per day of petroleum in 2010. Of this total, about 7.4 million barrels per day of petroleum are projected to be used by

light duty vehicles. The Energy Information Administration also estimates that 65 percent of our total petroleum demand will be imported in 2010.

The greatest gains in displacing petroleum motor fuel consumption by the year 2010 are expected to occur by replacing gasoline with alternative fuels such as electricity, ethanol, hydrogen, methanol, natural gas and propane, in a portion of the U.S. car and truck population, which is projected to be in excess of 200 million vehicles in the year 2010. Currently, alternative fueled vehicles comprise a small fraction of the total U.S. vehicle stock. According to the Energy Information Administration, of the 180 million light duty vehicles registered in 1992, 250,000 were alternative fueled vehicles. Of this total, about 221,000 were fueled by liquified petroleum gas (propane), about 24,000 were fueled by compressed natural gas, and about 3,400 were fueled by methanol or ethanol. The remaining quantity of vehicles was comprised of electric vehicles and vehicles fueled by liquified natural gas. In 1994, it is expected that 300,000 alternative fueled vehicles will be registered in the U.S. and that the proportion of vehicles operating on each fuel will be approximately the same. (Alternatives to Traditional Transportation Fuels: An Overview, DOE/EIA-0585/0, 1994)

To enable the Act's displacement goals to be met, alternative fuels must be readily accessible and motor vehicles that operate on these alternative fuels must be available for purchase. Thus, two important elements of reducing petroleum motor fuel consumption are: a nationwide alternative fuels infrastructure and the availability of alternative fueled vehicles for purchase at a reasonable cost by the general public in a wide variety of vehicle types and fueling options.

#### *B. Description of the Energy Policy Act Alternative Fuel Transportation Program's Basic Provisions*

1. General structure. Titles III, IV, V, and VI of the Act contain the basic provisions for regulatory mandates and authorities, as well as various financial incentives, all of which are aimed at displacing substantial quantities of oil consumed by motor vehicles. Title III contains general definitions which set forth legislatively mandated policy essential to understanding: (1) What constitutes an alternative fueled vehicle; (2) who must comply with regulatory mandates to acquire such vehicles; and (3) the extent to which a regulated entity's inventory of vehicles is subject to mandates to acquire alternative

fueled vehicles. Title III also sets forth mandatory requirements for Federal fleet acquisitions of alternative fueled vehicles, which began in fiscal year 1993.

Title IV includes a financial incentive program for states, a public information program, and a program for certifying alternative fuel technician training programs.

Title V provides for separate regulatory mandates for the purchase of alternative fueled vehicles which apply to: (1) Alternative fuel providers; (2) State government fleets; and (3) private and municipal fleets. These mandates set forth annual percentages of new light duty motor vehicle acquisitions which must be alternative fueled vehicles. The minimum acquisition requirements are phased-in, escalating from year to year until reaching a fixed percentage. The acquisition schedules for alternative fuel providers and State governments automatically take effect at the beginning of model year 1996. The acquisition schedule for private and municipal fleets in section 507(a) is a tentative schedule which may only take effect if confirmed in a DOE rulemaking. Such a rulemaking could conclude that imposition of a vehicle acquisition mandate on private and municipal fleets is not appropriate.

Title V also allows for credits for new light duty alternative fueled motor vehicles acquired beyond what is legally required. These credits may be sold and used by other persons or fleets subject to a vehicle acquisition mandate. Finally, title V contains investigative and enforcement authorities including provisions for civil penalties and, in certain circumstances, criminal fines for noncompliance with the statutory mandates and implementing regulations.

Title VI of the Act contains a variety of authorities to promote development and utilization of electric motor vehicles. More specifically, subtitle A provides for a commercial demonstration program, and subtitle B provides for an infrastructure and support systems development program.

This notice of proposed rulemaking focuses principally on: (1) The general definitions of title III applicable to alternative fuel providers, state governments, and private and municipal fleets; (2) procedures for obtaining interpretive rulings applying the regulations to particular facts; (3) the title V vehicle acquisition mandates applicable to alternative fuel providers and to state governments; (4) the credit program applicable to alternative fuel providers, state governments, and private and municipal fleets; and (5) the

investigative and enforcement authorities which also apply to alternative fuel providers, state governments, and private and municipal fleets. In a separate notice, the Department will be proposing rules for the financial incentive program for States under section 409 of the Act. 42 U.S.C. 13235.

As provided by section 507, DOE will be initiating a statutorily required rulemaking to determine whether a fleet requirement program is necessary for private and municipal fleets. 42 U.S.C. 13257. Section 507 contains complex requirements for making such a determination, and it is not clear at this time what determination will be made. Nevertheless, private persons (other than alternative fuel providers) and municipal authorities may be interested in reviewing and commenting on the proposed rules in the general subpart A and subpart F (credit program) of this notice which could apply to private and municipal fleet owners if the Department were to issue rules for a private and municipal fleet requirement program.

With respect to alternative fuel providers, there is discretion in section 501(b) of the Act to reduce the acquisition percentage requirements to as low as 20 percent for model years 1997 and beyond, and to extend the time to comply for up to two years. 42 U.S.C. 13251(b). The Department currently does not intend to exercise its discretion under section 501(b). The Department seeks comment on the conditions under which it should propose a rule to reduce the percentage requirements. There is no similar provision in section 507 authorizing modifications to the vehicle acquisition mandate on state governments. See 42 U.S.C. 13257(h), (o).

2. Who must comply and which vehicles are covered. The vehicle acquisition mandate applicable to alternative fuel providers is set forth in section 501 of the Act, 42 U.S.C. 13251. There are a series of subsections in section 501 which, when read in conjunction with certain definitions in section 301 of the Act, make the task of determining who must comply and to what extent the vehicle inventory is affected a complex matter.

The vehicle acquisition mandate applicable to states in section 507(o) of the Act, 42 U.S.C. 13257, also has to be read in conjunction with the definitions in section 301. While it is clear that the mandate in section 507(o) applies to state governments as distinguished from municipal governments, determining the extent to which a State's vehicle

inventory is subject to the mandate is also a complex matter.

The beginning of an understanding of who must comply with the regulatory mandates in title V, and of which vehicles are in the base number against which the acquisition percentages are applied, lies in the partially overlapping statutory definitions of the terms "fleet" and "covered person." The statutory definition of "fleet," in section 301(9), provides that the term "fleet" means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased or otherwise controlled by a governmental entity or other person who owns, operates, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

(A) motor vehicles held for lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement motor vehicles;

(E) emergency motor vehicles;

(F) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

(G) nonroad vehicles, including farm and construction motor vehicles; or

(H) motor vehicles which under normal operations are garaged at personal residences at night.

In the section-by-section analysis in part II of this Supplementary Information, DOE explains proposed regulatory provisions related to the above-quoted statutory definition of "fleet." Among other things, DOE: (1) Lists all of the relevant metropolitan statistical areas and consolidated metropolitan statistical areas; (2) defines "centrally fueled" and "capable of being centrally fueled"; (3) discusses in some detail how the provisions for aggregating vehicles are interpreted; and (4) provides interpretive regulatory language for some of the exclusions.

The word "fleet," with all its complexities, is embedded in the definition of the term "covered person" at section 301(5) which provides that

"covered person" means a person that owns, operates, leases, or otherwise controls—

(A) a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more; and

(B) at least 50 motor vehicles within the United States.

The term "fleet" is used for making determinations with regard to who must comply, and to what extent, with the vehicle acquisition mandates in section 507 on state governments, private persons, and municipal governments. The term "covered person" is used for making such determinations with regard to the vehicle acquisition mandate on alternative fuel providers in section 501 of the Act.

Under section 507, only a "fleet" is obligated to comply. Congress appears to have used the word "fleet" rather than "covered person" to limit the affected portion of the vehicle inventory to the vehicles in the "fleet." By contrast, under section 501(a), certain "covered persons" are obligated to comply, and consequently, the section 501 vehicle acquisition mandate potentially applies to all vehicles in the inventory throughout the United States and not just those vehicles in a "fleet" of a "covered person" who is subject to the mandate. 42 U.S.C. 13251. However, the potentially broad impact of section 501(a) is heavily qualified by the succeeding subsections of section 501, which limit the sweeping impact of section 501(a) both with regard to who must comply and the extent of the affected vehicle inventory.

Paragraph (a)(2) of section 501 limits application of the vehicle acquisition mandate to a subset of covered persons consisting of:

(A) A covered person, whose principal business is producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity;

(B) A non-Federal covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity; or

(C) A covered person—

(i) Who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) A substantial portion of whose business is production of alternative fuels \* \* \*

Paragraph (a)(2) appears to be a description of alternative fuel providers subject to the vehicle acquisition mandate. The proposed regulations interpret the underscored phrase "principal business."

The statutory refinement of which "covered persons" must comply and to what extent continues in subsection (a)(3) of section 501 which provides that:

(A) In the case of a covered person described in paragraph (2) with more than one affiliate, division, or other business unit, only an affiliate, division, or business unit which is substantially engaged in the alternative fuels business (as determined by the Secretary by rule) shall be subject to this subsection.

(B) No covered person or affiliate, division, or other business unit of such person whose principal business is—

(i) transforming alternative fuels into a product that is not an alternative fuel; or

(ii) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel shall be subject to this subsection.

Paragraph (a)(3) of section 501 has two effects. First, it limits the vehicle acquisition mandate of paragraph (a)(1) to the vehicles owned, operated, leased, or otherwise controlled by certain affiliates, divisions or other business of major energy producing corporations. Second, it excludes from coverage those covered persons, affiliates, divisions, or other business units that use an alternative fuel to create a product other than an alternative fuel. It is possible when the definitions of "affiliate" and "covered person" are applied to an entity, it may be both. However, merely being an affiliate does not necessarily mean that an entity must also be a covered person.

Section 501(a)(5) provides for petitions for exemption in certain circumstances for alternative fuel providers who otherwise would have to comply. The exemptions are available for those alternative fuel providers who can show that alternative fuels are not available in the operating area or that alternative fueled vehicles are not reasonably available.

There is a parallel exemption provision applicable to State governments in section 507(i). 42 U.S.C. 13257(i). That provision also makes "financial hardship" a ground for exemption. However, section 507 does not define "financial hardship," and the legislative history is devoid of any guidance as to what circumstances would constitute "financial hardship." The Department would welcome comments from States making

recommendations as to how to interpret and apply the term "financial hardship" in practice.

In the section-by-section analysis in part II of this Supplementary Information, the Department systematically distinguishes between proposed regulatory text that tracks the statutory language and proposed regulatory text that represents what the Department is proposing to add, such as, proposed procedures and interpretations. Members of the public are particularly encouraged to comment on the proposed regulations in the latter category. Members of the public are reminded that many of the details of the complex program described in this proposal are specified in the statute, and thus are not within the Department's discretion to change.

3. Comparison to Environmental Protection Agency (EPA) Fleet Requirement Program. As many State and local officials and members of the public are undoubtedly aware, there is a fleet requirement program under the provisions of the Clean Air Act, (42 U.S.C. 7401 et seq.), that is somewhat similar to those in the Energy Policy Act of 1992. Section 246 of the Clean Air Act requires each State in which there is located all or part of an ozone non-attainment area classified as extreme, severe, or serious under the Clean Air Act, or a carbon monoxide non-attainment area with a design value at or above 16.0 parts per million, to submit a state implementation plan revision establishing a clean fuel vehicle program providing that, beginning in model year 1998, certain percentages of covered fleet vehicles be clean fuel vehicles operating on clean alternative fuels. 42 U.S.C. 7586. Section 241 of the Clean Air Act contains definitions for the terms "clean alternative fuel," "covered fleet," and "covered fleet vehicle" that contain some phrases later used in the definitions in section 301 of the Energy Policy Act of 1992. Compare 42 U.S.C. 7581 with 42 U.S.C. 13211. For example, the definition of "covered fleet vehicle" in section 241 refers to motor vehicles "\* \* \* in a covered fleet which are centrally fueled (or capable of being centrally fueled). \* \* \*." [Emphasis added.] 42 U.S.C. 7581(6). That phraseology is similar to the definitions of "fleet" and "covered person" in section 301 of the Energy Policy Act of 1992 which refer to motor vehicles "\* \* \* that are centrally fueled or capable of being centrally fueled \* \* \*." 42 U.S.C. 13211(5)(A), 13211(9).

While such similarities in statutory text are significant and should not be ignored in formulating regulations, the

differences between the two pieces of legislation are more important. The critical differences are: (1) The primary goal of the EPA program is to significantly improve air quality through reduced emissions of pollutants and the primary goal of the DOE program is to strengthen national energy security by reducing dependence on imported oil; (2) the lists of fuels enumerated in the definitions of "clean alternative fuel" under section 241 of the Clean Air Act and of "alternative fuel" under section 301 of the Energy Policy Act of 1992 are not identical, and the Department's rulemaking discretion to add to the section 301 list is limited by stringent statutory standards; (3) the EPA program applies to fleets as small as 10 vehicles while 20 is the minimum number of vehicles for a fleet as defined by section 301; (4) the EPA program applies to light duty motor vehicles (up to 8,500 gross vehicle weight rating) and heavy duty motor vehicles (up to 26,000 gross vehicle weight rating) while the DOE program applies only to light duty motor vehicles; (5) the States will administer the EPA program while DOE will directly administer the Energy Policy Act program; and (6) the EPA program applies only to fleets in 22 ozone or carbon monoxide nonattainment areas while the DOE program applies to fleets in approximately 121 areas including both nonattainment and attainment areas.

The Department recognizes that fleet owners and operators who are subject to the EPA and the DOE fleet requirement programs would like to use the same vehicles and fuels to comply with both. In order to minimize differences, the Department has reviewed EPA's rulemaking notice implementing its statutory provisions, 40 CFR part 88; 58 FR 64679 (December 9, 1993), and followed EPA's lead where legally permissible and consistent with the Act's policy goals. Nevertheless, there are some unavoidable differences that will constrain the options of those fleet owners and operators interested in using the same vehicles and fuels to comply simultaneously with both statutory requirements. Where relevant, the Department identifies the basis for those differences in parts of the Supplementary Information that follow hereafter. Members of the public are invited to comment on ways the Department could lawfully make it easier to comply with both statutory requirements.

4. Reformulated gasoline. Although percentages can vary to a small degree, it is the Department's understanding that reformulated gasoline is comprised of over 90 percent petroleum on an

energy equivalent basis. Reformulated gasoline is an enumerated "clean alternative fuel" in section 241 of the Clean Air Act. 42 U.S.C. 7581. It is not mentioned at all in the definition of "alternative fuel" in section 301 of the Energy Policy Act of 1992. Section 301(2) provides that the term "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 cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline, or other fuels; natural gas; liquified petroleum gas; hydrogen; coal-derived liquid fuels; 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.

Each of the above-underscored phrases sets forth limited authority for the Department to add fuels to the definition of "alternative fuel." Under either authority, the Department must undertake notice and comment rulemaking under the Administrative Procedure Act, 5 U.S.C. § 553, to add a fuel to the statutory list. The Department did not include in today's proposal a provision adding reformulated gasoline to the definition of "alternative fuel." The percentage of petroleum in reformulated gasoline, at least 90 percent of the total volume, is too large to warrant proposing to make any of the necessary substantive determinations described above. To the extent that reformulated gasoline is an alcohol/gasoline mixture, it does not meet the minimum 70 percent alcohol volume requirement described above. To the extent that reformulated gasoline is some other kind of mixture, the 90 percent petroleum volume precludes a determination that the mixture is "substantially not petroleum" and would "substantially enhance energy security."

Members of the public are invited to comment on the Department's determination not to propose a rule that would include reformulated gasoline as an "alternative fuel" under section 301.

## II. Section-By-Section Analysis

This part of the Supplementary Information discusses those provisions of the proposed regulations that are not self-explanatory.

### A. Subpart A—General Subpart

#### Definition of "Fleet"

In order to promote easier understanding, DOE has divided the statutory definition into two parts. The main paragraph in the statutory definition appears in proposed § 490.2 under the word "fleet." This proposed regulatory definition of "fleet" cross references proposed § 490.3, that describes the categories of vehicles excluded from the definition.

In the proposed definition of "fleet," there is a cross reference to proposed appendix A to subpart A which sets forth a list of metropolitan statistical areas (MSAs) and consolidated metropolitan statistical areas (CMSAs), as defined by the Bureau of the Census, with the requisite 250,000 population as of the 1980 census. The statutory definition of "fleet" does not state whether the list must be updated in light of changes in the geographic areas designated by the Bureau of the Census as MSAs and CMSAs which meet the 1980 population requirement of the Act. The proposed rule allows DOE to update the list, but DOE may delete this provision in the final rule to eliminate uncertainty. Members of the public are invited to comment on this choice.

Consistent with the statutory language, the proposed definition requires that there be a minimum of 20 light duty motor vehicles "used primarily" in a relevant statistical area. DOE is proposing to interpret those words to mean that the majority of the vehicles' total miles are accumulated within a covered statistical area.

With regard to fleet fueling characteristics, the statutory and proposed regulatory definition of "fleet" provide that the vehicles be "centrally fueled or capable of being centrally fueled." Proposed § 490.2 defines the term "centrally fueled" as meaning that a vehicle is fueled 75 percent of the time at a location that is owned, operated, or controlled by a fleet or covered person or is under contract with the fleet or covered person.

It should be noted that simply because a fleet vehicle is not centrally fueled does not mean it is exempt from counting, because the statutory requirement covers those vehicles that are centrally fueled or are *capable of being centrally fueled*. It is possible that a vehicle that is not currently centrally fueled could be centrally fueled. Therefore, an organization which has determined that its vehicles are not centrally fueled must still determine if the vehicles are capable of being centrally fueled. If the vehicles are, then the total of these vehicles, i.e., those

vehicles either centrally fueled or capable of being centrally fueled, may result in a "fleet" or "covered person" that is subject to the acquisition requirements of the Act.

In determining whether 20 or more light duty motor vehicles within a MSA or CMSA are centrally fueled or capable of being centrally fueled, the organization must also consider situations where vehicles that are centrally fueled or capable of being centrally fueled are present in more than one location within the MSA or CMSA. The number of vehicles at all locations that are centrally fueled or capable of being centrally fueled must be totaled. For example, if a fleet or covered person has 12 vehicles at location A that are centrally fueled or capable of being centrally fueled and 10 vehicles at location B that are also centrally fueled or capable of being centrally fueled, the organization has 22 vehicles in a MSA or CMSA that are centrally fueled or capable of being centrally fueled.

In providing that contract fueling is a method of being centrally fueled, retail credit card purchases by themselves are not considered to be a contractual refueling agreement. However, commercial fleet credit cards are considered to be a contractual refueling agreement, since they are intended as a special fuel arrangement for fleet purchases alone. The intent of DOE's definition is to ensure that only those fleet-based agreements which provide special fleet refueling benefits at a particular facility or group of facilities would qualify as central fueling. DOE does not intend the definition of "centrally fueled" to pertain to fleet service card agreements which include a wide network of fuel providers, unless the service card agreement effectively operates as a commercial refueling arrangement between a circumscribed subset of such refueling facilities and a given fleet operator.

Proposed § 490.2 defines the term "capable of being centrally fueled" as meaning a vehicle can be refueled at least 75 percent of its time at a location, that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person. One method that DOE is proposing for determining central fueling capability is whether 75 percent of a vehicle's total miles traveled are derived from trips that are less than the operational range of the vehicle. As defined by EPA, in its December 9, 1993, **Federal Register** notice on the final rule for the definitions and general provisions for the Clean Fuel Fleet Program, 58 FR 64684, the operational

range is the distance a vehicle is able to travel on a round trip with a single refueling. The operational range should be no less than 50 percent of the average range of the existing fleet and in no instance should be less than 300 miles. It is important to note that the fuel in question is the fuel that the vehicle currently operates on. DOE believes that this proposed definition will allow fleets and covered persons to easily determine which vehicles are "capable of being centrally fueled." DOE requests comment on this definition of operational range, and on the operational range of alternative fueled vehicles which may be required to comply with this program.

In defining the same phrase in 40 CFR 88.302-94, EPA provided that the presence of one or more nonconforming vehicles in a fleet does not exempt an entire fleet from the requirements of this program; those vehicles that are capable of being centrally fueled will count towards the 20-vehicle minimum fleet size. DOE agrees, but does not find a need to include a phrase to this effect in the definition of "capable of being centrally fueled."

The DOE proposed definition differs from the EPA definition of "capable of being centrally fueled," at 40 CFR 88.302-94, because the DOE proposed definition does not require that vehicles covered must be capable of being centrally fueled 100 percent of the time. In developing its definition, EPA had to consider the fueling characteristics of both light duty and heavy duty vehicles. EPA amended its proposed definition to reflect the 100 percent fueling requirement based on the comments of heavy duty engine manufacturers, who argued that vehicles purchased by heavy duty vehicle fleet operators in order to comply with the Clean Fuel Fleet Program would have to be dedicated to a single fuel that may not be widely available. It appears that if the heavy duty vehicles had not been involved in the program that EPA would have settled on the 75 percent figure. DOE did not take these comments into consideration when developing the proposed definition because the Act has no requirement for fleets to acquire heavy duty vehicles. Thus, separate heavy duty vehicle fueling characteristics do not have to be considered. DOE requests comment on whether the 75 percent level is appropriate.

DOE's proposed definition of "capable of being centrally fueled" is based on EPA's work. However, DOE requests comment as to whether further editing is necessary to clarify the meaning of this phrase.

The statutory definition of "fleet" requires that a minimum of 20 vehicles be "owned, operated, leased, or otherwise controlled by a governmental entity or other person." The proposed regulatory definition of "fleet" substantially tracks this language. However, there is also a definition of "lease" in proposed § 490.2 that excludes rental agreements of less than 120 days. This provision is consistent with the EPA regulations. As EPA explained, a person does not have the same level of control over a vehicle lease for a short period of time, and the 120-day period takes into account short term variations in fleet operations and the number of fleet vehicles that ought not to trigger the vehicle acquisition mandates. 58 FR at 64687. DOE shares this view.

The proposed regulatory definition of "fleet" further tracks the statutory definition by requiring that a person controls 50-light duty motor vehicles regardless of where they are located. The proposed definition of "fleet" uses the concept of "control" to establish the guidelines for attributing vehicles to a "fleet" for the purposes of determining whether the 50-vehicle minimum is satisfied. The concept is used with regard to: (1) Control of vehicles; (2) control by another person; (3) control of another person; and (4) being subject to common control together with another person.

There is similar language in the definition of "covered fleet" which applies to the EPA fleet program requirement. EPA has promulgated an elaborate definition of "control" in 40 CFR § 88.302-94 which reflects the various ways in which the concept of "control" is used in the definition of "covered fleet." The explanation of that definition appears at 58 FR 64686-7. DOE is proposing to adopt EPA's definition of "control."

#### Other Definitions

Proposed § 490.2 defines the term "after-market converted vehicle" as a new or used conventional fuel Original Equipment Manufacturer vehicle that has been converted to operate on alternative fuel by an after-market converter. This converter must be in compliance with all Federal, state, and local laws at the time of conversion. After-market converted vehicles differ from Original Equipment Manufacturer converted vehicles with respect to which company warrants the conversion and its components. In the case of an Original Equipment Manufacturer converted vehicle, the vehicle is converted prior to first sale by a manufacturer-authorized conversion

company under contract to the manufacturer to convert Original Equipment Manufacturer vehicles, and is then offered by the Original Equipment Manufacturer, with warranty coverage through the Original Equipment Manufacturer, for sale to the general public. In the case of an after-market converted vehicle, the conversion is performed by an after-market converter, who provides the warranty for the vehicle conversion and the conversion kit.

Proposed § 490.2 defines the term "alternative fuel" consistent with the definition for that term in section 301 of the Act. The text of the statutory definition of "alternative fuel" was quoted earlier in this Supplementary Information section in a discussion of reformulated gasoline. The terms of that definition do not restrict "alternative fuels" to fuels used only for transportation purposes. However, section 501(a)(3)(B) of the Act specifically exempts certain businesses that do not use "alternative fuels" for transportation purposes. That provision is reflected in proposed § 490.303(b) which is discussed in detail below in this section-by-section analysis.

Proposed § 490.2 defines the term "covered person" consistent with the definition for that term in section 301 of the Act.

"Dealer demonstration vehicles" are excluded from the definition of "fleet." Proposed § 490.2 follows the EPA definition for the term "dealer demonstration vehicle" found at 40 CFR § 88.302-94 which defines "dealer demonstration vehicle" as meaning any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or pre-lease evaluation. The intent of this definition is to exempt the vehicles held on the lot of a motor vehicle dealer as stock from which potential purchasers or lessees can choose. Vehicles held by dealers for their own business purposes, such as shuttle buses, loaner vehicles, or other repair or business-related vehicles are not exempt, unless they are also offered for retail sale as part of the dealer stock or are rotated through the fleet back to the dealer stock.

As required by section 301(8) of the Act, proposed § 490.2 defines the term "dual fueled vehicle," consistent with section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2013, as a motor vehicle that is capable of operating on alternative fuel and on gasoline or diesel

fuel. These include flexible-fuel vehicles that operate on a mixture of an alternative fuel and a petroleum-based fuel, and bi-fuel vehicles that can be switched to operate on either an alternative fuel or a petroleum-based fuel. The intent of this definition is to include all vehicles that are capable of operating on an alternative fuel and a petroleum-based fuel, regardless of what terminology is used to describe the vehicle. The Department is aware that the terms "bi-fuel" and "dual-fuel" are being used interchangeably to describe the same motor vehicle and does not wish to further confuse the situation.

"Emergency vehicles" are excluded from the definition of "fleet." Proposed § 490.2 adopts EPA's definition for the term "emergency vehicle" in 40 CFR § 88.302-94 which defines "emergency vehicle" as meaning any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance. These vehicles normally have red and/or blue flashing lights and sirens. DOE is relying on the speed limit criterion because this is the way that many states define "emergency vehicles." The requirement for legal authorization to exceed the speed limit may be problematic, however, for localities that authorize certain utility vehicles to exceed the speed limit in special circumstances. However, those vehicles are not normally considered emergency vehicles in that their primary function does not include exceeding the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property. Their response to an emergency does not usually require them to exceed the speed limit, and they are not usually equipped with red and/or blue flashing lights and sirens for use when exceeding the speed limit. Therefore, those vehicle types are not considered excluded from the definition of "fleet" unless, on a vehicle-by-vehicle basis, they are specifically and legally authorized by a governmental authority to respond to emergencies as described above.

"Law enforcement vehicles" are excluded from the definition of "fleet." Proposed § 490.2 adopts EPA's definition of the term "law enforcement vehicle" found at 40 CFR § 88.302-94 which defines "law enforcement vehicle" as meaning any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement

Administration, or other law enforcement agencies of the Federal Government, or by state highway patrols, municipal law enforcement, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. This definition is intended to clarify the difference between law enforcement vehicles and vehicles used for other security purposes. Under this definition, a vehicle is considered to be a law enforcement vehicle and is exempt by virtue of its use for official law enforcement purposes, as conveyed by local, state or federal government mandate. Security vehicles do not usually comply with this definition, and as such are not excluded from the definition of "fleet" unless they are contracted by a law enforcement agency for the purposes described above.

Proposed § 490.2 defines the term "lease" to mean use of a vehicle for transportation purposes pursuant to a rental contract or similar arrangement, the term of such contract or similar arrangement is for a period of 120 days or more, and such person has control over the vehicle. This definition closely tracks EPA's definition of "owned or operated, leased or otherwise controlled by such person," found at 40 CFR § 88.302-94. The intent of this definition is to include, for compliance purposes, any vehicles controlled by a covered person, whether by ownership or lease. The 120-day period is slightly longer than a calendar season, and is intended to reflect the fact that the leasing of vehicles can occur for short periods of time, including seasonal uses, and that such short term, temporary leases should not be subject to the conditions of the program. However, fleets and covered persons leasing or renting a vehicle for more than 120 days must include this vehicle in the company's total count of new light duty motor vehicles acquired for the respective model year.

Proposed § 490.2 defines the term "model year" for the purposes of vehicle acquisition requirements as September 1 of the previous calendar year through August 31. This definition closely tracks EPA's definition of "model year," found at 40 CFR § 88.302-94. For purposes of compliance, covered persons should compute their vehicle acquisitions during the period beginning September 1 of each year through August 31. This definition of model year coincides with the period in which most automobile manufacturers introduce their new

annual models, which should facilitate compliance since fleets can make their acquisition plans regarding alternative fueled vehicles when they make plans for acquiring new model year vehicles. This definition is intended to clarify which vehicles count toward the required annual acquisitions under the program. This definition is also intended to ensure that all fleets and covered persons acquire vehicles based on the same annual period, which is important to facilitate enforcement of the programs. Thus, any new vehicles that are acquired by a fleet or covered person between September 1 and August 31 are counted and used as the basis for determining the acquisition requirement of the same year, and are considered of the same model year as the January that falls between them.

"Motor vehicles held for lease or rental to the general public" are excluded from the definition of "fleet." Proposed § 490.3 follows EPA's definition of this phrase found at 40 CFR § 88.302-94 which defines "motor vehicles held for lease or rental to the general public" as meaning a vehicle that is owned or controlled primarily for the purpose of short-term rental or extended-term leasing, without a driver, pursuant to a contract. According to this definition, the vehicles must be owned primarily for the purpose of renting or leasing them without a driver, effectively granting someone else control over them in exchange for money or other compensation. In addition, this exchange must be based on a contract. Thus, a firm cannot be found to "lease" its vehicles to its employees unless the vehicles are owned primarily for leasing them to the general public and they are leased pursuant to formal contracts which give control of the vehicle to the lessee.

"Motor vehicles used for motor vehicle manufacturer product evaluations and test" are also excluded from the definition of "fleet." Proposed § 490.3 follows EPA's definition of the phrase "vehicle used for motor vehicle manufacturer product evaluations and tests" at 40 CFR § 88.302-94. There the phrase is defined to mean vehicles that are owned and operated by a motor vehicle manufacturer, or motor vehicle component manufacturer, or owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicle for engineering, research and development, or quality control reasons. It is the intent of this provision to exclude vehicles which are part of a "fleet" used by an Original Equipment

Manufacturer for production control or quality control reasons.

"Motor vehicles which under normal operations are garaged at personal residences at night" is another category of vehicles excluded from the definition of "fleet." Proposed § 490.2 tracks the language of section 301(h) of the Act.

Proposed § 490.2 defines the term "Original Equipment Manufacturer Vehicle" as meaning a vehicle engineered, designed and produced by an Original Equipment Manufacturer. This term applies to conventionally fueled Original Equipment Manufacturer vehicles as well as to alternative fueled vehicles. Included in this definition are vehicles that were conventionally fueled Original Equipment Manufacturer vehicles, but were converted prior to sale by the Original Equipment Manufacturer, through a contract with a conversion company, to operate on an alternative fuel and which are covered under the Original Equipment Manufacturer warranty.

#### Proposed Section 490.3 Excluded Vehicles

Proposed § 490.3 sets forth the vehicles which may be excluded when counting to determine whether there are a sufficient number of vehicles to constitute a "fleet" as defined in proposed § 490.2. Some of the exclusions are categories capsulized in a term such as "dealer demonstration vehicle," "emergency vehicle," and "law enforcement vehicle." Those terms are defined in proposed § 490.2 and are discussed above.

#### Proposed Section 490.4 General Information Inquiries

In other regulatory programs, DOE has learned that on occasion representatives of regulated persons make informal inquiries, usually by telephone, and need a quick response from the program office even if the response is not binding on DOE. Proposed § 490.4 would make this device for obtaining information available to those who are subject to regulation under part 490.

#### Proposed Section 490.5 Requests for an Interpretive Ruling

For those who want a more authoritative answer as to how the Department intends to construe and apply its regulations to particular factual situations, and for whom other procedures such as petitions for exemption are irrelevant, proposed § 490.5 would provide a useful option. The uncertainties related to the complex provisions applicable to determining who must comply and the extent of

affected vehicle inventories prompted DOE to devise proposed § 490.5. Any interpretive ruling that the Department issues would apply only to the person who requested it. However, the Department will make copies of these rulings available for inspection and copying in a public file in its Freedom of Information Reading Room in the Forrestal Building at 1000 Independence Ave., SW, Washington, DC 20585.

#### Proposed Section 490.6 Petitions for Generally Applicable Rulemaking

Proposed § 490.6 sets forth procedures for petitioning the Department to issue new or amended rules of general applicability for part 490. These procedures implement rights available to members of the public under the Administrative Procedure Act, 5 U.S.C. 553(e).

#### Proposed Section 490.7 Relationship to Other Law

Proposed § 490.7 makes a declaratory statement to avoid arguments that provisions of part 490, by their silence, authorize acquisition of vehicles or conversion of vehicles in a manner that does not comply with other laws and regulations at the Federal, state, or local level.

#### *Subpart B—[Reserved]*

#### *Subpart C—Mandatory State Fleet Program*

#### Proposed Section 490.201 Alternative Fueled Vehicle Acquisition Mandate Schedule

Proposed § 490.201 sets forth the requirements, subject to some exemptions, for the percentage of new light duty motor vehicles for State fleets that must be alternative fueled vehicles when acquired under the Mandatory State Fleet Program. Beginning with the 1996 model year, September 1, 1995, any state fleet that is covered under this subpart must comply with these requirements, unless otherwise provided in this subpart.

In cases where acquisition percentages result in something less than a whole number, DOE is proposing that these fractions be rounded up to the next whole number.

#### Proposed Section 490.202 Acquisitions Satisfying the Mandate

Proposed § 490.202 provides in substance that an acquisition of an alternative fueled vehicle, regardless of the year of manufacture, counts toward satisfaction of the vehicle acquisition mandate. Such a vehicle would be new to the fleet operator. Credits acquired

under subpart F also count toward satisfaction of the mandate.

#### Proposed Section 490.203 Light Duty Alternative Fueled Vehicle Plan

The Act provides an alternative means of compliance for States. In lieu of a State meeting the acquisition requirements proposed by § 490.201 solely through acquisition of new State-owned vehicles, a State may comply with a Light Duty Alternative Fueled Vehicle Plan submitted by the State and approved by DOE. The Plan must demonstrate that there will be a sufficient number of light duty motor vehicles by State, local and private fleets, which in aggregate meet or exceed the applicable vehicle percentage for any given year.

DOE is proposing that any acquisition or conversion of light duty alternative fueled vehicles for a State may be part of the Plan, irrespective of whether the vehicles are in the excluded categories of vehicles in the definition of "fleet" as enumerated in proposed § 490.3. This allows for law enforcement vehicles, or other vehicles otherwise excluded from the definition of "fleet" to be part of a Light Duty Alternative Fueled Vehicle Plan.

DOE is proposing that, until a Plan is approved or unless DOE grants an exemption, a State is subject to the fleet percentage requirements in proposed § 490.201. This will be equally true in instances where a State plan participant (such as a municipality) fails to fulfill its commitments under the Plan. However, if the State is able to find a substitute participant, then the State may submit to DOE for approval an amendment to the Plan.

DOE is proposing in paragraph (b) of this section to require States to monitor and verify on an ongoing basis the implementation of its Plan. This is to ensure that all participants in the Plan are indeed in compliance, and that at the end of the model year, all requirements will have been met. If for whatever reasons a participant is unable to fulfill its commitments, the State should be able to find a substitute participant before the end of the year.

Paragraph (c) proposes to require a State to submit to DOE, for approval, its Light Duty Alternative Fueled Vehicle Plan no later than the June 1 prior to the model year covered by the Plan. A State should know by this deadline the number of light duty motor vehicles it plans to acquire during the upcoming model year. DOE would like to receive comments as to whether it is reasonable to require all Plans be submitted by the June 1 prior to the model year.

#### Proposed Section 490.204 Process for Granting Exemptions

Section 507 (i)(1) of the Act provides three categories under which a State may seek exemptions in whole or in part from the annual acquisition percentages. A State may seek exemption if it can demonstrate that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the State fleet are not available in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the state fleet are not reasonably available for acquisition because they are not offered for acquisition commercially on reasonable terms and conditions in any of the States; or

(3) The application of such requirements would pose an unreasonable financial hardship.

Category 1 tracks section 507(i)(1) of the Act. Category 2 is based on section 507(i)(1) and would preclude arguments that the physical unavailability in a state is not a valid reason for exemption when a vehicle can be ordered from somewhere else in the United States. Time delays in delivery of alternative fueled vehicles are generally not acceptable as an excuse. States must be cognizant of the possible irregular manufacturer production schedules and considerably longer lead times involved in the acquisition of alternative fueled vehicles compared with conventional vehicles. It is the responsibility of the state to plan and schedule its ordering and acquisitions of alternative fueled vehicles so as to comply with the acquisition requirements for each model year. Regarding category 3, section 507(i)(1) allows only States, not alternative fuel providers, the right to seek an exemption based on financial hardship. Proposed paragraph (d)(3) describes the few items of information that a State must submit to DOE when requesting an exemption based on financial hardship. (Earlier in this Supplementary Information, States were invited to comment on how DOE should interpret and apply the term "financial hardship.")

Proposed paragraph (g) provides that the Assistant Secretary for Energy Efficiency and Renewable Energy may grant a request for exemption. In order to keep the procedures simple, the Assistant Secretary may act finally for the Department, and there is no requirement to obtain the specific approval of the Secretary. If the Assistant Secretary denies the request for exemption, proposed paragraph (g)

further provides for a State right to appeal to the Department's Office of Hearings and Appeals, whose decision would be final for the purpose of judicial review. Further discussion on the exemption process is found in section-by-section analysis for the Alternative Fuel Provider Vehicle Acquisition Mandate.

The Act requires that the exemption process be reasonable and simple. The DOE invites comments on the proposed process for States to request exemptions, in whole or in part.

#### Proposed Section 490.205 Reporting Requirements

Proposed § 490.205 will require each state that is subject to the vehicle acquisition mandate to submit to DOE an annual report. This report will assist DOE in determining if a state has met the requirements of this subpart as well as to determine how successfully the goals and requirements of this subpart are being met. For further discussion on reporting requirements, see proposed section 490.309. DOE invites comment as to the reasonableness of these reporting requirements, as well as recommendations for additional, substitute or reduced requirements which would achieve the desired results.

#### *Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate*

##### I. Background

The Alternative Fuel Provider Vehicle Acquisition Mandate is intended to cover a broad range of alternative fuel providers in a flexible, workable program that will allow for compliance in the most economical fashion possible. The program allows alternative fuel providers flexibility in the acquisition of new alternative fuel vehicles via purchase, lease, or conversion, and in the geographical placement of alternative fuel vehicles. It also provides a minimum of restrictions on how the alternative fueled vehicles are to be used.

The program specifies the criteria for determining whether an alternative fuel provider is covered and under what circumstances exemptions from the program will be granted. Only those alternative fuel providers who are classified as "covered persons" are subject to the requirements of this proposed regulation and only that affiliate, division, or other business unit which is substantially engaged in the alternative fuels business may be subject to the acquisition mandate requirements of the Act.

#### Proposed Section 490.300 Purpose and Scope

Proposed § 490.300 defines the purpose and scope of part 490 Subpart D as implementing the statutory requirements of section 501 of the Energy Policy Act of 1992, which sets forth a mandate for those alternative fuel providers, who are classified as covered persons, to acquire alternative fuel vehicles at an escalating percentage of their new vehicle acquisitions.

#### Proposed Section 490.301 Definitions

Proposed § 490.301 sets forth the definitions for part 490, Subpart D.

Proposed § 490.301 defines the term "alternative fuels business" as meaning an activity undertaken to derive revenue from: (1) Producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity; or (2) generating, transmitting, importing, or selling at wholesale or retail electricity. This definition tracks the language of section 501(a)(2).

Proposed § 490.301 provides definitions for the terms "affiliate," "division," and "business unit" which are used in section 501 of the Act and proposed §§ 490.303 and 490.304. The first two are dictionary definitions. "Business unit" is defined to make clear the grouping of business activities must be similar in autonomy to affiliates and divisions.

Proposed § 490.301 defines the term "normal requirements and practices" as meaning the operating business practices and required conditions under which the principal business of the covered person operates. In a request for an interpretive ruling or in a civil penalty proceeding, the burden would be on the fuel provider to show that actions to acquire alternative fuel vehicles and/or obtain alternative fuel are outside the normal practices of the covered person's principal business.

Proposed § 490.301 defines the term "principal business" as meaning the largest sales-related gross revenue producing activity. If an organization derives a plurality of gross revenue from sales-related alternative fuels activity then the organization's principal business is alternative fuels. As it is used above, plurality does not require that over 50 percent of an organization's sales-related gross revenue be based on activities related to alternative fuels. Sales-related in this context means that the gross revenue does not come from investments such as corporate stocks.

In determining whether an organization's principal business is

alternative fuels, the important criterion to look at is what is the organization's single largest source of sales-related gross revenue. For example, if an organization derives 35 percent of its sales-related gross revenue from alternative fuels and the next largest single source of sales-related gross revenue comprises 25 percent of the organization's gross revenue, the organization's principal business is alternative fuels.

Proposed § 490.301 defines the term "substantially engaged" to mean that a covered person, or affiliate, division, or other business unit thereof, regularly derives sales-related gross revenue from an alternative fuels business. To determine whether a covered person or affiliate, division, or other business unit thereof is "substantially engaged" in the alternative fuels business, it is important to look at the involvement the covered person, affiliate, division, or other business unit has with the alternative fuels business. Thus, only that affiliate, division, or business unit that meets the substantially engaged criteria, as defined above, is subject to the acquisition requirements of this program.

The covered person is responsible for clearly defining the specific affiliate, division, or other business unit that is substantially engaged and is therefore subject to the acquisition requirements of this rule. If this designation is not made or is not made clearly, DOE will assume that the entire organization is subject to the acquisition requirements of this rule and will enforce it as such.

Proposed § 490.301 defines the term "substantial portion" to mean that at least 2 percent of a covered person's refinery yield of petroleum products is composed of alternative fuels. Alternative fuel is as defined in proposed § 490.2. This proposed definition was formulated using reliable data compiled by the Energy Information Administration and published in its Petroleum Supply Annual 1993, Volume 1 (DOE/EIA-0340(93)/1). Table 19 provides aggregate data on refinery yield for the Petroleum Administration for Defense districts and can be readily verified.

The 2% threshold was chosen because it represents the average yield for the production of alternative fuel by petroleum refiners as reported by the Energy Information Administration. DOE believes that the use of this percentage in the definition of "substantial portion" allows for the initial identification of that group of covered persons described in Sec. 501(a)(2)(c) of the Act and provides a sound basis for identifying those

affiliates, divisions, or other business units of such covered persons which are substantially engaged in the alternative fuel business.

The Department considered including some measure of the gross revenue attributed to the production of alternative fuels as an alternative in the definition of "substantial portion." The first measure that was considered was setting a minimum level of gross revenue from the sale of alternative fuels that an organization would have to equal or exceed to be classified as an alternative fuel provider. The second measure that was considered was establishing a minimum percentage, that reflects the percent of total gross revenue attributed to the sale of alternative fuels, that an organization would have to equal or exceed to be classified as an alternative fuel provider. Unfortunately, the information available on these measures is too fragmented to be the basis for proposed regulatory language. DOE seeks comment on whether reliable information exists that would allow establishment of a monetary measure (or any measure apart from the measure in the proposed rule) for determining whether alternative fuels production comprises a substantial portion of a company's business. DOE also seeks comment recommending any other alternative definitions for "substantial portion."

#### Proposed Section 490.302 Vehicle Acquisition Mandate Schedule

Proposed § 490.302 describes the vehicle acquisition schedule that alternative fuel providers must comply with if they are classified as covered persons. Proposed paragraph (a) requires that of the new light duty motor vehicles acquired by alternative fuel providers, the following percentages shall be alternative fueled vehicles for the following model years:

- (A) 30 percent for model year 1996.
- (B) 50 percent for model year 1997.
- (C) 70 percent for model year 1998.
- (D) 90 percent for model year 1999

and thereafter. For example, if an alternative fuel provider purchases or leases 50 light duty motor vehicles in model year 1996, 30 percent, or 15, of the vehicles have to be alternative fueled vehicles.

Proposed paragraph (b) states that, except as provided by § 490.304, these requirements apply to all new light duty vehicles acquired by a "covered person," not just those vehicles acquired for the fleets which initially qualified the alternative fuel provider as a "covered person." These requirements also apply regardless of where the new vehicles are to be located. For example,

if an alternative fuel provider, which is a covered person, is acquiring new light duty motor vehicles for a location that is not in a subject MSA or CMSA, the required percentage of these vehicles must be alternative fueled vehicles. The MSA/CMSA requirement is used for classifying "covered persons," not for determining how many light duty vehicles must be alternative fueled vehicles. The provisions of proposed § 490.302(b) are not discretionary because they follow the wording of section 501(a)(1) of the Act. 42 U.S.C. 13251(a)(1).

Proposed paragraph (c) provides for rounding off to the next higher number if application of a percent to the base number of new light duty vehicles acquired results in a requirement to acquire a fraction of a vehicle. This procedure is consistent with the statutory objective of promoting the acquisition of alternative fuel vehicles.

Proposed paragraph (d) states that only acquisitions satisfying the mandate, as described in proposed § 490.305, and/or Alternative Fueled Vehicle credits will be counted toward compliance with the acquisition schedule in proposed paragraph (a).

#### Proposed Section 490.303 Who Must Comply

Proposed § 490.303 gives an answer to the question: who is a covered person that must comply? This proposed section tracks section 501(a)(2) of the Act. There are two components to this determination. The first component involves determining whether the organization fits the profile of an alternative fuel provider as provided by section 501(a)(2) of the Act. The second component eliminates from coverage those alternative fuel providers whose principal business uses alternative fuel to create a product that is not an alternative fuel.

Types of companies likely to be covered persons subject to the alternative fuel providers mandate include, but are not limited to, private and public electric and natural gas utilities; natural gas distribution companies; pipeline companies; petroleum companies; propane producers, distributors, and suppliers; methanol providers; ethanol providers; and fuel transport companies.

Municipal utilities possessing the required fleet size, fueling characteristics, and located within the specified geographical areas are classified as alternative fuel providers under section 501(a)(2)(B). Therefore, they are expected to comply with the requirements of the mandate under § 490.302 and will not be subject to any

future municipal fleet mandate imposed by rule under section 507 of the Act.

If an organization produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum, and regularly derives gross revenue from the production of alternative fuels, that organization has a "substantial portion" of its business in alternative fuels. To determine whether an organization has a substantial portion of its business in alternative fuels it is important to look at the organization's involvement in the alternative fuels business, not just the amount of gross revenue from alternative fuels production or the level of investment in alternative fuels production. DOE's determination of whether an organization has a substantial portion of its business in alternative fuels will be made on a case-by-case basis. Comment is invited as to what criteria might be used in making this determination.

Paragraph (b) of proposed § 490.303 deals with covered persons who are excluded from having to comply with this subpart. This section tracks the language of section 501(a)(3)(B) of the Act. Two types of covered persons may be excluded from the requirements of this regulation: (1) Those who transform alternative fuels into a product that is not an alternative fuel; and (2) those who consume alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

An example of an excluded person described in paragraph (b)(1) would be a manufacturer of windshield washer fluid. The manufacturer would be classified as an excluded person because it blends an alternative fuel, methanol, in producing windshield washer fluid, which is not an alternative fuel.

An example of an excluded person described in paragraph (b)(2) would be a company that burns natural gas to provide a heat source for a manufacturing operation.

An example of an excluded person under paragraphs (b)(1) and (b)(2) would be an entity whose principal business is the production of alcoholic beverages.

#### Proposed Section 490.304 Which New Light Duty Motor Vehicles Are Covered

Under section 501(a)(3)(A) of the Act, if the covered person has more than one affiliate, division, or other business unit, only the vehicles of an affiliate, division, or business unit that is "substantially engaged in the alternative fuels business" are subject to the vehicle acquisition mandate. Proposed § 490.304 reflects the provisions of

section 501(a)(3)(A), and should be read in conjunction with the proposed definitions of "affiliate," "division," and "business unit" in § 490.301.

#### Proposed Section 490.305

##### Acquisitions Satisfying the Mandate

Proposed § 490.305 deals with the three types of acquired vehicles that will count toward compliance with proposed § 490.302, in addition to alternative fueled vehicle credits under Subpart F. These categories provide flexibility for organizations in acquiring vehicles to meet this regulation. An alternative fueled light duty motor vehicle shall be considered newly acquired, regardless of model year, if:

- (a) The vehicle is an Original Equipment Manufacturer vehicle capable of operating on alternative fuels and was not previously under the control of the covered person; or
- (b) The vehicle is an after-market converted vehicle and was not previously under the control of the covered person; or
- (c) The vehicle is an Original Equipment Manufacturer vehicle that has been converted to operate on alternative fuels prior to the vehicle's first use in service.

A vehicle that meets the description of paragraph (a) is one that is manufactured by an Original Equipment Manufacturer to be capable of operating on alternative fuels. For example, if a covered person acquires a 1993 flex-fuel light duty motor vehicle during model year 1996, this vehicle is classified as being a new acquisition for that organization.

A vehicle that meets the description of paragraph (b) is one that has been converted by a licensed converter to be capable of operating on alternative fuels. A vehicle that meets the description of paragraph (c) is a vehicle that upon acquisition by the organization is taken to a licensed converter for conversion to an alternative fueled vehicle and is never intended to be operated solely on petroleum-based fuel. It is important to note that section 507(j) of the Act states that no fleet owner shall be required to acquire converted vehicles in order to meet compliance with this or any fleet acquisition requirement.

#### Proposed Section 490.306 Vehicle Operation Requirements

Proposed § 490.306 largely tracks the provisions of section 501(a)(4), which requires that all alternative fueled vehicles acquired pursuant to section 501 be operated solely on alternative fuels, except when these vehicles are operating in an area where alternative fuel is not available.

#### Proposed Section 490.307 Option for Electric Utilities

Proposed § 490.307 deals with the statutory option for electric utilities. Proposed paragraph (a) tracks the provisions of section 501(c) of the Act, which provides that a covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity has the option of delaying the alternative fuel vehicle acquisition schedule in section 501(a) of the Act until January 1, 1998, if that covered person intends to comply with this regulation by acquiring electric motor vehicles. DOE considered delaying the date that electric utilities would have to start acquiring vehicles until the beginning of model year 1999 which starts on September 1, 1998. But given that the California Air Resources Board requires that 2 percent of all vehicles sold in California by major auto producers be Zero Emission Vehicles, (emission level currently only achievable by electric vehicles) starting September 1, 1997, DOE decided not to propose a delay in the effective date of the 30 percent alternative fueled vehicle acquisition requirement. Also, the States of New York and Massachusetts have enacted laws which adopt California standards and timetables.

Proposed paragraph (b) provides the date (January 1, 1996) by which notification must be received by DOE for an electric utility to be eligible for this delayed schedule. That date is dictated by section 501(c) of the Act. This notification should be in letter format and must explain the utility's commitment to electric vehicles.

Proposed paragraph (c) describes the acquisition schedule that an electric utility must comply with if the electric utility notifies the Secretary by the required date.

#### Proposed Section 490.308 Process for Granting Exemptions

Proposed § 490.308 deals with the requirements of section 501(a)(5) of the Act which provides for a simple and reasonable exemption process for those covered persons seeking exemptions either because alternative fuel is not available or alternative fueled vehicles are not reasonably available. Proposed paragraph (a) describes the procedure that a covered person needs to complete to receive an exemption. The first category of exemption is if any covered person demonstrates to the satisfaction of the Secretary that alternative fuels that meet the normal requirements and practices of the principal business of that person are not available in the area where the vehicles are to be operated.

The second category of exemption is if any covered person demonstrates to the satisfaction of the Secretary that alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not reasonably available for acquisition because they are not offered for acquisition commercially on reasonable terms and conditions in the United States. These exemptions would be granted for one model year only. To receive exemptions for additional model years, alternative fuel providers must re-apply to the Secretary each year. Criteria for granting exemptions will be based on documentation that specifically relates to the availability of alternative fuels and alternative fueled vehicles.

To determine whether alternative fuel is "not available," an alternative fuel provider must map out the operating area and base of operations for its fleet of vehicles. Next it must locate on the map the alternative fueling facilities within its MSA or CMSA. Then, for each vehicle, it must determine whether any location providing alternative fuel is in the area in which the vehicle is operated. If there is any location providing alternative fuel within the vehicle's operating area, alternative fuel is available. If there are no locations providing alternative fuel, for *any* alternative fuel that meets the normal requirements and practices of the covered person's principal business, within the vehicle's operating area, then alternative fuel is "not available."

The Act requires that the exemption process be reasonable and simple. DOE invites comment on the proposed process for exemptions, in whole or in part.

It is anticipated that alternative fuel will be available and accessible for almost all alternative fuel providers, and that it will be difficult for fuel providers to prove that alternative fuel is not available. Since alternative fuel providers stand to benefit greatly from the expanded use of alternative fuels and the proliferation of alternative fueled vehicles, it is also anticipated that they will help accelerate the establishment of the alternative fuels infrastructure and be less likely to seek exemptions based on alternative fuels being "not available."

To receive an exemption based on the criteria in subparagraph (a)(2) a covered person must show that there are no alternative fueled vehicles available for commercial acquisition on reasonable terms and conditions in any State. The covered person also must show good faith effort in attempting to obtain these vehicles. DOE requests comment on the extent to which vehicle cost, either

initial cost or life-cycle cost, should be considered in determining whether vehicles are available on "reasonable terms."

If a covered person normally and historically acquires vehicles from one automobile dealer or from one automobile manufacturer, but is unable to acquire alternative fueled vehicles of the model type needed from these same sources, this is not sufficient to qualify for an exemption under subparagraph (a)(2) if appropriate alternative fueled vehicles are available from other dealers or manufacturers. Having to use another dealer or manufacturer is not classified as outside the normal requirements and practices of the covered person, because the same procedures that are currently being employed by the covered person to obtain these vehicles can be used to obtain them from different sources.

Having to wait slightly longer for delivery of alternative fueled vehicles than for conventionally fueled vehicles is not a sufficient reason for granting an exemption. If, however, the time delay will result in a covered person violating the regulation, DOE will consider the covered person to be in compliance with this regulation if the delivery delay was through no fault of its own. Thus, if alternative fueled vehicles are ordered during the model year with expectations that they will be delivered by the end of the model year, but are not delivered until the next model year, the covered person will be deemed to be in compliance if it can provide DOE with proof of order date and anticipated delivery schedule. On the other hand, if a covered person orders alternative fueled vehicles and knows, at the time of the order, that it will not be receiving these alternative fueled vehicles by the end of the model year, it will be deemed to be in noncompliance and no exemption will be granted.

Additionally, in determining whether alternative fueled vehicles are reasonably available, a covered person must examine whether alternative fueled vehicles of the appropriate type are available in any alternative fuel configuration. Thus, the availability of the type of vehicle a covered person needs that operates on the fuel that the covered person provides is not the appropriate test for determining whether alternative fueled vehicles are "not reasonably available." The test for determining whether alternative fueled vehicles are "not reasonably available" is whether there are alternative fueled vehicles available that operate on any alternative fuel and meet the normal requirements and practices of the business, including the vehicle

performance requirements of the business.

Proposed paragraph (b) sets forth the types of documentation in support of exemption requests that should be provided to DOE.

Proposed paragraph (e) states that exemption determinations are letter rulings binding for the covered person only and cannot be used to establish a precedent for other exemption requests. DOE will review each exemption request on a case-by-case basis.

In proposed paragraphs (f) and (g) DOE is proposing an administrative remedy for those aggrieved by the initial decision of the DOE Deciding Official, who will be the Assistant Secretary for Energy Efficiency and Renewable Energy. In order to exhaust administrative remedies, it will be necessary to appeal to DOE's Office of Hearings and Appeals. This procedure has two virtues. It would be less expensive than pursuing a judicial remedy immediately. It would also ensure that DOE has made a record which is appropriate for judicial review in the event a petition for review is filed in a Federal court.

#### Proposed Section 490.309 Annual Reporting Requirements

Proposed § 490.309 sets forth annual reporting requirements. An annual report to verify regulation compliance is required of all alternative fuel providers. Proposed paragraph (a) sets forth where and by when annual reports should be sent.

Proposed paragraph (b) describes the required information that would be included in this annual report. Most of the requirements are self-explanatory; however, several of them deserve discussion for clarification purposes.

Proposed subparagraph (b)(2) would require covered persons to calculate the number of new light duty alternative fueled vehicles that they are required to acquire. To determine this number, a covered person would multiply the number entered for proposed subparagraph (b)(1), by the acquisition percentage from § 490.302 or § 490.307 that applies for that model year. For example, in model year 1996, if the number of new light duty motor vehicles acquired is 50, the number of new light duty vehicles that are required to be acquired is 30 percent of 50, or 15 ( $50 \times .3 = 15$ ). The number of new light duty alternative fueled vehicles acquired, added to the number of alternative fueled vehicle credits applied, from proposed subparagraph (b)(5), should be greater than or equal to the number calculated for proposed subparagraph (b)(2).

Proposed paragraph (c) sets forth the procedure that a covered person must follow if it is applying alternative fueled vehicle credits against its acquisition requirements.

Consistent with the requirements of 5 CFR Part 1320.6(f), proposed paragraph (d) would require that records related to this reporting requirement be maintained and retained for a period of three years.

DOE seeks comment on the reporting requirements, especially relating to the information that is requested to be included in the report.

#### Subpart F—Alternative Fueled Vehicle Credit Program

##### Background

Section 508 of the Act requires DOE to establish an alternative fueled vehicle credit program that will allocate alternative fueled vehicle credits to a fleet or covered person that is required to acquire alternative fueled vehicles under Title V of the Act if that fleet or covered person acquires alternative fueled vehicles in excess of the number that fleet or covered person is required to acquire or acquires alternative fueled vehicles prior to the date that fleet or covered person is required to acquire alternative fueled vehicles. An alternative fueled vehicle credit may be used to comply with alternative fuel provider or fleet program requirements in a later year, or may be traded or sold for use to another fleet or covered person who is required to acquire alternative fueled vehicles by Part 490.

The purpose of establishing a credit program is to provide purchasing flexibility for the regulated fleet operators without sacrificing the program's energy security goals. The general concept is that some fleet operators may, at times, find it attractive to buy more alternative fueled vehicles than required, if in doing so they can get credit against future acquisition requirements, or can sell or transfer the credits to another party. If the credits program is properly implemented and managed, there will be no decrease in energy security compared to a program based strictly on compliance through acquisitions.

Both section 246(f) of the Clean Air Act (42 U.S.C. 7586(f)) and section 508 of the Act (42 U.S.C. 13258) allow for awarding credits to entities that initiate clean fuel vehicle or alternative fueled vehicle programs sooner or in greater numbers than required. But the laws differ in their goals: the goal of the Clean Air Act Amendments is to improve air quality while the goal of the Act is energy security. Thus, the credit

programs and implementing regulations emanating from these acts also have different goals and objectives.

The EPA has a program called the Clean Fuel Fleet Credit Program (40 CFR § 88.304-94) that may be confused with the Department's Alternative Fueled Vehicle Credit program. In the Clean Fuel Fleet Credit program, a fleet owner obtains credits by implementing clean fuel vehicles earlier, in greater numbers, or which meet more stringent emission standards than those established by EPA. Clean Fuel Fleet credits can also be obtained for Clean Fuel Vehicle purchases in vehicle categories that are excluded from the Energy Policy Act definition of "fleet". These credits are awarded based on a formula that compares the clean fuel vehicle emissions with conventional vehicle emissions. By contrast, under section 508 of the Energy Policy Act, one credit is allocated for each alternative fueled vehicle acquired in excess of the required number. Also, the Energy Policy Act allocates one credit for each year the alternative fueled vehicle is acquired before the required date.

Another area of difference between the two statutes is where they allow credits to be traded. Under the Clean Air Act, credit trading is only allowable within the same non-attainment area. For example, fleet operators in the Baltimore non-attainment area can only buy, sell, or trade credits with other fleet operators in the Baltimore area. Congress appears to have concluded that it was not logical for non-attainment areas to trade credits with other areas, because the air quality in the area where credits were purchased and used would not be improved as a result of this transaction. On the other hand, the Energy Policy Act credits can be traded freely among those organizations that are required to acquire alternative fueled vehicles, which are located within the United States. However, there is an exception to this trading provision, based upon the last sentence of section 508(d) of the Act, which provides that vehicles representing credits generated or transferred to alternative fuel providers operate solely on alternative fuel. (42 U.S.C. 13258). This requirement is discussed under § 490.506 of this Supplementary Information. Because one of the major goals of the Act is the reduction of our Nation's foreign oil dependency, it makes little difference where in the United States this reduction takes place.

#### Proposed Section 490.500 Purpose and Scope

Proposed § 490.500 defines the purpose and scope of part 490 subpart F as implementing the statutory requirements of Section 508 of the Act, which instructs the Secretary to allocate credits to fleets or covered persons that acquire alternative fueled vehicles in excess of the number required, or obtain alternative fueled vehicles prior to the date when they are required to acquire alternative fueled vehicles.

#### Proposed Section 490.501 Applicability

Proposed § 490.501 deals with the applicability of the credit program to fleets and covered persons.

#### Proposed Section 490.502 Creditable Actions

Proposed § 490.502 describes the actions associated with allocation of alternative fueled vehicle credits by DOE. Proposed paragraphs (a) and (b) are consistent with the language of section 508(a) of the Act, which authorizes the Secretary to allocate credits to fleets or covered persons that acquire alternative fueled vehicles in excess of the number they are required to acquire, or acquire alternative fueled vehicles in advance of the date they are required to. Once a fleet or covered person is required to acquire alternative fueled vehicles the only way credits can be generated is by exceeding their required acquisition number. For example, an alternative fueled vehicle acquired in excess of the number required in model year 1996 cannot be claimed to be an early alternative fueled vehicle acquisition for model year 1999. The excess alternative fueled vehicle will generate 1 alternative fueled vehicle credit only, not 3 credits because it was acquired 3 years in advance.

Additionally, DOE is proposing that one credit be allocated for the acquisition of a light duty alternative fueled vehicle in a category listed in proposed § 490.3, such as motor vehicles held for lease or rental to the general public, law enforcement vehicles, etc. Section 508(b) provides the statutory basis for this proposal because it refers to the allocation of credits for the acquisition of alternative fueled vehicles in excess of the number required. Therefore, the acquisition of light duty alternative fueled vehicles in the excluded categories constitutes the acquisition of alternative fueled vehicles in excess of the number required qualifies for the allocation of credits. Because these excluded vehicles are not

required to be acquired they are not eligible to earn credits for early acquisition which results in multiple credits. Thus, DOE is proposing that the acquisition of these vehicles in excess of the required number will generate only one credit per vehicle.

It is reasonable to expect that any requirements placed on alternative fueled vehicles which are acquired to comply with alternative fuel provider or fleet program requirements would also apply to vehicles that generate credits. For example, the Act requires that alternative fuel providers operate their alternative fueled vehicles solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable. A net loss to energy security goals would occur if a credit-generating vehicle, such as an alternative fueled vehicle bought a year earlier than required by an alternative fuel provider, did not also operate solely on alternative fuel. This requirement applies only to those alternative fueled vehicles that generate credits to be used by covered persons who are alternative fuel providers. The Department is unaware of any possible requirements which would apply to vehicles purchased to demonstrate compliance and not to vehicles purchased for credits. Therefore, DOE is proposing that any such requirements apply equally to both types of vehicles.

The Department considered whether to allow the acquisition of medium duty and heavy duty alternative fueled vehicles (those alternative fueled vehicles with gross vehicle weight ratings of greater than 8,500 lbs.), by covered persons and fleets, to generate credits. Many medium duty and heavy duty vehicles are predominantly urban use vehicles, such as transit buses and delivery trucks, and could take advantage of the anticipated fueling infrastructure within these urban areas. These vehicles possess larger capacity engines, which consume significantly more fuel than light duty vehicles and result in increased displacement of petroleum-based fuel. However, paragraph (b) of section 508 provides that credits can only be allocated for the acquisition of the same type of vehicles that are required under the fleet mandates of Title V of the Act. The only type of vehicles that are required to be acquired in Title V are light duty vehicles. Thus, credits cannot be awarded for the acquisition of medium duty and heavy duty vehicles because the Act does not require any fleet or covered person to acquire them.

**Proposed Section 490.503 Credit Allocation**

Proposed § 490.503 deals with alternative fueled vehicle credit allocation. Proposed paragraphs (a) and (b) are consistent with the language of section 508(a) of the Act, which describes how credits are to be allocated. Before alternative fueled vehicle credits are allocated they must be applied for using the procedure described in proposed § 490.507.

Proposed paragraph (a) provides for the allocation of one credit for each alternative fueled vehicle a fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire. If a fleet or covered person is required to acquire 10 alternative fueled vehicles in a model year and they acquire 15 alternative fueled vehicles, they can apply for allocation of five alternative fueled vehicle credits.

Proposed paragraph (b) provides for the allocation of one credit per alternative fueled vehicle for each year the alternative fueled vehicle is acquired in advance of the date the fleet or covered person is required to acquire alternative fueled vehicles. These credits cannot be allocated until the date that a fleet is required to acquire alternative fueled vehicles. Thus, only covered persons and State fleets are presently eligible for credit allocation. Until such time as private and municipal fleets are required to acquire alternative fueled vehicles, they cannot be allotted credits for early acquisition. At that time, all alternative fueled vehicles acquired between October 24, 1992, and the start date of the private and municipal fleet mandate would be eligible for credit allocation.

Proposed paragraph (c) provides for the allocation of credits to alternative fuel providers and State governments for alternative fueled vehicles acquired from October 24, 1992, the date the Energy Policy Act was enacted.

Credit allocation is best explained by the following examples. In the first example a covered person acquires 10 alternative fueled vehicles in model year 1994 and 15 alternative fueled vehicles in model year 1995. Because the covered person is not required to acquire alternative fueled vehicles until model year 1996, each alternative fueled vehicle acquired in model year 1994 will generate 2 credits and each alternative fueled vehicle acquired in model year 1995 will generate 1 credit. Thus, the covered person generates 35 credits  $[(10 \times 2) + (15 \times 1) = 35]$ , which can be used against future alternative fueled

vehicle acquisition requirements or can be traded.

In the second example a state fleet acquires 50 alternative fueled vehicles in model year 1995 and 15 alternative fueled vehicles in excess of their required acquisition number in model year 1996. The state generates 50 credits for acquiring alternative fueled vehicles early and 15 credits for acquiring alternative fueled vehicles in excess of their required number. If the state doesn't trade away or use any credits, it will have 65 credits that it can use against future acquisitions or can trade.

A database will be established that will keep a record of credit allocations, trades and credit balances.

**Proposed Section 490.504 Use of Alternative Fueled Vehicle Credits**

Consistent with the language of section 508(c) of the Act, proposed § 490.504 states that a credit shall be treated as the acquisition of a light duty alternative fueled vehicle. Each alternative fueled vehicle credit will represent one light duty alternative fueled vehicle and can be applied against the required alternative fueled vehicle acquisition number for one model year only, designated by a fleet or covered person, in lieu of the acquisition of a light duty alternative fueled vehicle during that model year.

**Proposed Section 490.505 Credit Accounts**

Proposed § 490.505 deals with Alternative Fueled Vehicle Credit accounts. Proposed paragraph (a) states that DOE will establish a credit account for each fleet or covered person who obtains an alternative fueled vehicle credit.

Proposed paragraph (b) states that each fleet or covered person will receive an annual credit account balance statement after the receipt and recording of its annual activity report. This statement will reflect the credit account activity that occurred in the previous model year and can be used as proof of the credit balance for an account.

DOE is considering whether to provide updated credit account balance statements to fleets and covered persons upon request during the year and is also considering whether to charge a nominal fee for this service. These updated credit account balance statements would provide written proof of a fleet or covered person's credit account balance as of the date they are printed. These updated credit account balance statements may be required of a credit seller by a credit purchaser before proceeding with the credit transfer. Thus, the credit seller can use this

updated credit account balance statement to gain independent private benefit.

The charging of a fee for this service is authorized under 31 U.S.C. 9701, which provides that each Federal government agency may establish a charge for a service of a thing of value provided by the agency if this service results in independent private benefit. This charge must be fair and based on the costs to the Government, the value of the service or thing to the recipient, public policy or interest served, and other relevant facts. DOE asks for comments related to the desirability of providing updated credit account balance statements and what value a fleet or covered person would place on this service.

**Proposed Section 490.506 Alternative Fuel Vehicle Credit Transfers**

Proposed § 490.506 deals with the transfer of alternative fueled vehicle credits. Proposed paragraph (a)(1) states that any fleet may transfer an alternative fueled vehicle credit to any other fleet, which is required to acquire alternative fueled vehicles. In contrast, proposed paragraph (a)(2) states that any fleet may transfer an alternative fueled vehicle credit to an alternative fuel provider, who is a covered person, if the fleet provides certification to the covered person that the credit represents a vehicle that operates solely on alternative fuel. This restriction on the transfer of credits from a fleet to an alternative fuel provider, who is a covered person, is necessary because of the vehicle operational requirement placed on alternative fuel provider vehicles. 42 U.S.C. 13251(a)(4). Section 508(d) of the Energy Policy Act permits alternative fuel providers to use credits only if these operational requirements are met. 42 U.S.C. 13258(d).

Proposed paragraph (c) states that proof of credit transfer should be provided to DOE within seven days of the transfer date, and provides for the use of a DOE form, or other written documentation containing the dated signatures of the transferor and transferee. This provision allows for the maintenance and verification of credit transfer activity.

**Proposed Section 490.507 Credit Activity Reporting Requirements**

Proposed § 490.507 describes the credit program's activity reporting requirements. An annual report is required of all fleets or covered persons who have generated or traded alternative fueled vehicle credits to record and track their credit activity. Proposed paragraph (a) sets forth where

and by when annual reports should be sent.

Proposed paragraph (b) describes the required information that would be included in this annual report. Most of the requirements are self-explanatory, however, subparagraph (b)(4) deserves discussion for clarification purposes.

Proposed subparagraph (b)(4) would only allow a fleet or covered person to report either the number of alternative fueled vehicles acquired in excess of acquisition requirements or the number of alternative fueled vehicles acquired in advance of the start date of the acquisition requirements, not both of them. Once the first model year in which acquisition requirements apply has begun, credits can no longer be earned for early acquisition of alternative fueled vehicles.

#### *Subpart G—Investigations and Enforcement*

##### Proposed Section 490.601 Powers of the Secretary

Proposed § 490.601 sets forth the powers of the Secretary provided specifically by section 513 of the Act. Some of these powers (e.g., subpoenas for witnesses or documents) can be used either in a investigative effort begun with orders to show cause or in connection with a civil penalty proceeding.

##### Proposed Section 490.602 Special Orders

Proposed § 490.602 tracks the provisions of section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2005(b)(1). Those provisions are applicable under part 490 because section 505(b)(1) is cross referenced in section 513 of the Act. Orders under this section could be used to deal with a wide variety of circumstances. One example would be the failure to submit a required report. Another would be an order to show cause why civil penalty proceedings should not be initiated for failure to comply with subparts C, D, or F.

##### Proposed Section 490.603 Prohibited Acts

This proposed regulation tracks the language of section 511 of the Act. 42 U.S.C. 13261.

##### Proposed Section 490.604 Penalties and Fines

This proposed regulation follows section 512 of the Act. 42 U.S.C. § 13262. The text reflects DOE conclusions with regard to which of the subsections of section 512 provide for civil penalties and which provide for criminal fines.

##### Proposed Section 490.605 Statement of Enforcement Policy

In rare instances, DOE may initiate enforcement with the object of ensuring compliance and deterring future violations. This proposed section indicates that DOE will not proceed with enforcement if there is a satisfactory compliance agreement.

##### Proposed Section 490.606 Proposed Assessments and Orders

This proposed section provides for issuance of proposed assessments of civil penalty and an order to pay which becomes a final order for the Department if the recipient fails to appeal on a timely basis to the Office of Hearings and Appeals.

##### Proposed Section 490.607 Appeals

This proposed section provides for administrative due process if the recipient of a proposed assessment and order to pay wishes to contest the basis therefore. The appeal must be filed in the Office of Hearings and Appeals on or before 30 days from the date of the issuance of a proposed assessment and order. Most of the applicable procedures for the Office of Hearings and Appeals are in subpart H of 10 CFR part 205. In addition, paragraph (b) of proposed § 490.607 provides that the appellant has the ultimate burden of persuasion which is appropriate because the appellant will in most cases have unequal access to the relevant evidence (its own records). Paragraph (b) also provides that a trial-type hearing on contested issues of fact may occur only if the hearing officer concludes that cross examination will materially assist in determining the facts in addition to the evidence available in documentary form. There should not be extended hearings in order to fill the record with evidence which is largely repetitious.

### **III. Opportunity for Public Comment**

#### *A. Participation in Rulemaking*

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, or comments with respect to the subject set forth in this notice. The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, coalitions, states or other government entities, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearings to be held at the times and places indicated at the beginning of this

notice. Comments relating to the energy security, environmental, or economic effects that might result from the adoption of the proposals contained in this notice are specifically invited and desired. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted.

#### *B. Written Comment Procedures*

Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Alternative Fuel Provider Vehicle Acquisition Mandate and Alternative Fuel Vehicle Credit Program, NOPR, Docket Number EE-RM-95-110" and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit a written comment cannot provide eight copies, alternative arrangements can be made in advance by calling Andi Kasarsky at (202) 586-3012. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect 5.1 for DOS.

All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Rule Docket File in DOE's Freedom of Information Reading Room both before and after the closing date for comments. In addition, a transcript of the proceedings of the public hearings will be filed in the docket.

Pursuant to the provisions of 10 CFR 1004.11 any person submitting information or data that is 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 Department of Energy will make its own determination of any such claim and treat it according to its determination.

#### *C. Public Hearing Procedures*

The time and place of the public hearings are indicated at the beginning of this notice. The Department invites any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice and

be received by the time specified in the DATES section of this notice.

The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of the group or class of persons that has such an interest. The person also should provide a phone number where they may be reached during the day. Each person selected to speak at a public hearing will be notified as to the approximate time that they will be speaking. They should bring ten copies of their statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with Andi Kasarsky, (202) 586-3012.

The DOE reserves the right to select persons to be heard at the hearings, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes, or based on the number of persons requesting to speak.

A Department official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and Section 501 of the Department of Energy Organization Act. 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

#### **IV. Review Under Executive Order 12612**

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any 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 a preparation of a federalism

assessment to be used in all decisions involved in promulgating and implementing policy action.

This proposed rule establishes an Alternative Fueled Vehicle Credit Program under which states may generate credits if they obtain alternative fueled vehicles in excess of their required quantity or if they obtain alternative fueled vehicles prior to the date when they are required and establishes a mandate for state fleets to acquire alternative fuel vehicles. The allocation of credits is based on the measurable actions of obtaining alternative fueled vehicles and is available to fleets, that meet the requirements, throughout the United States.

The granting of credits to states will be handled in the same manner as the granting of credits to any other fleet operator. The enforcement of the state fleet mandate will be handled in the same manner as other mandate programs. States can also apply for a hardship exemption which would exempt them from acquiring alternative fuel vehicles in any given year.

The Department has determined that since states are treated the same as any other fleet operator in the allocation of credits and in the administration and enforcement of the fleet mandate, the proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States. In addition, the provision for hardship exemptions included in the state fleet mandate precludes any possible violation in the authority that the Federal government has over States. Thus, preparation of a federalism assessment is therefore unnecessary.

#### **V. Review Under Executive Order 12778**

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. DOE certifies that the proposed rule meets the requirements of section 2 (a) and (b)(2) of Executive Order 12778.

#### **VI. Review Under Executive Order 12866**

This regulatory action has been determined to be a significant regulatory action under Executive order 12866, Regulatory Planning and Review, October 4, 1993. Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). DOE concluded that the proposed rule would not result in (1) an annual effect on the economy of \$100 million or more or (2) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic export markets. OIRA requested that DOE prepare a cost analysis. In this section of the Supplementary Information, DOE describes the assumptions and main conclusions of that cost analysis. A copy of that cost analysis is available for public inspection in the administrative record on file in DOE's Freedom of Information Reading Room. DOE has also placed in that file a copy of the notice of proposed rulemaking as transmitted to OIRA, as well as exchanges of correspondence between DOE and OIRA showing changes in the notice agreed to by the two agencies.

The cost analysis spans a 25-year time frame, from 1995 to 2020, which included the incremental vehicle purchase cost and the cost differential between alternative fuels and gasoline under five different scenarios. The analysis examines the effects the proposed rule will have on the acquisition of alternative fueled vehicles by fuel providers and State fleets, exclusive of the effects of non-mandated acquisition of vehicles by these and other fleets. In doing so it assumes that no alternative fueled vehicles will be acquired by these fleets prior to model year 1996. In actuality, these fleets currently are acquiring alternative fueled vehicles—either because of economics, State laws or business strategies—and will probably continue to do so in the future. This assumption focuses the analysis on the estimated costs to fuel providers and State fleets in complying with the proposed regulation without distorting it in any substantial way. Assumptions about the number of vehicles acquired, the operating characteristics of those vehicles, fleet vehicle replacement rates, current and future alternative fueled vehicle incremental costs, and current and future retail fuel costs were based on previous analyses undertaken by the Department.

The costs to fuel providers and State fleets in complying with the proposed rule varies depending upon vehicle type, fuel type and fuel consumption, but in no case are the annual costs estimated to exceed \$61 million per year. More typically, the estimated annual costs are approximately \$25 million, decreasing to \$10 million per year in later years. In reaching these conclusions, the Department took into account the fact that some alternative fuel providers may not operate vehicles solely on the fuel they provide and may have to purchase other alternative fuels at retail prices. Retail fuel prices for all alternative fuels were used in the analysis. These prices have three main components: (1) The wholesale fuel cost; (2) the cost of transporting the fuel from production points to retail outlets; and (3) the retail outlet mark-ups.

In one scenario, the annual costs to State fleets decreased to a point where it is estimated that these fleets would incur savings as a result of complying with the proposed rule. This scenario assumes that the most popular alternative fueled vehicles will be flexible-fuel vehicles that can operate on gasoline and/or methanol. Because the proposed rule does not impose a fuel use requirement on State fleets, it is logical to assume that States will choose to operate these vehicles on the fuel which costs less at a certain point in time; currently that fuel is gasoline. It is expected that the nominal incremental cost for these vehicles, together with the fact that their operation and refueling is identical to a gasoline-only version, should make them very attractive to State fleet managers. The expected popularity of these vehicles, combined with estimates that show methanol prices falling below gasoline by model year 2001, result in annual cost savings to State fleets, starting with model year 2005, in the range of \$400,000 to \$1 million.

In order to provide commenters with a better understanding of the effects of this proposal, the Department plans to make revisions and improvements to its analysis before the close of the comment period. To aid in this effort, the Department seeks comments on all aspects of its analysis. In particular, the Department is interested in comment on the following elements of the analysis: the retail and net-of-excise-tax future price projections for gasoline and alternative fuels; the assumption that alternative fueled vehicle purchases, that would result in apparent life-cycle cost savings, would not occur in the absence of this rule; and the assumption that the cost per gallon of gasoline displaced falls as the amount of gasoline

displaced increases. The Department would also be interested in data that would aid in estimating the extra refueling costs for "covered persons" whose fleets use fuels other than the one they themselves provide, e.g., a natural gas pipeline company whose alternative fueled vehicles operate on methanol or ethanol.

#### **VII. Review Under the Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, was enacted by Congress to ensure that small entities do not face significant negative economic impact as a result of Government regulations. In instances where significant impacts are possible on a substantial number of entities, agencies are required to perform a regulatory flexibility analysis.

DOE has determined that this proposed rule will not have a significant negative impact on a substantial number of small entities. To be covered by this rulemaking, an organization must own, operate or control at least 50 light duty motor vehicles, of which at least 20 light duty motor vehicles used primarily within a single MSA or CMSA must be capable of being centrally fueled. An organization that fits this description is usually not a small organization, but one of medium size or larger.

#### **VIII. Review Under the Paperwork Reduction Act**

New information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and recordkeeping requirements are proposed by this rulemaking. Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of paperwork requirements. The information DOE proposes to collect as reporting requirements is necessary to determine whether an organization is in compliance with the proposed regulation and whether they are eligible for the allocation of alternative fueled vehicle credits. The frequency of the information collection is annually and is due four months after the end of the compliance period. It is estimated the number of organizations submitting reports will be approximately 1000 for the years 1996 through 1999. The estimated number of organizations who will be submitting reports after that date has not been determined and is subject to the DOE decision on future rulemakings.

The public reporting burden is estimated to average 12 hours per response, including time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and retrieving the collection of information. The collection of information contained in this proposed rule is considered the least burdensome for the Department of Energy functions to comply with the legal requirements and achieve program objectives. However, comments are requested concerning the accuracy of the estimated paperwork reporting burden.

#### **IX. Review Under the National Environmental Policy Act**

The provisions of this proposed rule would establish procedures for the implementation of an Alternative Fuel Transportation Program to assist in and monitor the progress of State fleet and certain alternative fuel providers compliance activity. The proposed rule provides for reporting procedures to demonstrate compliance with the alternative fueled vehicle acquisition mandates as specified by Title V of the Energy Policy Act of 1992, and includes proposed procedures for interpretive rulings, exemption, appeals, and the approval process for State plans.

The proposed rule would also establish and define the parameters for who must comply, the parts of a vehicle inventory which are affected by the acquisition mandates, the allocation of credits for voluntary acquisitions, the investigation and enforcement in the assessment of civil penalties, and the contents of a State's light duty alternative fueled vehicle plan. Because of the foregoing non-procedural parts of the proposed rule, the Department has determined that preparation of an Environmental Assessment (EA) is appropriate. The Department will complete the EA and any further analysis found to be required prior to the issuance of a final rule.

#### **X. Impact on State Governments**

Section 1(b)(9) of Executive Order 12866 ("Regulatory Planning and Review"), 58 FR 51735 (September 30, 1993) established the following principle for agencies to follow in rulemakings: "Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving

regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated state, local and tribal regulatory and other governmental functions." Executive Order 12875 ("Enhancing Intergovernmental Partnership"), 58 FR 58093 (October 26, 1993) provides for reduction or mitigation, to the extent allowed by law, of the burden on State, local, and tribal governments of unfunded Federal mandates not required by statute.

Section 507(o) of the Act explicitly prescribes the alternative fueled vehicle acquisition mandate which is reflected in subpart C of today's proposed regulations, but does not specifically authorize appropriation of funds to defray the costs of compliance. However, it is important to observe that the effect of the mandate is mitigated in terms of its impacts and costs in a number of respects.

First, section 507(o) authorizes approval of acceptable alternative State plans to comply with the acquisition mandate by enlisting the voluntary commitments from other fleet operators with fleets that are not subject to vehicle acquisition requirements under the Energy Policy Act of 1992. Second, section 507(i) authorizes the Department to grant exemptions from vehicle acquisition requirements for States in cases of financial hardship. Third, Congress has authorized and appropriated some fiscal year 1994 and fiscal year 1995 funds for financial assistance to State alternative fuel transportation programs some of which may include plans to fund the incremental costs of acquiring alternative fueled vehicles. Section 409 of the Act specifically authorizes financial assistance to States for this purpose. However, the funds, even if exclusively used to pay for such incremental costs, may not be sufficient to fund all such costs incurred by each State annually.

The Department preliminarily estimates that, in the aggregate, the costs to States in model year 1996 will be between \$3.3 million and \$7.4 million. The annual aggregate costs should never exceed \$13 million in FY 1995 dollars. A copy of the analysis which includes these figures is in the public file in the DOE Freedom of Information Reading Room and is available upon request from the information contact identified at the outset of this notice. The Department does not have estimates for each State. The Department would welcome comments from State financial officials knowledgeable about near term State plans for replacing existing vehicles so that DOE can refine its

estimates of incremental costs attributable solely to the section 507(o) mandate.

In developing today's notice of proposed rulemaking, the Department consulted with a focus group of State officials from the National Association of State Energy Officials which represents energy offices in 53 States, territories and the District of Columbia. The principal concern expressed by some of these officials was conflict between the DOE program and similar programs operating under EPA or State regulations. With respect to EPA, DOE has attempted to avoid unnecessary differences between its proposed regulations and those already promulgated by EPA. When asked for comments on a draft of today's notice, EPA did not suggest any changes to eliminate or mitigate unnecessary differences.

Earlier in this notice, DOE noted that the overlap between the proposed regulations and the EPA regulations is limited because the DOE program would apply in MSAs and CMSAs with a 1980 Bureau of Census population of 250,000 or more and the EPA program applies only in non-attainment areas. EPA has published a table, 59 FR 50043, listing the 22 non-attainment areas as follows:

STATES AND AREAS AFFECTED BY THE CLEAN FUEL FLEET PROGRAM

Affected area	State(s)
1. Atlanta .....	Georgia.
2. Baltimore .....	Maryland.
3. Baton Rouge .....	Louisiana.
4. Beaumont-Port Arthur ...	Texas.
5. Boston-Lawrence-Worcester (Eastern Massachusetts).	Massachusetts, New Hampshire.
6. Chicago-Gary-Lake County.	Illinois, Indiana.
7. Denver-Boulder .....	Colorado.
8. El Paso .....	Texas.
9. Greater Connecticut .....	Connecticut.
10. Houston-Galveston-Brazoria.	Texas.
11. Los Angeles-South Coast Air Basin.	California.
12. Milwaukee-Racine .....	Wisconsin.
13. New York-Northern New Jersey-Long Island.	Connecticut, New Jersey, New York.
14. Philadelphia-Wilmington-Trenton.	Delaware, Maryland, New Jersey, Pennsylvania.
15. Providence (All Rhode Island).	Rhode Island.
16. Sacramento Metro .....	California.
17. San Diego .....	California.
18. San Joaquin Valley .....	California.
19. Southeast Desert Modified AQMA.	California.
20. Springfield (Western Massachusetts).	Massachusetts.

STATES AND AREAS AFFECTED BY THE CLEAN FUEL FLEET PROGRAM—Continued

Affected area	State(s)
21. Ventura County .....	California.
22. Washington (District of Columbia).	Maryland, Virginia.

As indicated above, 11 of these 22 areas have applications to opt out of the EPA Clean Fuel Fleet Program which are still pending as of the date of publication of this notice.

With respect to the State programs, DOE is unaware of any that would be in conflict with the program proposed today. If DOE has overlooked any such conflicts, State officials are invited to submit comments explaining the conflicts.

List of Subjects in 10 CFR Part 490

Appeal procedures, Energy, Energy conservation, Fuel, Gasoline, Motor vehicles, Oil imports, Petroleum, Recordkeeping and Reporting requirements, and Utilities.

Issued in Washington, D.C. on February 2, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the Preamble, Title 10, Chapter II, Subchapter D, of the Code of Federal Regulations is proposed to be amended by adding a new Part 490 as set forth below:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

Subpart A—General Provision

- Sec.
- § 490.1 Purpose and Scope.
- § 490.2 Definitions.
- § 490.3 Excluded vehicles.
- § 490.4 General information inquiries.
- § 490.5 Requests for an interpretive ruling.
- § 490.6 Petitions for general applicable rulemaking.
- § 490.7 Relationship to other law.

Appendix A to Subpart A of Part 490—Metropolitan Statistical Areas/Consolidated Metropolitan Statistical Areas with 1980 Populations of 250,000 or More

Subpart B—[Reserved]

Subpart C—Mandatory State Fleet Program

- § 490.200 Purpose and scope.
- § 490.201 Alternative fueled vehicle acquisition mandate schedule.
- § 490.202 Acquisitions satisfying the mandate.
- § 490.203 Light Duty Alternative Fueled Vehicle plan.
- § 490.204 Process for granting exemptions.
- § 490.205 Reporting requirements.
- § 490.206 Violations.

**Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate**

- § 490.300 Purpose and scope.
- § 490.301 Definitions.
- § 490.302 Vehicle acquisition mandate schedule.
- § 490.303 Who must comply.
- § 490.304 Which new light duty motor vehicles are covered.
- § 490.305 Acquisitions satisfying the mandate.
- § 490.306 Vehicle operation requirements.
- § 490.307 Option for electric utilities.
- § 490.308 Process for granting exemptions.
- § 490.309 Annual reporting requirements.
- § 490.310 Violations.

**Subpart E—[Reserved]****Subpart F—Alternative Fueled Vehicle Credit Program**

- § 490.500 Purpose and scope.
- § 490.501 Applicability.
- § 490.502 Creditable actions.
- § 490.503 Credit allocation.
- § 490.504 Use of alternative fueled vehicle credits.
- § 490.505 Credit accounts.
- § 490.506 Alternative Fueled Vehicle Credit transfers.
- § 490.507 Credit activity reporting requirements.

**Subpart G—Investigations and Enforcement.**

- § 490.600 Purpose and scope.
- § 490.601 Powers of the Secretary.
- § 490.602 Special orders.
- § 490.603 Prohibited acts.
- § 490.604 Penalties and fines.
- § 490.605 Statement of enforcement policy.
- § 490.606 Proposed assessments and orders.
- § 490.607 Appeals.

**Authority:** 42 U.S.C. 7191, 13235, 13251, 13257, 13258, 13260–3.

**Subpart A—General Provisions****§ 490.1 Purpose and Scope.**

(a) The provisions of this part implement the alternative fuel transportation program under titles III, IV, V, and VI of the Energy Policy Act of 1992. (Pub. L. 102–486)

(b) The provisions of this subpart cover the definitions applicable throughout this part and procedures to obtain an interpretive ruling and to petition for a generally applicable rule to amend this part.

**§ 490.2 Definitions.**

The following definitions apply to this part—

*Act* means the Energy Policy Act of 1992 (Pub. L. 102–486) and any amendments thereof.

*After-Market Converted Vehicle* means an Original Equipment Manufacturer vehicle that is reconfigured by a conversion company, which is not under contract to the Original Equipment Manufacturer, to operate on an alternative fuel and whose

conversion kit components are under warranty of the conversion company.

*Alternative Fuel* means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; and electricity (including electricity from solar energy).

*Alternative Fueled Vehicle* means a dedicated vehicle or a dual fueled vehicle.

*Assistant Secretary* means the Assistant Secretary for Energy Efficiency and Renewable Energy or any other DOE official to whom the Assistant Secretary's duties under this part may be redelegated by the Secretary.

*Capable of Being Centrally Fueled* means a vehicle can be refueled at least 75 percent of its time at a location, that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes, including commercial fleet credit card agreements.

*Centrally Fueled* means that the vehicle is fueled at least 75 percent of the time at a location that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes, including commercial fleet credit card agreements.

*Control* means—

(1) When it is used in the context determining whether one person controls another or whether two persons are under common control, means any one or a combination of the following:

(i) A third person or firm has equity ownership of 51 percent or more in each of two firms; or

(ii) Two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies; or

(iii) One firm leases, operates, supervises, or in 51 percent or greater part owns equipment and/or facilities used by another person or firm, or has equity ownership of 51 percent or more of another firm.

(2) When it is used to refer to the management of vehicles, means a person has the authority to decide who can operate a particular vehicle, and the purposes for which the vehicle can be operated.

(3) When it is used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in a precise situation, such as the workplace.

*Covered Person* means a person that owns, operates, leases, or otherwise controls—

(1) A fleet, as defined by this section, that contains at least 20 light duty motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more as set forth in Appendix A to this subpart or in a **Federal Register** notice; and

(2) at least 50 light duty motor vehicles within the United States, as defined by this section.

*Dealer Demonstration Vehicle* means any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or pre-lease evaluation.

*Dedicated Vehicle* means—

(1) A dedicated automobile as defined in section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013(h)(1)(C)); or

(2) A motor vehicle, other than an automobile, that operates solely on alternative fuel.

*DOE* means the Department of Energy.

*Dual Fueled Vehicle* means—

(1) A dual fueled automobile which is capable of operating on alternative fuel and on gasoline or diesel fuel and as defined in section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. § 2013(h)(1)(D)); or

(2) A motor vehicle, other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel fuel including flexible-fuel vehicles that operate on a mixture of an alternative fuel and a petroleum-based fuel or bi-fuel vehicles that can be switched to operate on either an alternative fuel or a petroleum-based fuel.

*Electric-hybrid Vehicle* means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells or other sources of electric current and also relies on a non-electric source of power.

*Electric Motor Vehicle* means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle.

*Emergency motor vehicle* means any vehicle that is legally authorized by a

government authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance.

*Fleet* means, except as provided by § 490.3, a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census as of December 31, 1992, with a 1980 Census population of more than 250,000 (listed in Appendix A to this Subpart or in an annual notice in the **Federal Register**), that are centrally fueled or capable of being centrally fueled, and are owned, operated, leased, or otherwise controlled—

(1) By a person who owns, operates, leases, or otherwise controls 50 or more light duty motor vehicles within the United States and its possessions and territories;

(2) By any person who controls such person;

(3) By any person controlled by such person; and

(4) By any person under common control with such person.

*Law Enforcement Motor Vehicle* means any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other agencies of the Federal government, or by state highway patrols, municipal law enforcement, or other similar enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

*Lease* means the use and control of a motor vehicle for transportation purposes pursuant to a rental contract or similar arrangement with a term of 120 days or more.

*Light Duty Motor Vehicle* means a light duty truck or light duty vehicle, as such terms are defined under section 216(7) of the Clean Air Act (42 U.S.C. § 7550(7)), having a gross vehicle weight rating of 8,500 pounds or less.

*Model Year* means the period from September 1 of the previous calendar year through August 31.

*Motor Vehicle* has the meaning given such term under section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)).

*Original Equipment Manufacturer* means a manufacturer that provides the original design and materials for assembly and manufacture of its product.

*Original Equipment Manufacturer Vehicle* means a vehicle engineered, designed and produced by an Original Equipment Manufacturer.

*Person* means any individual, partnership, corporation, voluntary association, joint stock company, business trust, Governmental entity, or other legal entity in the United States except United States Government entities.

*Public Building* means any closed structure owned, leased, or controlled by a state, or any instrumentality of a state.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

#### § 490.3 Excluded vehicles.

When counting light duty motor vehicles for the purpose of determining under this part whether a person has a fleet or whether acquisitions are for addition to a fleet, the following vehicles are excluded—

(a) Motor vehicles held for lease or rental to the general public, including vehicles that are owned or controlled primarily for the purpose of short-term rental or extended-term leasing, without a driver, pursuant to a contract;

(b) Motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;

(c) Motor vehicles used for motor vehicle manufacturer product evaluations or tests, including but not limited to, light duty motor vehicles owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicle for engineering, research and development or quality control reasons;

(d) Law enforcement vehicles;

(e) Emergency motor vehicles;

(f) Motor vehicles acquired and used for purposes that the Secretary of Defense has certified to DOE must be exempt for national security reasons;

(g) Nonroad vehicles, including farm and construction motor vehicles; and

(h) Motor vehicles which under normal operations are garaged at personal residences at night.

#### § 490.4 General information inquiries.

DOE responses to inquiries with regard to the provisions of this part that are not filed in compliance with §§ 490.5 or 490.6 of this part constitute general information and the responses provided shall not be binding on DOE.

#### § 490.5 Requests for an interpretive ruling.

(a) *Right to file.* Any person who is or may be subject to this part shall have the right to file a request for an interpretive ruling on a question with regard to how the regulations apply to particular facts and circumstances.

(b) *How to file.* A request for an interpretive ruling shall be filed—

(1) With the Assistant Secretary;

(2) In an envelope labeled "Request for Interpretive Ruling under 10 CFR Part 490;" and

(3) By messenger or mail at the Office of Energy Efficiency and Renewable Energy, EE-33, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 or at such other address as DOE may provide by notice in the **Federal Register**.

(c) *Content of request for interpretive ruling.* At a minimum, a request under this section shall—

(1) Be in writing;

(2) Be labeled "Request for Interpretive Ruling Under 10 CFR Part 490;"

(3) Identify the name, address, telephone number, and any designated representative of the person requesting the interpretive ruling;

(4) State the facts and circumstances relevant to the request;

(5) Be accompanied by copies of relevant supporting documents, if any;

(6) Specifically identify the pertinent regulations and the related question on which an interpretive ruling is sought with regard to the relevant facts and circumstances; and

(7) Contain any arguments in support of the terms of an interpretation the requester is seeking.

(d) *Public comment.* DOE may give public notice of any request for an interpretive ruling and invite public comment.

(e) *Opportunity to respond to public comment.* DOE may provide an opportunity for any person who requested an interpretive ruling to respond to public comments.

(f) *Other sources of information.* DOE may—

(1) Conduct an investigation of any statement in a request;

(2) Consider any other source of information in evaluating a request for an interpretive ruling; and

(3) Rely on previously issued interpretive rulings dealing with the same or a related issue.

(g) *Informal conference.* DOE, on its own initiative, may convene an informal conference with the person requesting an interpretive ruling.

(h) *Effect of an interpretive ruling.* The authority of an interpretive ruling shall be limited to the person requesting

such ruling and shall depend on the accuracy and completeness of the facts and circumstances on which the interpretive ruling is based. An interpretive ruling by the Assistant Secretary shall be final for DOE.

(i) *Reliance on an interpretive ruling.* No person who obtains an interpretive ruling under this section shall be subject to an enforcement action for civil penalties or criminal fines for actions reasonably taken in reliance thereon, but a person may not act in reliance on an interpretive ruling that is administratively rescinded or modified, judicially invalidated, or its prospective effect is overruled by statute or regulation.

(j) *Denials of requests for an interpretive ruling.* DOE shall deny a request for an interpretive ruling if DOE determines that—

(1) There is insufficient information upon which to base an interpretive ruling;

(2) The questions posed should be treated in a general notice of proposed rulemaking under 42 U.S.C. 7191 and 5 U.S.C. 553(e);

(3) There is an adequate procedure elsewhere in this part for addressing the question posed, such as a petition for exemption; or

(4) For other good cause.

(k) *Public file.* From time to time, DOE may file a copy of an interpretive ruling in a public file labeled "Interpretive Rulings Under 10 CFR Part 490" which shall be available during normal business hours for public inspection at the DOE Freedom of Information Reading Room at 1000 Independence Avenue, SW, Washington, DC 20585, or at such other addresses as DOE may announce in a **Federal Register** notice.

#### § 490.6 Petitions for generally applicable rulemaking.

(a) *Right to file.* Pursuant to 42 U.S.C. 7191 and 5 U.S.C. 553(e), any person may file a petition for generally applicable rulemaking under titles III, IV, and V of the Act with the DOE General Counsel.

(b) *How to file.* a petition for generally applicable rulemaking under this section shall be filed by mail or messenger in an envelope address to the Office of General Counsel, GC-1, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

(c) *Content of rulemaking petitions.* A petition under this section must—

(1) Be labeled "Petition for Rulemaking Under 10 CFR Part 490";

(2) Describe with particularity the terms of the rule being sought;

(3) Identify the provisions of law that direct, authorize, or affect the issuance of the rules being sought; and

(4) Explain why DOE should not choose to make policy by precedent through interpretive rulings, petitions for exemption, or other adjudications.

(d) *Determination upon rulemaking petitions.* After considering the petition and other information deemed to be appropriate, DOE may grant the petition and issue an appropriate rulemaking notice, or deny the petition because the rule being sought—

(1) Would be inconsistent with statutory law;

(2) Would establish a generally applicable policy that should be left to case-by-case determinations;

(3) Would establish a policy inconsistent with the underlying statutory purposes; or

(4) For other good cause.

#### § 490.7 Relationship to other law.

Nothing in this part shall be construed to require or authorize acquisition of, or conversion to, light duty alternative fueled motor vehicles in violation of applicable regulations of the U.S. Environmental Protection Agency, U.S. Department of Transportation, or any State or local government agency.

#### Appendix A To Subpart A of Part 490

Metropolitan Statistical Areas/  
Consolidated Metropolitan Statistical Areas  
With 1980 Populations of 250,000 or more

Albany-Schenectady-Troy MSA NY  
Albuquerque MSA NM  
Allentown-Bethlehem-Easton MSA PA  
Appleton-Oshkosh-Neenah MSA WI  
Atlanta MSA GA  
Augusta-Aiken MSA GA-SC  
Austin-San Marcos MSA TX  
Bakersfield MSA CA  
Baton Rouge MSA LA  
Beaumont-Port Arthur MSA TX  
Binghamton MSA NY  
Birmingham MSA AL  
Boise City MSA ID  
Boston-Worcester-Lawrence CMSA MA-NH-ME-CT  
Buffalo-Niagara Falls MSA NY  
Canton-Massillon MSA OH  
Charleston MSA SC  
Charleston MSA WV  
Charlotte-Gastonia-Rock Hill MSA NC-SC  
Chattanooga MSA TN-GA  
Chicago-Gary-Kenosha CMSA IL-IN-WI  
Cincinnati-Hamilton CMSA OH-KY-IN  
Cleveland-Akron CMSA OH  
Colorado Springs MSA CO  
Columbia MSA SC  
Columbus MSA OH  
Columbus MSA SC-GA-AL  
Corpus Christi MSA TX  
Dallas-Fort Worth CMSA TX  
Davenport-Moline-Rock Island MSA IA-IL  
Dayton-Springfield MSA OH  
Daytona Beach MSA FL

Denver-Boulder-Greeley CMSA CO  
Des Moines MSA IA  
Detroit-Ann Arbor-Flint CMSA MI  
El Paso MSA TX  
Erie MSA PA  
Eugene-Springfield MSA OR  
Evansville-Henderson MSA IN-KY  
Fort Wayne MSA IN  
Fresno MSA CA  
Grand Rapids-Muskegon-Holland MSA MI  
Greensboro-Winston Salem-High Point MSA NC  
Greenville-Spartanburg-Anderson MSA SC  
Harrisburg-Lebanon-Carlisle MSA PA  
Hartford MSA CT  
Hickory-Morganton MSA NC  
Honolulu MSA HI  
Houston-Galveston-Brazoria CMSA TX  
Huntington-Ashland MSA WV-KY-OH  
Indianapolis MSA IN  
Jackson MSA MS  
Jacksonville MSA FL  
Johnson City-Kingsport-Bristol MSA TN-VA  
Kansas City MSA MO-KS  
Knoxville MSA TN  
Lakeland-Winter Haven MSA FL  
Lancaster MSA PA  
Lansing-East Lansing MSA MI  
Las Vegas MSA NV-AZ  
Lexington MSA KY  
Little Rock-N. Little Rock MSA AR  
Los Angeles-Riverside-Orange County CMSA CA  
Louisville MSA KY-IN  
Macon MSA GA  
Madison MSA WI  
McAllen-Edinburg-Mission MSA TX  
Melbourne-Titusville-Palm Bay MSA FL  
Memphis MSA TN-AR-MS  
Miami-Fort Lauderdale CMSA FL  
Milwaukee-Racine CMSA WI  
Minneapolis-St. Paul MSA MN-WI  
Mobile MSA AL  
Modesto MSA CA  
Montgomery MSA AL  
Nashville MSA TN  
New London-Norwich MSA CT-RI  
New Orleans MSA LA  
New York-N. New Jersey-Long Island CMSA NY-NJ-CT-PA  
Norfolk-Virginia Beach-Newport News MSA VA-NC  
Oklahoma City MSA OK  
Omaha MSA NE-IA  
Orlando MSA FL  
Pensacola MSA FL  
Peoria-Pekin MSA IL  
Philadelphia-Wilmington-Atlantic City CMSA PA-NJ-DE-MD  
Phoenix-Mesa MSA AZ  
Pittsburgh MSA PA  
Portland-Salem CMSA OR-WA  
Providence-Fall River-Warwick MSA RI-MA  
Raleigh-Durham-Chapel Hill MSA NC  
Reading MSA PA  
Richmond-Petersburg MSA VA  
Rochester MSA NY  
Rockford MSA IL  
Sacramento-Yolo CMSA CA  
Saginaw-Bay City-Midland MSA MI  
St. Louis MSA MO-IL  
Salinas MSA CA  
Salt Lake City-Ogden MSA UT  
San Antonio MSA TX  
San Diego MSA CA  
San Francisco-Oakland-San Jose CMSA CA

San Juan MSA PR  
 Santa Barbara-Santa Maria-Lompoc MSA CA  
 Scranton-Wilkes Barre-Hazleton MSA PA  
 Seattle-Tacoma-Bremerton CMSA WA  
 Shreveport-Bossier City MSA LA  
 Spokane MSA WA  
 Springfield MSA MA  
 Stockton-Lodi MSA CA  
 Syracuse MSA NY  
 Tampa-St. Petersburg-Clearwater MSA FL  
 Toledo MSA OH  
 Tucson MSA AZ  
 Tulsa MSA OK  
 Utica-Rome MSA NY  
 Washington-Baltimore CMSA DC-MD-VA-WV  
 West Palm Beach-Boca Raton MSA FL  
 Wichita MSA KS  
 York MSA PA  
 Youngstown-Warren MSA OH

#### Subpart B—[Reserved]

#### Subpart C—Mandatory State Fleet Program

##### § 490.200 Purpose and scope.

This subpart sets forth rules implementing the provisions of Section 507(o) of the Act which requires, subject to some exemptions, that certain percentages of new light duty motor vehicles acquired for state fleets be alternative fueled vehicles.

##### § 490.201 Alternative fueled vehicle acquisition mandate schedule.

(a) Except as otherwise provided in this subpart, beginning with model year 1996, the following percentages of new light duty motor vehicles acquired annually for state government fleets, including agencies thereof but excluding municipal fleets, shall be alternative fueled vehicles;

- (1) 10 percent of the vehicles acquired in model year 1996;
- (2) 15 percent of the vehicles acquired in model year 1997;
- (3) 25 percent of the vehicles acquired in model year 1998;
- (4) 50 percent of the vehicles acquired in model year 1999; and
- (5) 75 percent of the vehicles acquired in model year 2000 and thereafter.

(b) Each State shall calculate its alternative fueled vehicle acquisition requirements for the state government fleets, including agencies thereof, by applying the alternative fueled vehicle acquisition percentages for each model year to the total number of new light duty motor vehicles to be acquired during that model year for those fleets.

(c) If, when the mandated acquisition percentage of alternative fueled vehicles is applied to the number of light duty motor vehicles to be acquired by a fleet subject to this subpart, a number results that requires the acquisition of a partial vehicle, an adjustment to the acquisition

number will be made by rounding the number of vehicles up to the next whole number.

##### § 490.202 Acquisitions satisfying the mandate.

In addition to the use of alternative fueled vehicle credits under subpart F of this part, the following actions within a model year qualify as acquisitions that count toward compliance with the new light duty alternative fueled vehicle mandates by State fleets:

(a) The purchase or lease of an Original Equipment Manufacturer vehicle, (regardless of model year of manufacture), capable of operating on alternative fuels that was not previously in service in the fleet; or

(b) The purchase or lease of an after-market converted vehicle (regardless of model year of manufacture), that was not previously in service in the fleet; or

(c) The conversion of a newly purchased Original Equipment Manufacturer Vehicle (regardless of the model year of manufacture) to operate on alternative fuels prior to its first use in service.

##### § 490.203 Light Duty Alternative Fueled Vehicle Plan.

(a) *General provisions.* (1) In lieu of meeting its acquisition requirements under § 490.201 exclusively through State-owned vehicles, a State may follow a Light Duty Alternative Fueled Vehicle Plan approved by DOE under this section.

(2) Unless a fleet is exempt under § 490.204, a State which does not have an approved plan in effect under this section will be subject to the State fleet acquisition percentage requirements of § 490.201.

(3) In the event that a significant commitment under an approved plan is not met by a participant of a plan, the State shall meet its percentage requirements under § 490.201 or submit to DOE an amendment to the plan for DOE approval.

(4) Only voluntary acquisitions or conversions, or combinations thereof, by state, local, and private fleets may be used to meet the State's alternative fuel vehicle acquisition requirement under the plan.

(5) Any acquisitions or conversions of light duty alternative fueled vehicles by fleets within the State may be included within the plan, irrespective of whether the vehicles are in excluded categories in the definition of fleet set forth in § 490.2 of this part.

(b) *Required elements of a plan.* Each plan must include the following elements:

(1) Certification by the Governor, or the Governor's designee, that the plan meets the requirements of this subpart;

(2) Identification of state, local and private fleets that will participate in the plan;

(3) Number of new alternative fueled vehicles per plan participant, either through conversion or acquisition;

(4) A written statement from each plan participant to assure commitment;

(5) A statement of contingency measures by the State to offset any failure to fulfill significant

commitments by plan participants, in order to meet the requirements of § 490.201;

(6) A provision by the State to monitor and verify implementation of the plan;

(7) A provision certifying that all acquisitions and conversions under the plan are voluntary and will meet the requirements of § 247 of the Clean Air Act, as amended (42 U.S.C. § 7587) and all applicable safety requirements.

(c) *When to submit plan.* Beginning with model year 1996, any State wishing to submit a plan under this section must do so no later than June 1 prior to the model year covered by such plan.

(d) *Review and approval.* DOE shall review and approve a plan which meets the requirements of this subpart and is designed to achieve at a minimum, the same number of alternative fueled vehicle acquisitions or conversions as would be required under § 490.201 within 60 days of the date of receipt of the plan by DOE at the address in paragraph (h)(1) of this section.

(e) *Disapproval of plans.* If DOE disapproves or requests a State to submit additional information, the State may revise and resubmit the plan to DOE within a reasonable time. States, however, must comply with § 490.201 until such time as the plan is approved.

(f) *How a State may modify an approved plan.* If a State determines that it cannot successfully implement its plan, it may submit to DOE for approval, at any time, the proposed modifications with adequate justifications. Until the modifications are approved, the State must comply with § 490.201.

(g) *Where to submit plans.* (1) A State shall submit to DOE an original and two copies of the plan and shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-33, 1000 Independence Ave., SW, Washington, DC 20585.

(2) Any requests for modifications shall also be sent to the address in paragraph (g)(1) of this section.

**§ 490.204 Process for granting exemptions.**

(a) To obtain an exemption, in whole or in part, from the vehicle mandates of this subpart, a State shall submit to DOE a written request for exemption, along with supporting documentation which demonstrates that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the state fleet are not available in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the state fleet are not reasonably available for acquisition because they are not offered for sale or lease commercially on reasonable terms and conditions in any of the States; or

(3) The application of such requirements would pose an unreasonable financial hardship.

(b) Requests for exemption may be submitted on an ongoing basis and must be accompanied with supporting documentation.

(c) DOE shall grant exemptions for one model year only, and they may be renewed annually if supporting documentation is provided.

(d) If a State is seeking an exemption under—

(1) Paragraph (a)(1) of this section, the types of documentation that are to accompany the request must include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel; or

(2) Paragraph (a)(2) of this section, the types of documentation that are to accompany the request must include, but are not limited to, alternative fueled vehicle purchase or lease requests, a listing of vehicles that meet the normal practices and requirements of the State fleet and any other documentation that exhibits good faith efforts at acquiring alternative fueled vehicles; or

(3) Paragraph (a)(3) of this section, it must submit a statement identifying what portion of the alternative fueled vehicle acquisition requirement should be subject to the exemption and describing the specific nature of the financial hardship that precludes compliance.

(e) Requests for exemption shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-33, 1000 Independence Ave., SW, Washington, DC 20585, or to such other address as DOE may announce in a **Federal Register** notice.

(f) The Assistant Secretary shall provide to the State within 30 days a written determination as to whether the

State's request has been granted or denied.

(g) If the Assistant Secretary denies an exemption, in whole or in part, and the State wishes to exhaust administrative remedies, the State must appeal within 30 days of the date of the determination, pursuant to 10 CFR part 205, subpart D, to the Office of Hearings and Appeals, U. S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. The Assistant Secretary's determination shall be stayed during the pendency of an appeal under this paragraph.

**§ 490.205 Reporting requirements.**

(a) Any State subject to the requirements of this subpart must submit a report on or before the December 31 after the close of the model year, beginning with model year 1996.

(b) The report shall include the following information:

(1) Number of new light duty motor vehicles acquired by a state during the model year;

(2) Number of new light duty alternative fueled vehicles that must be acquired in the model year;

(3) Number of new light duty alternative fueled vehicles acquired by a State during the model year;

(4) Number of alternative fueled vehicle credits transferred to or from the State during the model year;

(5) Number of alternative fueled vehicle credits applied against acquisition requirements;

(6) For each new light duty alternative fueled vehicle acquired—

(i) Vehicle make and model;

(ii) Model year; and

(iii) Vehicle identification number;

(7) Number of light duty alternative fueled vehicles acquired by municipal and private fleets during the model year under an approved Light Duty Alternative Fueled Vehicle Plan (if applicable).

(c) If credits are applied against vehicle acquisition requirements, then a credit activity report, as described in subpart F of this part, must be submitted with the report under this section.

(d) Records shall be maintained and retained for a period of three years from the start of this program.

(e) All reports, marked "Annual Report," shall be sent to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE-33, 1000 Independence Ave., SW, Washington, DC, 20585, or such other address as DOE may provide by notice in the **Federal Register**.

**§ 490.206 Violations.**

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

**Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate****§ 490.300 Purpose and Scope.**

This subpart implements section 501 of the Act, which requires, subject to some exemptions, that certain annual percentages of newly acquired light duty motor vehicles acquired by alternative fuel providers must be alternative fueled vehicles.

**§ 490.301 Definitions.**

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

*Affiliate* means a person that, directly or indirectly, controls, is controlled by, or is under common ownership or control of the subject person.

*Alternative Fuels Business* means activities undertaken to derive revenue from—

(1) Producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity; or

(2) Generating, transmitting, importing, or selling at wholesale or retail electricity.

*Business unit* means a semi-autonomous major grouping of activities for administrative purposes and organizational structure within a business entity.

*Division* means a major administrative unit of an enterprise comprising at least several enterprise units or constituting a complete integrated unit for a specific purpose.

*Normal Requirements and Practices* means the operating business practices and required conditions under which the principal business of the covered person operates.

*Principal Business* means the sales-related activity that produces the greatest gross revenue.

*Substantial Portion* means that at least 2 percent of a covered person's refinery yield of petroleum products is composed of alternative fuels.

*Substantially Engaged* means that a covered person, or affiliate, division, or other business unit thereof, regularly derives sales-related gross revenue from an alternative fuels business.

**§ 490.302 Vehicle acquisition mandate schedule.**

(a) Except as provided in § 490.304 of this part, of the light duty motor vehicles newly acquired by a covered

person described in § 490.303 of this part, the following percentages shall be alternative fueled vehicles for the following model years:

- (1) 30 percent for model year 1996.
- (2) 50 percent for model year 1997.
- (3) 70 percent for model year 1998.
- (4) 90 percent for model year 1999 and thereafter.

(b) Except as provided in § 490.304 of this part, this acquisition schedule applies to all light duty motor vehicles that a covered person newly acquires for use within the United States.

(c) If, when the mandated acquisition percentage of alternative fuel vehicles is applied to the number of new light duty motor vehicles to be acquired by a covered person subject to this subpart, a number results that requires the acquisition of a partial vehicle, an adjustment will be made to the required acquisition number by rounding up the number of vehicles to the next whole number.

(d) Only acquisitions satisfying the mandate, as defined by § 490.305, and use of alternative fueled vehicle credits acquired under subpart F of this part count toward compliance with the acquisition schedule in paragraph (a) of this section.

#### § 490.303 Who must comply.

(a) Except as provided by paragraph (b) of this section a covered person must comply with the requirements of this subpart if that person is—

(1) A covered person whose principal business is producing, storing, refining, processing, transporting, distributing, importing or selling at wholesale or retail any alternative fuel other than electricity;

(2) A covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity; or

(3) A covered person—

(i) Who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) A substantial portion of whose business is producing alternative fuels.

(b) This subpart does not apply to a covered person whose principal business is—

(1) transforming alternative fuels into a product that is not an alternative fuel; or

(2) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

#### § 490.304 Which new light duty motor vehicles are covered.

(a) *General rule.* Except as provided in paragraph (b) of this section, the vehicle

acquisition mandate schedule in § 490.302 of this part applies to all new light duty motor vehicles acquired by a covered person described in § 490.303 of this part.

(b) *Exception.* If a covered person has more than one affiliate, division, or other business unit, then § 490.302 of this part only applies to new light duty motor vehicles acquired by an affiliate, division, or other such business unit—

(1) Which is substantially engaged in the alternative fuels business; but

(2) This subpart does not apply to the vehicles of an affiliate, division, or other business unit whose principal business is either transforming alternative fuels into a product that is not an alternative fuel or consumes alternative fuel as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

#### § 490.305 Acquisitions satisfying the mandate.

In addition to the use of alternative fueled vehicle credits under subpart F of this part, the following actions within the model year qualify as acquisitions for the purpose of compliance with the requirements of § 490.302 of this part—

(a) The purchase or lease of an Original Equipment Manufacturer vehicle (regardless of the model year of manufacture), capable of operating on alternative fuels that was not previously under the control of the covered person; or

(b) The purchase or lease of an after-market converted vehicle (regardless of the model year of manufacture), that was not previously under the control of the covered person; or

(c) The conversion of a newly acquired Original Equipment Manufacturer vehicle (regardless of the model year of manufacture) to operate on alternative fuels prior to its first use in service.

#### § 490.306 Vehicle operation requirements.

The alternative fueled vehicles acquired pursuant to § 490.302 of this part shall be operated solely on alternative fuels, except when these vehicles are operating in an area where the appropriate alternative fuel is unavailable.

#### § 490.307 Option for electric utilities.

(a) A covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity has the option of delaying the vehicle acquisition mandate schedule in § 490.302 until January 1, 1998, if the covered person intends to comply with this regulation by acquiring electric motor vehicles.

(b) *Notification Date.* If an electric utility intends to use the option under

this section, the electric utility must notify the Department of its intent to do so. The notification must be postmarked no later than December 31, 1995 and must be sent to the Office of Energy Efficiency and Renewable Energy, EE-33, 1000 Independence Avenue, S.W., Washington, D.C. 20585 or such other addresses as DOE may provide in a **Federal Register** notice.

(c) If a covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity has notified the Department by December 31, 1995, of their intent to acquire electric motor vehicles, the following percentages of new light duty motor vehicles acquired shall be alternative fueled vehicles for the following model years:

- (1) 30 percent for model year 1998.
- (2) 50 percent for model year 1999.
- (3) 70 percent for model year 2000.
- (4) 90 percent for model year 2001 and thereafter.

#### § 490.308 Process for granting exemptions.

(a) To obtain an exemption from the vehicle acquisition mandate in § 490.302 of this part, a covered person, or its affiliate, division, or business unit which is subject to § 490.302 of this part, shall submit a written request for exemption to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE-33, 1000 Independence Ave., SW, Washington, DC 20585, or such other address as DOE may publish in the **Federal Register**, along with supporting documentation which demonstrates that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of that person are not available in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not offered for purchase or lease commercially on reasonable terms and conditions in the United States.

(b) *Documentation*

(1) If a covered person is seeking an exemption under paragraph (a)(1) of this section, the types of documentation that are to accompany the request include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel.

(2) If a covered person is seeking an exemption under paragraph (a)(2) of this section, the types of documentation that are to accompany the request include, but are not limited to, alternative fueled vehicle purchase requests, a listing of

vehicles that meet the normal practices and requirements of the covered person and any other documentation that exhibits good faith efforts at acquiring alternative fueled vehicles.

(c) Except as provided by paragraph (e) of this section, exemption determination shall be made in a letter ruling by the Assistant Secretary.

(d) Exemptions are granted for one model year only and may be renewed, if supporting documentation is provided, annually.

(e) Exemption determinations are binding for the covered person only and cannot be used to set precedent for other exemption requests.

(f) If a covered person is denied an exemption and believes that it meets the criteria established in paragraph (a) of this section, that covered person may file a request for relief with the Office of Hearings and Appeals, U.S.

Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585.

(g) Requests for relief will be processed utilizing the procedures codified at 10 CFR part 205, Subpart D.

#### § 490.309 Annual reporting requirements.

(a) If a person is required to comply with the vehicle acquisition mandate schedule in § 490.302 or § 490.307, that person shall file an annual report under this section, on a form obtainable from DOE, with the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE-33, 1000 Independence Ave., SW, Washington, DC 20585, or such other address as DOE may publish in the **Federal Register**, on or before the December 31 after the close of the model year beginning with model year 1996.

(b) This report shall include the following information—

(1) Number of new light duty motor vehicles acquired in the United States during the model year;

(2) Number of new light duty alternative fueled vehicles that are required to be acquired;

(3) Number of new light duty alternative fueled vehicles acquired in the United States during the model year;

(4) Number of alternative fueled vehicle credits transferred to or from a covered person during the model year;

(5) Number of alternative fueled vehicle credits applied against acquisition requirements;

(6) For each new light duty alternative fueled vehicle acquired—

(i) Vehicle make and model;

(ii) Model year; and

(iii) Vehicle Identification Number.

(c) If credits are applied against alternative fueled vehicle acquisition

requirements, as reported in the annual report, then a credit activity report, as described in subpart F, must be submitted with this report to DOE.

(d) Records shall be maintained and retained for a period of three years.

#### § 490.310 Violations.

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

#### Subpart E [Reserved]

#### Subpart F—Alternative Fuel Vehicle Credit Program

##### § 490.500 Purpose and Scope.

This subpart implements the statutory requirements of section 508 of the Act, which provides for the allocation of credits to fleets or covered persons who acquire alternative fueled vehicles in excess of the number they are required or obtain alternative fuel vehicles prior to the date when they are required to do so under this part.

##### § 490.501 Applicability.

This subpart applies to all fleets and covered persons who are required to acquire alternative fuel vehicles by this Part.

##### § 490.502 Creditable actions.

A fleet or covered person becomes entitled to alternative fuel vehicle credits by—

(a) Acquiring alternative fuel vehicles that qualify under § 490.305 and § 490.202, as applicable, in excess of the number that fleet or covered person is required to acquire in a model year when acquisition requirements apply; or

(b) Acquiring alternative fueled vehicles in model years prior to the model year when that fleet or covered person is first required to acquire alternative fueled vehicles.

##### § 490.503 Credit allocation.

(a) Based on annual credit activity report information, as described in § 490.507 of this part, DOE shall allocate one credit for each alternative fueled vehicle a fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire in a model year when acquisition requirements apply; or

(b) In the event that an alternative fueled vehicle is acquired by a fleet or covered person in a model year prior to the model year when acquisition requirements first apply, as reported in the annual credit activity report, DOE shall allocate one credit per alternative fueled vehicle for each year the alternative fueled vehicle is acquired

before the model year when acquisition requirements apply.

(c) DOE shall allocate credits to fleets and covered persons under paragraphs (a) or (b) of this section for alternative fueled vehicles acquired after October 24, 1992.

##### § 490.504 Use of alternative fueled vehicle credits.

At the request of a fleet or covered person in an annual report under this part, DOE shall treat each credit as the acquisition of a light duty alternative fueled vehicle that is counted in determining compliance with specific annual alternative fueled vehicle acquisition requirements of this part.

##### § 490.505 Credit accounts.

(a) DOE shall establish a credit account for each fleet or covered person who obtains an alternative fueled vehicle credit.

(b) DOE shall send to each fleet or covered person an annual credit account balance statement after the receipt of its credit activity report under § 490.507.

##### § 490.506 Alternative fueled vehicle credit transfers.

(a) Any fleet which is required to acquire alternative fueled vehicles may transfer an alternative fueled vehicle credit to—

(1) Any other fleet which is required to acquire alternative fueled vehicles.

(2) An alternative fuel provider which is a covered person, if the fleet provides certification to the covered person that the credit represents a vehicle that operates solely on alternative fuel.

(b) Any alternative fuel provider which is a covered person required to acquire alternative fueled vehicles may transfer its alternative fueled vehicle credits to any other fleet or covered person required to acquire alternative fueled vehicles.

(c) Proof of credit transfer may be on a form provided by DOE, or otherwise in writing, including dated signatures of the transferor and transferee. The proof should be received by DOE within 7 days of the transfer date to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE-33, 1000 Independence Ave, SW, Washington, DC 20585 or such other address as may be provided by notice in the **Federal Register**.

##### § 490.507 Credit activity reporting requirements.

(a) A covered person or fleet applying for allocation of alternative fueled vehicle credits must submit a credit activity report by December 31 after the close of a model year to the Office of Energy Efficiency and Renewable

Energy, U.S. Department of Energy, EE-33, 1000 Independence Ave, SW, Washington, DC 20585 or other such address as DOE may publish in the **Federal Register**.

(b) Included in this report should be the following information:

(1) Number of new light duty motor vehicles acquired;

(2) Number of new light duty alternative fueled vehicles acquired;

(3) Number of alternative fueled vehicles that are required to be acquired;

(4) Number of alternative fueled vehicle credits requested for:

(i) alternative fueled vehicles acquired in excess of required acquisition number; and

(ii) alternative fueled vehicles acquired in model year prior to model year in which alternative fueled vehicle acquisition requirements first apply;

(5) Purchase of alternative fueled vehicle credits:

(i) Credit source; and

(ii) Date of Purchase;

(6) Sale of alternative fueled vehicle credits:

(i) Credit purchaser; and

(ii) Date of Sale.

#### **Subpart G—Investigations and Enforcement**

##### **§ 490.600 Purpose and scope.**

This subpart sets forth the rules applicable to investigations under titles III, IV, V, and VI of the Act and to enforcement of section 501, 503(b), 507 or 508 of the Act, or any regulation issued under such sections.

##### **§ 490.601 Powers of the Secretary.**

For the purpose of carrying out titles III, IV, V, and VI of the Act, DOE may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require by subpoena the attendance and testimony of such witnesses the production of such books, papers, correspondence, memoranda, contracts,

agreements, or other records as the Secretary of Transportation is authorized to do under section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. § 2005(b)(1)).

##### **§ 490.602 Special orders.**

(a) DOE may require by general or special orders that any person—

(1) File, in such form as DOE may prescribe, reports or answers in writing to specific questions relating to any function of DOE under this part; and

(2) Provide DOE access to (and for the purpose of examination, the right to copy) any documentary evidence of such person which is relevant to any function of DOE under this part.

(b) File under oath any reports and answers provided under this section or as otherwise prescribed by DOE, and file such reports and answers with DOE within such reasonable time and at such place as DOE may prescribe.

##### **§ 490.603 Prohibited acts.**

It is unlawful for any person to violate any provision of section 501, 503(b), or 507 of the Act, or any regulations issued under such sections.

##### **§ 490.604 Penalties and Fines.**

(a) *Civil penalties.* Whoever violates § 490.603 of this part shall be subject to a civil penalty of not more than \$5,000 for each violation.

(b) *Willful violations.* Whoever willfully violates § 490.603 of this part shall pay a criminal fine of not more than \$10,000 for each violation.

(c) *Repeated violations.* Any person who knowingly and willfully violates § 490.603 of this part, after having been subjected to a civil penalty for a prior violation of § 490.603 shall pay a criminal fine of not more than \$50,000 for each violation.

##### **§ 490.605 Statement of enforcement policy.**

DOE may agree not to commence an enforcement proceeding, or may agree to

settle an enforcement proceeding, if the person agrees to come into compliance in a manner satisfactory to DOE.

##### **§ 490.606 Proposed assessments and orders.**

DOE may issue a proposed assessment of, and order to pay, a civil penalty in a written statement setting forth supporting findings of violation of the Act or a relevant regulation of this part. The proposed assessment and order shall be served on the person named therein by certified mail, return-receipt requested, and shall become final for DOE if not timely appealed pursuant to § 490.607 of this part.

##### **§ 490.607 Appeals.**

(a) In order to exhaust administrative remedies, on or before 30 days from the date of issuance of a proposed assessment and order to pay, a person must appeal a proposed assessment and order to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

(b) Proceedings in the Office of Hearings and Appeals shall be subject to subpart H of 10 CFR part 205 except that—

(1) Appellant shall have the ultimate burden of persuasion;

(2) Appellant shall have right to a trial-type hearing on contested issues of fact only if the hearing officer concludes that cross examination will materially assist in determining facts in addition to evidence available in documentary form; and

(3) The Office of Hearings and Appeals may issue such orders as it may deem appropriate on all other procedural matters.

(c) The determination of the Office of Hearings and Appeals shall be final for DOE.

[FR Doc. 95-4764 Filed 2-27-95; 8:45 am]

BILLING CODE 6450-01-P