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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

Clean Fuel Fleet Program

Definitions and General Provisions

Agency: Environmental Protection Agency (EPA)

Action: Final Rule

Summary: The provisions of Subpart C of Title II of the Clean Air Act require certain states to revise their State Implementation Plans (SIP) to incorporate a Clean Fuel Fleet Program. Under this program, specified percentages of the new vehicles acquired in model year 1998 and after by certain fleet owners must meet clean-fuel fleet vehicle (CFFV) emission standards. This requirement can be met by the purchase of new CFFVs, the conversion of conventional vehicles to CFFVs, or through purchases of credits pursuant to a credit program. The revised SIPs for affected states must also include provisions to implement a credit program and to exempt CFFVs from certain transportation control measures. These revisions must be submitted to EPA by May 15, 1994.

This final rule contains definitions for certain key terms

and provisions, for use by the states in determining the requirements of their programs. These terms and provisions will be used to determine which fleet operators are covered by the requirements of the program and to determine which fleet vehicles will be counted for the purchase requirements of the program.

Effective Date: This Final Rule is effective on [insert date 30 days after date of publication in FR].

Addresses: Materials relevant to this final rule are contained in Public Docket No. A-92-30, located at Room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 12:00 noon and from 1:30 p.m. until 3:00 p.m. Monday through Friday. Under 40 CFR Part 2, a reasonable fee may be charged by EPA for copying docket materials.

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Supplemental Information:

I. Background

According to section 246(b) of the Clean Air Act (the "Act"), beginning in model year 1998 "each covered fleet operator in each covered area" shall include a certain portion of clean-fuel fleet vehicles in new vehicle purchases. Under Section 246(c) of the Act, the date for the commencement of the program may be delayed until as late as model year 2001 if vehicles meeting the CFFV standards are not offered for sale in California in model year 1998. At this time, however, EPA expects that vehicles meeting the CFFV standards will be offered for sale in California in model year 1998.

There are three terms included in the Act that are pivotal in determining which fleet vehicles and ultimately which fleets will be covered by the fleet program. These are "covered fleet operator," "centrally fueled," and "capable of being centrally fueled." In addition, several other terms used in sections 241 and 246 of the Act need to be defined to determine which fleet vehicles are subject to the purchase requirements. These terms are: control; dealer demonstration vehicle; emergency vehicle; law enforcement vehicle; model year; motor vehicles held for lease or rental to the general public; new covered fleet vehicle; nonroad vehicles and engines; owned or operated, leased, or

otherwise controlled; person; vehicle used for motor vehicle manufacturer product evaluations and tests; under normal conditions garaged at personal residence at night. Also, EPA believes that one additional issues requires further clarification: how to promote uniformity for multi-state nonattainment areas.

EPA proposed definitions for these terms and regulations dealing with these issues in a Notice of Proposed Rulemaking (NPRM) published on June 10, 1993 in the Federal Register (58 FR 32474), and held a public hearing on that NPRM on July 15, 1993. Comments were accepted at that time and for thirty days thereafter, until August 16, 1993. Comments were submitted at the hearing by seven entities representing both the industry and the states being regulated. Written comments after the hearing were submitted by these commenters and several others. Interested readers are referred to the docket for this rulemaking for the transcript of the hearing and copies of all written comments (see the Addresses section of this Final Rule for information about the docket).

II. Public Participation

The development of proposed definitions for Clean Air Act terms involved significant participation from the public, especially states and fleets. This participation resulted fir

in EPA's decision to propose regulations containing standardized key definitions for all state clean-fuel fleet programs under Part C of Title II of the Act, and then in the development of definitions that responded to many of the concerns and suggestions that emerged. The draft definitions were coordinated with state and fleet interests prior to release of the NPRM and, during the public hearing and public comment period, EPA received a number of comments on the proposed definitions. In response to those comments, the Agency has prepared a document entitled "Summary and Analysis of Comments: Proposed Clean Fuel Fleet Definitions," which may be found in the docket for this rule. The following paragraphs review several of the most significant issues raised in the comments and discuss the reasoning behind EPA's final decisions on these issues.

Several commenters addressed EPA's proposed definitions for "centrally fueled" and "capable of being centrally fueled." The proposed definition for centrally fueled meant a vehicle that is refueled at least 75 percent of the time at a central location. The proposed definition for capable of being centrally fueled meant it is practically and economically feasible to refuel the vehicle centrally. "Practical" meant that the vehicle does not travel farther than its operational range more than 50 percent of the time, and "economical" meant that central fueling for the vehicles would not cause undue economic hardship.

Commenters representing heavy-duty engine manufacturers suggested that the program should only apply to those vehicles that are refueled centrally 100 percent of the time or are capable of being refueled centrally 100 percent of the time. They argue that vehicles purchased by heavy-duty vehicle fleet operators in order to comply with clean-fuel fleet programs will be dedicated to a single fuel that may not be widely available. These commenters suggested that to require fleet operators to replace vehicles that currently spend some time out of range of the central fueling facilities with dedicated vehicles may require fleet operators to change their business significantly or acquire more vehicles in order to keep more vehicles closer to the fuel.

Other commenters, primarily those representing natural gas interests, made an opposing point. For the "centrally fueled" definition, they suggested that the 75 percent criterion was too high and that vehicles that currently operate at least 50 percent of their time inside the range of a central facility should also be considered centrally fueled. This position was based on the expectation that, by 1998, the natural gas fueling infrastructure would be sufficiently widespread that vehicles need not always return "home" for fueling. They supported EPA's proposed definition for "capable of being centrally refueled" with minor revisions. Finally, several other commenters, including light-duty vehicle manufacturers, petroleum interests, and light-duty

vehicle fleet operators, commented that the proposed 75 percent criterion was appropriate. However, with regard to the definition for capable of being centrally fueled, they believed that the proposed criterion of 50 percent of operation within reach of the fueling facility was too low and would include many vehicles that would not in fact be capable of central fueling. These commenters believed that the threshold for capable of being centrally fueled should be raised to at least at 75 percent criterion, to bring it in line with the threshold for central fueling.

EPA is persuaded by the comments suggesting that the definition of "centrally fueled" be limited to vehicles that <u>are</u> centrally fueled 100 percent of the time and that the definition of "capable of being centrally fueled" be limited to vehicles that <u>could be</u> fueled centrally 100 percent of the time. EPA also believes that similar logic applies to both heavy-duty and light-duty vehicles. First, EPA agrees that, in many cases, the required fuel may not be widely available. While it is not clear whether special diesel fuel will be required for heavy-duty vehicles, special gasoline will be required for vehicles certified on California reformulated gasoline sold outside California or for vehicles certified on federal reformulated gasoline operated outside areas covered by reformulated gasoline programs. Since fleet vehicles will need to use the fuel on which they are certified, and that fuel may not always be ea-

available, it therefore makes sense to use a 100 percent threshold. Alternative fuels, including compressed natural gas, may increase in availability, but they are likely to remain much less available than gasoline.

Second, as suggested by some commenters, EPA believes that revising the definition of "central fueled" will enhance regulatory efficiency. With the recent enactment of the federal Energy Policy Act (EPAct), requirements to purchase vehicles capable of using alternative fuels will be phasing at or near the same time as when the fleets program becomes effective, and EPAct will likely apply to many of the same fleets as the Clean Fuel Fleet program. Dedicated alternative fueled vehicles capable of meeting very low exhaust and evaporative emission standards are the best choice from the environmental and energy perspectives of both programs because there is no option to operate such a vehicle on a fuel that is less clean or that results in less replacement of imported petroleum fuel.

As the commenters pointed out, a program that would require the replacement of vehicles now operated in "mixed service" (i.e., vehicles that are refueled centrally most of the time but that operate outside the range of the central facilities some of the time) with vehicles requiring central fueling all the time seems unnecessarily burdensome. Under such a program, heavy-duty vehicle fleet operators that operate mixed service fleets would

be faced with two options. They can replace mixed service vehicles with clean fuel vehicles that meet the CFFV emission standards on gasoline or diesel fuel. The disadvantage with this solution is that the technology might not be available for heavy-duty vehicles to meet the heavy-duty CFFV standards operating on gasoline or diesel fuel, and reformulated fuels may not be readily available each time a mixed service vehicle travels farther than its operation range. Alternatively, fleet operators who operate mixed service fleets can replace mixed service vehicles with vehicles that operate on reformulated diesel fuel and conventional diesel fuel (i.e., dual-fuel vehicles). The problem with this solution, according to these commenters, is that dual-fuel technology may not be available. If dual-fuel vehicles are not available, fulfilling the tasks now served by mixed-service vehicles with dedicated vehicles would be very difficult. Further, the Clean Air Act requires that clean-fuel fleet vehicles must use clean fuel when operating in the non-attainment area, and forcing the use of dual-fuel vehicles in these mixed service applications would unnecessarily create the potential for misfueling (i.e., operating on the wrong fuel while in the covered area), and would result in the loss of environmental benefits.

Similarly, as the definitions were proposed, operators of light-duty vehicle and light-duty truck fleets would be encouraged to purchase vehicles that operate on or are capable

operating on conventional (or reformulated) petroleum fuels. Fleet operators who buy these vehicles would have to either 1) purchase separate vehicles to satisfy the alternative fuel vehicle requirements of the Energy Policy Act, or 2) purchase flexible-fuel or dual-fuel vehicles, which would achieve significantly less emission reductions than clean, dedicated alternative fuel vehicles. Even though fleet operators using dual-fuel vehicles are required to operate these vehicles on "clean fuel" while in the nonattainment area, dual-fuel vehicles that also operate on conventional gasoline would contribute more evaporative emissions in the nonattainment area than clean, dedicated alternative fuel vehicles. For example, vehicles capable of operating on both ethanol and gasoline have more evaporative emissions because when these two fuels are mixed in the gas tank, the mixture is more volatile than either ethanol or gasoline separately. Also, when such a vehicle returns to the covered area, there is a problem of what to do with the gasoline in the tank, since the vehicle is required to operate on a clean fuel (in this case, ethanol) when operating in the covered area. In the case of a dual-fuel clean-fuel vehicle that uses compressed natural gas, such a vehicle has greater emissions than a dedicated CNG vehicle. This is because dedicated CNG vehicle has no evaporative emissions, while a dual-fuel CNG vehicle will have evaporative emissions due to the presence of the second fuel. Both of these unproductive choices will be avoided if the Clean Fuel Fleet program does not require the replacement of

mixed-use vehicles with clean-fuel vehicles but, rather, aims the program toward those vehicles that are or could reasonably be centrally fueled all of the time.

EPA believes that focusing these two definitions more clearly on vehicles that are or could be centrally fueled all the time will help resolve fleet concerns about fuel availability and will facilitate compliance with both Clean Air Act and EPAct fleet requirements. These revisions of "centrally fueled" and "capable of being centrally fueled" would encompass fewer vehicles than the previous definitions, but would remove impediments to fleets selecting the use of dedicated alternative fuel vehicles, which EPA believes are the best choice to meet the requirements of the program, these vehicles would inherently have less emissions (exhaust and evaporative emissions) than mixed-use vehicles. Furthermore, based on the rapid evolution of federal, state, and local policy initiatives relating to alternate fuel vehicles, EPA believes that these revised definitions are a necessary part of a coordinated framework for promoting dedicated clean alternate fuel vehicles. The purchase of dedicated alternate fuel vehicles by fleet operators could lead to advances in the development of an alternate fuel refueling infrastructure and the optimization of alternate fuel vehicle technology (engines designed with the expectation of operating on only one fuel and then optimized for that fuel). As incentives are implemented and economic barriers are reduced for fleet operat

to purchase dedicated alternate fuel vehicles, the revised definitions would allow for the development of a growing market demand for these vehicles that would then lead to even greater and sustained emission benefits. Finally, EPA intends that the revised definitions enable a fleet owner to easily choose a single vehicle type to satisfy their entire purchase requirement for the Clean Fuel Fleet Program (and perhaps the fleet requirements of the EPAct) since it will make the program both easier for fleets to comply with and easier for states to enforce.

While most of the significant comments addressed the key definitions relating to whether a vehicle is or can be centrally fueled, EPA received a number of comments on the remaining proposed definitions as well. These remaining comments have resulted in revisions in several areas, but no major changes from the proposal have occurred. EPA's reasoning supporting the final definitions in light of the full range of comment is discussed in detail in the Summary and Analysis of Comments document.

III. Content of the Rule

As a result of comments and further analysis by EPA, three definitions are being changed in a substantive way from the proposed definitions. They are "covered fleet operator," "centrally fueled," and "capable of being centrally fueled."

addition, another definition is being added: "can be centrally fueled." This definition describes the group of fleet vehicles that are centrally fueled or that are capable of being centrally fueled (the sum of both of these). These four terms are pivotal in determining which fleet vehicles and which fleets will be covered by the fleet program; therefore, EPA will discuss these terms together. This will facilitate the reader's understanding of their interdependence and, consequently, of their meaning. Fleet operators can determine whether they are covered fleet operators if their fleets or fleet vehicles meet the criteria of these definitions. Final definitions for the other terms EPA had proposed to define are presented following the discussion of these four terms.

A. *Definitions of Covered Fleet Operator, Can Be Centrally Fueled, Centrally Fueled, and Capable of Being Centrally Fueled*

1. Covered Fleet Operator

In this rule, EPA is defining "covered fleet operator" as meaning a person who operates a fleet of at least ten covered fleet vehicles, and that fleet is operated in a single covered area, even if the covered fleet vehicles are garaged outside of it. Under Section 241(6) of the Act, a "covered fleet vehicle" is one for which clean-fuel vehicle standards apply and which is

in a "covered fleet" that is centrally fueled or capable of being centrally fueled. Thus, the definition of "covered fleet operator" is dependent on the definitions of "centrally fueled" and of "capable of being centrally fueled." As noted above, the sum of the vehicles that are centrally fueled or are capable of being centrally fueled are referred to as vehicles that can be centrally fueled. These terms are further defined below.

This definition is intended to clarify the criteria that determine if a fleet operator is a covered fleet operator. According to this definition, the determination is based on whether three major criteria are satisfied by an operator's fleet or the vehicles in his/her fleet: (1) if the fleet can be classified as a "covered fleet"; (2) if 10 or more fleet vehicles are operated in a single covered area; and (3) if at least 10 of those fleet vehicles that are operated in the covered area can be centrally fueled as defined below (i.e. they are currently centrally fueled or they are capable of being centrally fueled), thereby making them covered fleet vehicles. If these criteria are met, the fleet or that portion of the fleet that meet these criterion is subject to the purchase requirements specified in the Act. These conditions are discussed in more detail below.

a) <u>"Covered Fleet"</u>

The term "covered fleet" is defined in section 241(5) of the

Act as "10 or more motor vehicles which are owned or operated by a single person... ." That section also contains a list of vehicles that are not covered and are not to be counted in determining a covered fleet (exempt vehicles). These are: "motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, or nonroad vehicles (including farm and construction vehicles)." Many of these terms are defined below. Those motor vehicles that are not specifically exempt under Section 241(5) are "nonexempt" fleet vehicles.

Any fleet operator who owns or operates a fleet of 10 or more nonexempt fleet vehicles may be subject to the purchase requirements of the Act. However, the actual determination of whether or not that fleet operator must purchase clean fuel vehicles hinges on whether or not the fleet operator has a fleet of 10 or more covered fleet vehicles. By the same token, any fleet operator who operates a fleet of 9 or fewer motor vehicles is not subject to the purchase requirements under the Act.

b) "In the Covered Area"

Although section 246(a)(2) of the Act defines the term "covered area" and section 246(b) specifically limits the

program's application to "each covered fleet operator in each covered area," the Act does not clearly define what the term "in" means. It is clear that fleet vehicles garaged in the covered area are affected by the Clean Fuel Fleet Program; however, the issue of fleet vehicles operated in but garaged outside the covered area needs to be addressed further. EPA believes that Congress intended for those fleet vehicles operated in, but garaged outside, the covered area to be included in the Clean Fuel Fleet Program since vehicle miles travelled in the covered area clearly affect air quality in the covered area.

In the NPRM, EPA proposed to address the issue of fleet vehicles operated in, but garaged outside, the covered area by defining the term "operated in a covered area" as meaning a fleet which is operated from a covered area, or spends 75 percent or more of total fleet operating time in a covered area. However, during the comment period, EPA became aware of problems with this definition.

The proposed definition could have created competitive inequities. Specifically, for fleets of ten or more vehicles that can be centrally fueled, fleets located in the covered area would have been affected by the program no matter how much of their operating time was spent in the covered area. As long as they had ten or more vehicles that can be centrally fueled, they would have been subject to the purchase requirements of the Act.

However, for similar fleets located outside the covered area, fleets of ten or more vehicles that can be centrally fueled would have been affected by the program only if they spent 75 percent or more of total fleet operating time in the covered area. If they did not meet that high standard of operating time in the covered area, they would not have been subject to the purchase requirements of the Act.

The proposed definition also would have treated differently fleets with similar impacts on a covered area's ambient air quality based merely on whether the fleets were operating from a location inside or outside the covered area. Vehicle miles travelled in a covered area affect the air quality the same regardless of where the vehicle is garaged.

Second, the proposed definition could have created administrative and enforcement problems for states and EPA. EPA believes that it should be less of an administrative burden to determine whether a fleet that can be centrally fueled operates at all in a covered area rather than determining whether such a fleet operates 75 percent of total operating time in a covered area.

Therefore, rather than promulgate a flawed definition, EPA is withdrawing the proposed definition of the term "operated in a covered area". Although it might be useful to define this term

by regulation for purposes of uniformity, EPA is constrained in finalizing an improved definition by notice and comment concerns.

EPA believes that states would achieve the maximum available air quality benefits of the fleet program by defining the term "operated in a covered area" such that a vehicle will be covered if it operates in a covered area at any time during the year, and EPA suggests that states consider this approach. However, since the Clean Fuel Fleet Program is a state program administered through SIPs and since EPA is not finalizing a definition for this term, states will have some flexibility in defining "operated in a covered area" subject to EPA approval. During the SIP approval process, EPA will consider how much emission reduction to credit to states based on the broadness of their definition for "operated in the covered area." Obviously, the larger the number of vehicles included in the program the greater the benefits available. EPA may in the future propose to define this term by regulation in a separate rulemaking.

c) "Covered Fleet Vehicle"

Section 241(6) of the Act defines "covered fleet vehicle" as meaning a motor vehicle that is "(i) in a vehicle class for which standards are applicable under this part; and (ii) in a covered fleet which is centrally fueled (or capable of being centrally

fueled)," with the exception that "... no vehicle which under normal operations is garaged at a personal residence at night shall be considered to be ... capable of being centrally fueled..." To determine if the fleet consists of 10 or more covered fleet vehicles, then, the fleet operator who owns or operates a fleet of 10 or more non-exempt vehicles that are operated in a covered area must determine if at least 10 of those vehicles can be centrally fueled (i.e., they are centrally fueled or capable of being centrally fueled, as defined below.)

2. Can be Centrally Fueled

During the comment period, it became apparent to EPA that it would be useful to define a single term that would encompass those vehicles that are currently centrally fueled and those that are capable of being centrally fueled. Such a term would be useful both to clarify certain definitions, such as covered fleet operator, and to simplify the program for the states and the thousands of potentially affected fleet owners.

Therefore, EPA is defining "can be centrally fueled" as meaning the sum of those vehicles that are centrally fueled and those vehicles that are capable of being centrally fueled. Thus, this definition encompasses those vehicles that are known to be able to be centrally fueled, either because they already are or they could be, pursuant to the definitions and determinations

centrally fueled and capable of being centrally fueled, defined below.

3. Centrally Fueled

As discussed in the response to comments section of this rule, EPA is defining "centrally fueled" as a fleet, or that part of a fleet, consisting of vehicles that are fueled 100 percent of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator. Any vehicle that under normal operations is garaged at a personal residence at night but that is, in fact, centrally fueled 100 percent of the time shall be considered to be centrally fueled for the purpose of this definition. The fact that one or more vehicles in a fleet is/are not centrally fueled does not exempt an entire fleet from the purchase requirements under the Act; those non-exempt vehicles that are centrally fueled or capable of being centrally fueled will count as covered fleet vehicles and will be applied toward the 10-vehicle minimum covered fleet size threshold.

This definition of "centrally fueled" is intended to clarify the criteria that determine if a fleet is centrally fueled. As described above, the determination of whether a vehicle is a covered fleet vehicle depends, in part, on whether the vehicle in a covered fleet that is centrally fueled.

It should be noted that the fact that a fleet vehicle is not centrally fueled does not mean it is exempt from the program, since the part of the fleet that is affected by the program are those vehicles that are centrally fueled or could be centrally fueled. It is possible that a vehicle that is not currently centrally fueled could be centrally fueled. Vehicles that are not centrally fueled, pursuant to this definition, and that are not specifically exempt, pursuant to section 214(5), may still be capable of being centrally fueled. Therefore, a fleet operator who has determined his or her fleet vehicles are not centrally fueled must still determine if they are capable of being could be centrally fueled. If they are, then the total of these vehicles, i.e., those vehicles that can be centrally fueled, may constitute a fleet that may be subject to the purchase requirements of the Act.

Also, a covered fleet is <u>any</u> group of at least ten covered fleet vehicles that can be centrally fueled; the entire fleet of nonexempt vehicles need not be centrally fueled or capable of being centrally fueled. Therefore, if only a portion of the fleet of nonexempt vehicles (a subfleet) can be centrally fueled, and that subfleet consists of ten or more nonexempt vehicles, then that subfleet is a covered fleet. So, for example, if a fleet consists of 20 vehicles, 18 of which are nonexempt, and if 14 of those nonexempt vehicles can be centrally fueled, then that subfleet of 14 vehicles is a covered fleet and is subject to the

purchase requirements under the Act.

a) Contract Fueling

Contract fueling is deemed to exist if a fleet vehicle is required to be refueled at a service station or other facility with which the fleet owner has entered into a contract for such refueling purposes. If this is the case, then that fleet vehicle would be considered to be centrally fueled. However, if there is no such contract, and the fleet vehicle receives no special refueling benefits at the service station (i.e., it is treated as a normal retail customer), then that vehicle would not be considered centrally fueled. Retail credit card purchases are not considered to be a refueling agreement. However, commercial fleet credit cards are considered to be a refueling agreement, since they are intended as a special fuel arrangement for fleet purchases alone.

b) Determination of Central Fueling

EPA intends that determination of whether a vehicle is centrally fueled be made based on the refueling patterns for that vehicle, regardless of where it is kept when not in use. It should be relatively easy to determine if a vehicle is centrally fueled 100 percent of the time. First, the fleet operator must have central fueling facilities or have arrangements for con-

fueling with a fuel provider. Second, the vehicle must receive all of its fuel from those central fueling facilities or through that fuel provider, regardless of where that vehicle is parked when it is not in use. Again, just because a vehicle is not centrally fueled 100 percent of the time does not mean that vehicle is exempt from the program. It may be capable of being centrally fueled, as described below.

EPA intends that states require that fleet operators report to them the number of their fleet vehicles that are centrally fueled in the manner described in the section on reporting requirements, below.

c) Location

For the purpose of this definition (and the definition of "capable of being centrally fueled" below), "location" means any building, structure, facility, or installation, which (i) is owned or operated by a person, or is under the control of a person; (ii) located on one or more contiguous properties and (iii) contains or could contain a fueling pump or pumps for the use of the vehicles owned or controlled by that person. This definition is meant to encompass all of the facilities of the fleet operator in a single covered area, in their entirety. Location is not meant to be interpreted narrowly, e.g., as a single refueling pump.

4. Capable of Being Centrally Fueled

EPA is defining a fleet that is "capable of being centrally fueled" as a fleet, or that part of a fleet, consisting of vehicles that could be refueled 100 percent of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator. The fact that one or more vehicles in a fleet is/are not capable of being centrally fueled does not exempt an entire fleet from the program; those vehicles that are capable of being centrally fueled will count toward the 10-vehicle minimum fleet size threshold.

a) Determination of Capable of Being Centrally Fueled

EPA intends that the determination of whether a fleet is centrally fueled will be made based on the refueling patterns for that portion of the fleet consisting of nonexempt vehicles that are not centrally refueled 100 percent of the time, excluding those vehicles that are garaged at a personal residence at night. This determination will not be done on a vehicle-by-vehicle basis, since it would be too easy to evade the program. For example, trips among vehicles could be shifted so that no vehicle is capable of central fueling.

For the portion of the fleet operated in the covered area

that includes vehicles that are not centrally refueled 100 percent of the time and are not garaged at a personal residence at night, there are two different cases in which the fleet operator would need to determine whether these vehicles are capable of being centrally fueled: (i) if the fleet operator already owns, operates, or controls a location that contains central fueling facilities or has an arrangement for contract fueling, but some fleet vehicles are not refueled at those facilities 100 percent of the time; or (2) if the fleet operator does not currently own, operate, or control central fueling facilities or does not have an arrangement for contract fueling. EPA intends that the methods for making these determinations with respect to each of these cases be performed as described below.

i) <u>When fleet has refueling facilities</u>. In the first case, when a fleet operator already owns, operates, or controls central fueling facilities, or has an arrangement for contract fueling, the portion of the fleet operated in the covered area that is capable of being centrally fueled 100 percent of the time is equal to the ratio of the number of miles from trips that could be centrally fueled to the total number of miles travelled by that portion of the fleet, averaged over all nonexempt fleet vehicles (excluding those vehicles which are centrally fueled or which are garaged at a personal residence at night). For the purpose of this calculation, miles from trips that could be centrally fueled are those miles from trips that would not

require a vehicle to travel outside of its operational range. The operational range is defined as being (1) no less than 50 percent of the average range of the existing fleet but (2) in any case no less than 300 miles.

The calculation should be based on a sample trip profile for that portion of the fleet operated in the covered area that is not centrally fueled 100 percent of the time or garaged at a personal residence at night, in the following way. Each fleet operator will choose at least two, but not more than four, noncontinuous weeks during the year or two preceding the year in which the purchase requirements go into effect (i.e., 1996 or 1997).

Each of those weeks should be representative of normal travel patterns for the fleet and should consist of seven continuous days. The first day of the first week and the last day of the last week should not be more than 365 days apart. For example, one week during each of the four seasons can be chosen, or one week during each of two seasons, to capture any differences that may occur in fleet operating patterns due to seasonal fluctuations in business. The seven-continuous-day period is meant to reflect the fleet's travel patterns for a week. If the normal days of operation for a fleet are only Monday through Friday, or Monday through Saturday, the fleet would obviously not record trips for those days if, in fact, no

trips occur.

For each of those weeks, a sample fleet will be chosen from among the fleet vehicles operated in the covered area that are not centrally fueled, not exempt pursuant to section 241(5), and not garaged at a personal residence at night. The sample fleet will consist of at least 5 vehicles for fleets of up to 20 nonexempt, noncentrally fueled vehicles that are not garaged at a personal residence at night, and at least 30 percent of the number of nonexempt, noncentrally fueled vehicles that are not garaged at a personal residence at night for fleets of 21 or more such vehicles, rounded up to the closest integer value (i.e., .30 x 21 vehicles = 7 vehicles). The purposes for which these sample vehicles are used should reflect actual business operations (i.e., the sample fleet should contain the same proportion of vehicles used for sales, deliveries, etc., as in the fleet as a whole).

During each of the sample weeks, detailed travel logs will be kept for each sample vehicle. Those travel logs will contain information about the trips taken by each of the sample vehicles including, but not limited to, the originating point of each trip and, for each destination point the vehicle visits before returning to the place of origination, the location of the destination point and the odometer reading of the vehicle at that location. The originating point is assumed to be the locati

the fleet's central fueling facilities. In the case when a fleet has more than one location with central fueling facilities, the originating point is the one where the vehicle typically refuels or the one that makes the most sense for the needs of that particular vehicle. Each time the vehicle leaves the originating point, it is beginning a new trip.

The fleet operator will use this information to calculate the miles from trips that could be centrally fueled. As noted above, a trip that could be centrally fueled is one that would not require a vehicle to travel outside of its operational range. In other words, these are trips for which miles travelled from the vehicle's departure until its return to the same place would not exceed the operational range of the vehicle. To calculate this, a fleet operator would have the drivers of the sample vehicles make note of their vehicle's odometer reading when they set off on a trip and when they return, and each time they stop to make a delivery or visit a customer. Using this information, the fleet operator can calculate the miles from trips that could be centrally fueled in one of at least two ways.

In the first method, the fleet operator will begin by tabulating the miles the vehicle travelled on each trip, in the order they were driven, until the total miles, from the point of departure, equals one-half of the operational range of the vehicle. These represent the miles from a trip that could be

centrally fueled. These miles are summed over all trips made by a sample vehicle for the sample week. Then, the fleet operator will calculate the total number of miles driven for that vehicle over the sample week. Third, the fleet operator will calculate the ratio of miles from trips that could be centrally fueled to total miles, for that sample vehicle and for that sample week. For example, if the mileage accumulated within the operational range of a vehicle, on a trip basis, over the sample week is 360, and the total number of miles travelled on all trips by that vehicle over that week is 720, then the ratio of miles from trips that could be centrally fueled to total miles, for that vehicle, is 360/720 = .50.

The ratio of trips from miles that could be centrally fueled to total miles for the fleet of nonexempt, noncentrally fueled vehicles that are not garaged at a personal residence at night is determined by averaging the above ratio over the sample vehicles and the sample weeks. So, for example, if there are 10 vehicles in the sample fleet that operate in the covered area, and their ratios for one sample week are .45, .68, .53, .94, .72, .59, .78, .34, .22, and .54, then the fleet average for that sample week is .58. This weekly ratio is then averaged with the ratios from the other sample weeks.

Finally, this average fleet ratio is used to calculate the number of vehicles that are not centrally refueled 100 percent

the time and are not garaged at a personal residence at night that are capable of being centrally fueled. This is determined by multiplying the number of nonexempt vehicles that are not centrally fueled and are not garaged at a personal residence at night by that ratio. So, if there are 15 nonexempt fleet vehicles that are not centrally fueled and are not garaged at a personal residence at night and the average ratio for the fleet is .55, then number of fleet vehicles capable of being centrally fueled is .55 x 15 = 8.

Alternatively, miles travelled within operational range can be calculated after trips are completed, based on some reasonable algorithm for the destinations and fleet trips involved. However, it will still be necessary for the vehicle driver to keep a record of the destinations visited, on a trip basis, and in the order in which they were made. The fleet operator could select his or her own algorithm, subject to review by the state.

ii) <u>When fleet does not have refueling facilities</u>. In the case where a fleet operator does not own, operate, or control central fueling facilities, or is not under contract with a fuel provider, the determination of the number of miles from trips that could be centrally fueled would be based on trips that would not require the vehicle to travel outside of its operational range, using as a base the fleet's operating facility or, in the case where the fleet operates from more than one facility, the

point of departure for the sample fleet vehicle for each trip. The operational range is defined as (1) no less than 50 percent of the average range of the existing fleet but (2) in any event no less than 300 miles.

This calculation should be made based on information about the fleet trip profile accumulated in the same way as described above for fleets operated in the covered area that have central fueling facilities, either explicitly tabulating vehicle mileage or by using an algorithm. Again, the fleet operator could select his or her own algorithm, subject to review by the state. This method will also require the vehicle driver to keep a record of the destinations visited, on a trip basis, and in the order in which they were made.

b) Rounding Convention

The following rounding convention will apply when calculating the number of vehicles in a fleet that are capable of being centrally fueled. When the calculated percentage of a fleet operator's vehicles for this determination is not a whole number, i.e., when a fraction of a vehicle is involved, the number will be rounded down to the closest integer value. Thus, the numbers 7.75 or 7.25 is rounded to 7. This rounding convention was chosen to avoid the situation where a fleet operator would have to purchase more clean-fuel vehicles that

needed for trips within operational range of the fleet's central refueling facility.

However, as specifically noted above, the number of vehicles in the sample fleet, when calculated based on 30 percent of the number of total nonexempt vehicles that are not garaged at home at night, shall be rounded up to the closest integer value.

c) Trips reflect actual operations

It is important to note that these calculations for the determination of "capable of being centrally fueled" are intended to be based on the actual travel patterns of fleets and do not require or intend the fleet operator to change the order of the destinations on any trips, or to split up trips into smaller units. After the operational range is reached in the calculations, it is not necessary to begin summing again as if the vehicle returned to the central fueling location. The miles travelled after the operational range is reached are considered to be miles travelled outside the operational range of the vehicle.

5. Reporting requirements

EPA recommends that, for enforcement purposes, states require that fleets submit an annual report that would include

but not be limited to, the number and identification of all fleet vehicles classified as (i) those that are exempt pursuant to section 241(5); (ii) those that are vehicles that are garaged at a personal residence at night; and (iii) all other fleet vehicles, by type. EPA further recommends that states include appropriate reporting requirements to support the state's determination of operation in a covered area.

In addition to requiring the reporting of the general information described above, EPA believes that states should require that each fleet consisting of 10 or more nonexempt fleet vehicles report information concerning whether the fleet has 10 or more vehicles that operate in a covered area and which of these fleet vehicles can be centrally fueled, as described in the previous sections. States should require the submission of this information sufficiently in advance of the effective date of the program so as to make the necessary determinations, e.g., 30 days before the effective date.

For the determination of operation in a covered area, the additional information states should require to be reported should include, to the extent it is not already reported above, the number of vehicles in the entire fleet, by type; the number of vehicles that operate in the covered area, by type; the number of vehicles that operate in the covered area and can be centrally fueled (covered fleet vehicles), by type; identity of covered

fleet vehicles (vehicle identification number), trip records of covered fleet vehicles (origination and destination points).

For the determination of "can be centrally fueled" (centrally fueled or capable of being centrally fueled), the additional information reported to the state shall be used to determine whether vehicles are either centrally fueled or capable of being centrally fueled. For centrally fueled, the additional information to be reported to the state shall include, to the extent it is not already reported above, the number of fleet vehicles that operate in the covered area and are centrally fueled 100 percent of the time and their identity (vehicle identification number). For capable of being centrally fueled, the additional information to be reported shall include, to the extent it is not already reported above, the number of vehicles in the entire fleet, by type; the number of vehicles operated in the covered area, by type; the number of vehicles that are garaged at a personal residence at night and their vehicle identification numbers; the number of exempt vehicles and their vehicle identification numbers; the number of centrally fueled vehicles and their vehicle identification numbers; the number of vehicles in the sample fleet, by type and their vehicle identification numbers; the operational range of the vehicles in the sample fleet; the dates included in the sample weeks; the total mileage accumulated by the sample vehicles, by sample week; the total mileage accumulated in their operational range by the

sample vehicles, by sample week; how mileage was calculated; the ratio of miles from trips that could be centrally fueled to total miles, estimated using the sample results; and, if available, the total mileage accumulated during the sample periods by all nonexempt fleet vehicles that are not garaged at a personal residence at night.

The operational range for the sample fleet vehicles should be reported to the state by the fleet operator along with the other characteristics of those vehicles. Again, the state may, at its discretion, request a detailed explanation of how the operational range was determined and/or require the fleet operator to recalculate miles from trips that could be centrally fueled using a different operational range for the fleet vehicle if the operational range seems to be unusually low.

States, of course, would be able to review the information submitted to them regarding the determinations for operation in a covered area or "can be centrally fueled," and take action to assure the accuracy of the information.

Because fleet operations can change over time, EPA recommends that states require that these calculations be repeated periodically. For example, a state could require that the calculations be performed again when the fleet size changes substantially, perhaps by 20 percent or every three years,

whichever first occurs, and that a new trip profile be filed with the state. This should provide a reasonable mechanism to assure that the determinations are up to date without imposing unreasonable burdens on fleet operations.

To permit states to keep track of changes in fleet size, all fleets with 10 or more covered fleet vehicles that are located or operate in the covered area shall be required to file a simplified annual report. This annual report should contain the total number of vehicles in the fleet, by vehicle type; the number of vehicles purchased during the prior year and the number of clean-fuel vehicles purchased, by vehicle type; and the number of anticipated vehicle purchases for the coming year and the number of anticipated clean-fuel vehicle purchases, by vehicle type. States should choose to make the reporting of obligation less than annual, e.g., every two years, and cover more years.

A state may develop a way or ways of easing reporting requirements, as long as the level of certainty achieved with these methods is equivalent to the methods discussed above.

B. *Other Definitions*

1. Control

The term "control" is used in three ways in section 241(5)

of the Act, which defines covered fleet. First, it is used to join all entities under common management (e.g., different divisions of the same company), to ascertain which vehicles are subject to the requirements of the fleet program. Second, it is used to refer to the management of vehicles, to ascertain who decides how and when the vehicles are used. Third, it is used to refer to the management of employees. The term "control" is thus crucial to the program, but its use in three different contexts indicates that it needs three different definitions. The term control is also used to aggregate any building, structure, facility, and/or installation, as they pertain to a location, as that term is defined in the definition of can be centrally fueled, above. Therefore, EPA intends that these three definitions of control also be used in conjunction with the definition of location, to aggregate any building, structure, facility, or installation, controlled by the same person that are on one or more contiguous properties.

a) Joining Entities Under Common Management.

Section 241(5) of the Act specifies that "in determining the number of vehicles owned or operated by a single person ... all motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person controlled by such person, and by an person under common control with such person shall be treated as owned by such

person." It is clear that the overall intent of this provision is to join all entities that are under common management. In this case, EPA is defining "control" as a function of ownership rights in the entities. These ownership rights can take at least three forms: controlled stock, controlled management, or controlled facilities.

The first form of control with regard to joining all entities under common management is when a third person or firm has equity ownership of 51 percent or more in each of two or more firms. When this is the case, the vehicles of those firms shall be aggregated. Thus, if firm A owns 51 percent of firm B and 51 percent of firm C, the sum of the vehicles of all three firms will be considered in determining the number of vehicles subject to the fleet program.

The second form of control with regard to joining all entities under common management is when 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. When this is the case, the vehicles of those firms shall be aggregated. Thus, if firm A and firm B have the same corporate officers, in whole or in substantial part, acting in either the same or different capacities, then the sum of the vehicles of those firms will be considered in determining the number of vehicles subject to the fleet program.

The third form of control with regard to joining all entities under common management is when 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. When this is the case, the combined vehicles of both firms (or multiple firms in the case of three or more) shall be used to determine the number of vehicles owned by the entities that are subject to the fleet program. Thus, for example, if firm A owns 51 percent of firm B's facilities or stock, then the combined total of both firms' vehicles will be used to determine if they must comply with the requirements of the fleet program and how many clean fuel vehicles they must purchase.

"Lease, operate, or supervise," means that a firm leases and/or operates equipment or facilities, or operates and/or supervises the business of other firms as its primary business activity. A firm that engages in these activities for the general public or members of the broad business community, under contract with those entities, is not considered to control the firm to which it renders these services. However, a firm whose primary business is to supply these kinds of services to one or more specific firms and not to the general public is not considered to be independent of the firms to which it supplies the services and can be considered to control, or to be controlled, by them. Thus, EPA would consider fleet management

companies that are established to supervise the fleet of one specific company or a set of interrelated companies, and not to service the general business community, to control all the vehicles they supervise.

"Supervision" is characterized as residing in a person or committee at any time after November 15, 1990 and involves but is not restricted to the following responsibilities: vehicle purchasing and supplier negotiations; day-to-day maintenance and fuel purchase management; specification and engineering decisions; monitoring of operation costs; and/or coordination of vehicle salvage or retail.

These provisions are necessary to combine vehicles among firms that are closely related for the purposes of the fleet program, based on either ownership of facilities, equity ownership, or common corporate officers. This is necessary because some fleets are organized among a variety of corporate entities, and section 241(5) requires that these fleets be covered as an aggregation. The intent of these provisions is to recombine, for the purposes of determining whether a fleet is a covered fleet and whether a vehicle is a covered vehicle, the parts of a firm that is split up for tax, accounting, or other reasons.

It is not the intent of this provision to combine parts

large fleets that operate out of different locations, as that term is defined above. If, because of the nature of a particular business operation, the vehicles in a fleet are distributed across several locations, either within a covered area or among location inside and outside a covered area, then the determination of whether or not the purchase requirements apply to vehicles at each such location will be made on the basis of the portion of the fleet operated from each such location. As noted above, the intent is to recombine those fleets operated from the same location but that are split among separate ownership entities for tax purposes.

Additionally, unless the fleets are controlled by one person or firm as described above, this provision does not intend to combine subsidiaries of large companies that operate independently of one another into one encompassing fleet for the purpose of the purchase requirements. These provisions seek only to combine those fleets that are controlled by the same entity, as required by the Act. Thus, independently run subsidiaries that can demonstrate their operating independence are not required to be aggregated with those other subsidiaries. Independence is demonstrated by showing that (a) no person or firm has equity ownership of 51 percent or more of the subsidiary and one or more other firms, (b) the subsidiary does not share, in whole or in substantial part, common corporate officers with other subsidiaries, and (c) no person or firm leases, operates,

supervises, or in 51 percent or greater part owns facilities and/or equipment used by the subsidiary, or has equity ownership of 51 percent or greater part of the subsidiary. If, on the other hand, any one of those three conditions is true, then this means that another person or firm has control over the subsidiary and it should be aggregated with that controlling entity for the purposes of the program.

EPA intends that, for the purpose of the definition of location, all buildings, structures, facilities, and/or installations owned or controlled by the same person be aggregated in the same way as that for aggregating vehicles, provided that those buildings, structures, facilities, and/or installations are located on or consist of contiguous properties.

b) Management of Vehicles.

Section 241(5) of the Act refers to "... all motor vehicles owned or operated, leased or otherwise controlled by such person..." When used in this sense, i.e., with regard to the management of vehicles, EPA is defining "control" as a function of the authority to make decisions about vehicle use. A person has control over a vehicle when that person has the authority to decide who can operate a particular vehicle and the purposes for which the vehicle can be operated. Under the Act, vehicles [illegible] or controlled are those "owned or operated, leased or otherw[illegible]

controlled" by a person. Therefore, leased vehicles are to be considered in the same way as owned vehicles under the program. Thus, an operator of a fleet of 10 or more leased vehicles is a covered fleet operator.

At the same time, EPA realizes that a person does not have the same level of control over a vehicle leased for a short period of time, especially regarding vehicle choice, compared to vehicles leased for a long period of time. As a result, only vehicles leased for 120 days or longer will be considered relevant to the program. This 120-day period is slightly longer than a calendar season, to take into account short-term variations in fleet operations and seasonal fluctuations in the number of fleet vehicles. On the other hand EPA does consider longer-term vehicle exchanges that sometimes occur within fleets to be events triggering the fleet purchase requirements, just as they affect an area's air quality.

c) Management of Employees.

Section 241(5) of the Act provides that "... all motor vehicles owned or operated, leased or otherwise controlled by ... any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person." When used in this sense, i.e., with regard to the management of employees, EPA

is defining "control" as a function of who decides how or when an individual's time is used. A person has control over an individual or an employee when that person has the authority to direct the activities of that individual or employee in a precise situation, such as at the workplace.

These two definitions of control, with respect to the management of vehicles and employees, are intended to clarify whether or not a vehicle comes under the requirements of the fleet program when a person or firm does not hold beneficial title to it. For example, a leased vehicle is controlled by the lessee, since it is the lessee who determines who can use the vehicle and for what purposes. On the other hand, an employee's personal vehicle is not considered to be controlled by his or her employer. Although the employer controls the employee in a business sense, the employer cannot determine who uses the employee's vehicle and for what purposes, despite the fact that the employee may use the vehicle for business purposes as well as personal purposes. This distinction is important because, in addition to ownership, control is one of the tests for determining if a vehicle comes under the requirements of the fleet program.

Similarly, a person who leases a building, structure, facility, and/or installation is deemed to control that building, structure, facility, and/or installation for the purpose of the

definition of location, above.

2. Dealer Demonstration Vehicle

EPA is defining "dealer demonstration vehicle" as any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicles 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 kept for the convenience of persons having repair work done on their 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 dealer stock. Also, vehicles that are allocated to employees as part of a compensation package are not considered exempt, unless they are also offered for retail sale as part of the current dealer stock of new vehicles. However, if these employee vehicles are typically rotated back into dealer stock as used vehicles, they would not be considered exempt from the program.

The term "dealer" is defined in section 216(4) of the Act as "any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser."

3. Emergency Vehicle

EPA is defining "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.

EPA is relying on the speed limit criterion because this is the way many states define "emergency vehicles." The requirement for legal authorization to exceed the speed limit may be problematic for localities that authorize tow trucks and 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 blue and/or red flashing lights and sirens for use when exceeding the speed limit. Therefore, those vehicle types are not considered exempt for the purposes of this program. Thus, for example, for-hire tow trucks are not considered to be exempt vehicles. A utility maintenance vehicle is not considered to be considered an emergency vehicle unless, on a vehicle-by-vehicle basis, it is specifically and legally authorized by a governmental authority to respond to emergencies as described above.

4. Law Enforcement Vehicle

EPA is defining "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 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. For federal law enforcement vehicles, the definition contained in Executive Order 12759, Section 11: Alternative Fueled Vehicle for the Federal Fleet. Guidance Document for Federal Agencies, shall apply.

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 from the Clean Fuel Fleet Program, by virtue of its use for official and legal law enforcement purposes, as conveyed by local, state, or federal government mandate. Security company vehicles do not generally comply with this definition, and as such are not exempt from the fleet program unless they are contracted by a law enforcement agency for the purposes described above. Vehicles operated by law enforcement agencies largely for staff or administrative purposes would not be covered under this exemption.

5. Model Year

EPA is defining "model year" for purposes of fleet purchase requirements as September 1 through August 31. For each model year, states must ensure that fleet operators purchase (or lease) the number of clean-fuel vehicles, as a percentage of total new vehicles purchased (or leased), required under the Act. According to this definition, for purposes of compliance, fleets would compute their annual purchases (or leases) during the period from September 1 until 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 purchase plans regarding clean-fuel vehicles when they make their plans for purchasing all new model vehicles.

It is not the intent of this definition to require motor vehicle manufacturers to change their model years to reflect this definition of model year. This definition is only intended to clarify which vehicles count towards a fleet operator's required annual purchases under the program, to ensure that all fleet operators purchase vehicles based on the same annual period. This is important to facilitate enforcement of the program. Thus, any new vehicles purchased by a fleet operator between September and August are counted toward the purchase requirement of the same year, and are considered of the same model year as the January that falls between them. Otherwise, fleet operators could evade the requirements of the program, particularly in the initial years when the difference between purchase requirements is substantial (30% of new model year 1998 light-duty vehicles; 50% of new model year 1999 light-duty vehicles, and 70% of new model year 2000 light-duty vehicles). Also, without this requirement, it would be much more difficult for states to keep track of annual purchases, since fleets could spread them out over a period longer than 12 months by purchasing their vehicles based on the manufacturer's model year.

6. Motor Vehicles Held For Lease or Rental To The General Public

EPA is defining "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 (with or without maintenance), without a driver, pursuant to a contract.

This definition is intended to clarify whether a fleet falls under the exemption for leased or rented vehicles contained in section 241(5). 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.

The exemption for fleet vehicles held for lease or rental to the general public provides an exemption for fleets of vehicles from which potential lessees or renters can choose. This is important because not all potential lessees or renters are covered fleet operators who are required to rent or lease clean fuel vehicles as part of the purchase requirements of the Act

According to this definition, as long as vehicles held for lease or rental to the general public remain under the control of the lessor or renter (the "rental fleet operator"), they are not covered vehicles in a covered fleet and are not subject to the program. However, once control of any such vehicle is transferred from the rental fleet operator to a lessee or a renter for more than 120 days, the vehicle is counted as part of the lessee's or renter's fleet for purposes of determining whether the fleet is a covered fleet and subject to the purchase requirements of the program.

The 120-day period is slightly longer than a calendar season, and is meant to take into account short-term variations in fleet operations and seasonal fluctuations in the number of fleet vehicles. Covered fleet operators, as described above, who intend to lease or rent a vehicle for more than 120 days will be required to follow the purchase requirements of the Act, which may require leasing or renting clean-fuel vehicles. As a result, although vehicles held for lease or rental to the general public are exempt from clean-fuel vehicle fleet purchase requirements, rental fleet operators will want to consider purchasing clean-fuel vehicles for renting or leasing to covered fleet operators.

7. New Covered Fleet Vehicle

EPA is defining a "new covered fleet vehicle" as a vehicle

that has not been previously controlled by the current purchaser, regardless of the model year, except as follows: (1) vehicles that were manufactured before the start of the fleet program for such vehicle's weight class, (2) vehicles transferred due to the purchase of a company not previously controlled by the purchaser or due to a consolidation of business operations, (3) vehicles transferred as part of an employee transfer, or (4) vehicles transferred for seasonal requirements (i.e., for less than 120 days) are not considered new. States are permitted to discontinue the use of the fourth exception for fleet operators who abuse the discretion afforded them. This definition of new covered fleet vehicle is distinct from the definition of new vehicle as it applies to manufacturer certification, including the certification of vehicles to the clean fuel standards.

The definition is intended to describe vehicles which are new to the fleet rather than newly manufactured. It would not be appropriate to define "new covered fleet vehicle" as a "new motor vehicle" as that term is defined under section 216(3) of the Act, i.e., as a vehicle for which "the equitable or legal title has never been transferred to an ultimate purchaser." To do so would allow fleet operators to avoid the requirements of the program simply by purchasing barely used vehicles that have already been titled to an ultimate purchaser.

At the same time, it is not the intent of this definiti

consider all newly-purchased vehicles as new covered fleet vehicles. There are four exceptions to this general principle; otherwise, all vehicles leased or purchased for a fleet are considered in determining the number of new covered fleet vehicles purchased by a covered fleet operator for purposes of calculating percentage purchase requirements.

The first exception is for vehicles manufactured before the start of the fleet program. This applies on a vehicle class basis. Thus, if the program does not begin until model year 1998 for light-duty vehicles, then the exception would apply for LDVs manufactured in model years through 1997. Since the program is statutorily required to begin in 1998 for heavy-duty vehicles, the exception for HDVs would apply to model years through 1997. Pursuant to this exception, a purchase of a vehicle manufactured in a model year before the program begins for that class would not be considered a purchase of a new vehicle for the purpose of calculating percentage purchase requirements. The purpose of this exception is to allow fleet operators who have consistently purchased used vehicles to continue that practice by not being required to purchase CFFVs until used CFFVs become available.

The other three exceptions are for vehicles transferred into the covered fleet 1) as part of a takeover, consolidation, or other merger, 2) with a transferred employee, or 3) for less than 120 days. These types of transfers would be extraordinarily

difficult to consider when calculating percentages. It is not EPA's intent to force fleet operators to change practices more than necessary to comply with the statutory requirements. However, this definition is designed to limit the ability of fleet operators to circumvent the program's requirements simply by purchasing vehicles outside of the covered areas and transferring them into the covered areas through fictional mergers or acquisitions. These three exceptions are discussed individually below.

First, vehicles transferred as part of a takeover or consolidation of operations, through a merger or the closing of a division, will be excluded from the requirements of the program. If these vehicles were considered to be new, they could substantially increase the number of "purchases" in the year of acquisition and thus the requirement for the purchase of clean-fuel vehicles for that year. Moreover, in most cases the complying fleet operator does not choose the vehicles that are transferred as a result of a takeover, and such vehicles would not necessarily meet the clean-fuel vehicle emission standards. Including such transferred vehicles may require covered fleet operators to purchase a substantial number of unneeded vehicles, credits, or vehicle conversions.

Second, vehicles transferred with employees will be excluded from program requirements. This is because it is not the in[illegible]

of these provisions to affect company personnel decisions (e.g., basing transfers or promotions on what company car the person drives), or to force the early sale of vehicles because the driver is moving and must be given a new car because of the location. However, any vehicle purchased for the use of a transferred employee after the transfer will be considered a new covered fleet vehicle.

Third, vehicles transferred for seasonal requirements (i.e., less than 120 days) are also exempted from the requirements of the program. The 120-day period is intended to allow transfers for slightly longer periods of time than a calendar season. This will allow companies to respond to different "high seasons" without unnecessary confusion. Because this exception may be subject to more abuse than the other two, since it would allow companies to avoid the program by continuously rotating vehicles, states may, at their discretion, discontinue the use of this exception for fleet operators who abuse it.

8. Nonroad Vehicle; Nonroad Engine

EPA intends for the terms "nonroad vehicle" and "nonroad engine" to have the same meaning as defined by EPA in a rulemaking concerning emission standards for nonroad engines (Notice of Proposed Rulemaking, 58 FR 28809, May 4, 1993). [illegible] such time as those definitions are finalized, the definition[illegible]

these terms contained in section 216 of the Act shall apply.

9. Owned or Operated, Leased, or Otherwise Controlled By Such Person

The phrase "owned or operated, leased or otherwise controlled by such person" appears in section 241(5) of the Act, in connection with the determination of the vehicles to be included in a covered fleet. EPA is defining this phrase as meaning that (1) such person holds the beneficial title to such vehicle; or (2) such person uses the vehicle for transportation purposes pursuant to a 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 pursuant to the definition of control, above.

The intent of this definition is to include, for purposes of the determination of participation in the program, any vehicles controlled by a fleet operator, whether by ownership or lease. The 120-day period is intended to reflect the fact that the leasing of vehicles can occur for short periods of time, and such short term temporary leases should not be subject to the terms of the program.

10. Person

The Act refers to all fleets of ten or more vehicles which are owned by a person, or "by any person who controls such person, by any person controlled by such person, [or] by any person under common control with such person." EPA is defining the term "person" in accordance with section 302(e) of the Act, according to which "the term 'person' includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof."

11. Under Normal Circumstances Garaged at Personal Residence

EPA is defining the phrase "under normal circumstances garaged at personal residence" as meaning a vehicle that, when it is not in use, is normally parked at the personal residence of the individual who usually operates it, rather than at a central refueling, maintenance, and/or business location.

This definitions is intended to extend the "at night" exemption specifically provided by Congress to those people who work at night. Under this definition, a vehicle that is owned by a business entity but treated as personal vehicle or an employee's vehicle and that is normally kept at the user's place of residence when not in use is exempt from the program, notwithstanding the timing of the periods of use and non-use

It is not the intent of this definition to exempt those vehicles which are garaged at a personal residence at night but which are, in fact, centrally fueled 100 percent of the time. Section 241(6) of the Act provides that vehicles garaged at a personal residence are not to be considered "capable of being centrally fueled." The Act does not exempt these vehicles if they are in fact centrally fueled. An example of a nonexempt vehicle is a centrally-fueled repair truck that the fleet operator sends home with an employee so that the employee can go directly to her/his repair jobs in the morning.

12. Vehicles Used for Motor Vehicle Manufacturer Product Evaluations and Tests

EPA is defining "vehicles used for motor vehicle manufacturer product evaluations and tests" as 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 vehicles for engineering, research and development or quality control reasons.

It is the intent of this definition to exempt from the program vehicles used by a motor vehicle manufacturer for production control or quality control reasons, as well as those

vehicles covered under an EPA testing exemption issued under 40 CFR part 85 subpart R.

C. Multi-state Nonattainment Areas

In addition to the above definitions, clarification of the issue of multi-state nonattainment areas is needed to ensure consistency among different SIPs. Clarification of this issue will facilitate fleet compliance and enhance implementation of the fleet program.

Multi-state nonattainment areas are nonattainment areas that cross state lines. If each state included in the nonattainment area regulates its fleets differently, the program compliance requirements for fleet operator would become much more complex than if they had to comply with one set of requirements for the entire area.

In addition, the Act specifies that "credits may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area." This legislative language supports a requirement that fleet programs in multi-state nonattainment areas be consistent to ensure that credits can be freely traded throughout the nonattainment area.

Therefore, to limit the number of fleets affected by conflicting requirements, and to ensure that the credits earned through the credits program uniformly apply across states, this action requires that, to the greatest extent possible, multi-state nonattainment areas promulgate consistent clean-fuel vehicle programs. For example, the credit programs and TCM exemptions should be the same to optimize vehicle use and credit exchange among fleets. Also, the determination of program elements raised in the above definitions, such as average operating period and the criteria for determining the degree of operation within a covered area, should be substantially the same for states in a multi-state nonattainment area.

IV. Environmental and Economic Impacts

To the extent that there are impacts due to incorporating today's final definitions into the larger Clean Fuel Fleet program, they are best analyzed in the context of the full program. EPA will address the environmental and economic impact of the entire Clean Fuel Fleet program in the final Regulatory Impact Analysis (RIA) for this program. The RIA will be released with the rule finalizing CFFV emission standards and conversion regulations and will be available in the docket for that rule (A-92-30) at the time of publication.

V. Statutory Authority

The statutory authority for this proposal is provided by sections 241, 246, and 301(a) of the Act.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 [58 Federal Register 51,735 (October 4, 1993)], the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal

mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Compliance with Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to consider potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a regulatory flexibility analysis.

As with other impacts, EPA will examine the impact of this regulation on small entities as a part of assessing the impacts of the overall fleet program for the later fleet final rule.

VIII. Paperwork Reduction Act

EPA has determined that the definitions and general provisions promulgated in this rulemaking do not create any new information collection requirements separate from the larger Clean Fuel Fleet program. The information collection

requirements of the entire Clean Fuel Fleet program have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

IX. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review of the United States Court of Appeals for the District Of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in the judicial proceedings brought by EPA to enforce these requirements.

X. List of Subjects in 40 CFR Part 88

Administrative practice and procedure, Air pollution control, Gasoline, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated:

Carol M. Browner

Administrator