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