

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

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

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

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

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

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

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

energy equivalent basis. Reformulated gasoline is an enumerated "clean alternative fuel" in section 241 of the Clean Air Act. 42 U.S.C. 7581. It is not mentioned at all in the definition of "alternative fuel" in section 301 of the Energy Policy Act of 1992. Section 301(2) provides that the term "alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline, or other fuels; natural gas; liquified petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

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

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

## II. Section-By-Section Analysis

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