A. Subpart A—General Subpart Definition of "Fleet"

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

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

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

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

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

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

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

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

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

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

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

centrally fueled.'

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

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

meaning of this phrase.