

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

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

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

Other Definitions

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

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

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

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

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

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

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

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

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