

replacement fuel use in covered fleets, even if DOE were to impose a private and local government fleet vehicle acquisition requirement pursuant to EPCA sections 507(e) and (g).

DOE's proposed determination that a private and local government fleet regulatory program is not "necessary" under the standards set forth in EPCA section 507(e) and therefore cannot and should not be promulgated is also consistent with the view expressed in many of the comments DOE received during earlier stages of work that preceded issuance of this notice of proposed rulemaking. In these earlier stages, commenters (especially potentially covered fleets) expressed concerns regarding the lack of available fueling infrastructure and suitable AFV models. In addition, a number of alternative fuel proponents stated that the best means of increasing the introduction of AFVs and the use of alternative fuels would be to provide incentives for their use rather than adopting new mandates. These proponents urged DOE to support legislative initiatives that would provide incentives for the use of AFVs and alternative fuels. This Administration is in fact supporting the adoption of incentives for high-efficiency, advanced technology vehicles, which include AFVs. In addition, the President and DOE have proposed the FreedomCAR and Hydrogen Fuel Initiative, which is a major new initiative focused on significantly increasing the availability and use of non-petroleum motor fuels.

In evaluating whether to propose adoption of a private and local government fleet rule under EPCA sections 507(e) and (g), DOE reviewed the status of progress toward achieving the current replacement fuel goal. Based on this review, DOE believes that extraordinary measures would be required to achieve the current goal of 30 percent petroleum replacement by 2010.

At the same time, DOE takes note of the fact that Congress is widely expected to take up comprehensive legislation that may significantly affect our nation's energy future and may bear importantly not only on the achievability of the current goals but also on what any potential revised goals might be. In addition, the FreedomCAR and Hydrogen Fuel Initiative is focused on dramatically increasing the availability and use of replacement fuels and reducing reliance on petroleum as a motor fuel. In light of the momentum that this effort is engendering; in light of what DOE understands to be the principal purpose of EPCA's

replacement fuel goals<sup>1</sup>—to keep the pressure on policymakers, industry and the public to engage in aggressive action to expand the use of alternative and replacement fuels; and in light of the likelihood of consideration and enactment of new legislation this Congress that would have a significant bearing on these issues, DOE has concluded that it should not make a determination under EPCA concerning the achievability of the 2010 goals at this time. Therefore DOE also is not proposing at this time to use its EPCA authority to seek to modify these goals. DOE will continue to evaluate this issue.

#### A. Authority

The issue DOE addresses in this notice of proposed rulemaking is whether a private and local government fleet requirement program is "necessary" under EPCA section 507(e). That section states that a private and local government fleet program shall be promulgated if DOE determines such a program is "necessary," and that such a program "shall be considered necessary" only if DOE finds that "the goal of replacement fuel use \* \* \* is not expected to be actually achieved \* \* \* without such a fleet requirement program" and "such goal is practicable and actually achievable \* \* \* through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals."

The statutory definitions of vehicles and fuels in EPCA are key to DOE's determination discussed in this notice. An "alternative fuel vehicle" is a "dedicated vehicle or a dual fuel vehicle." (EPCA section 301(3)). A "dual fuel" vehicle is one "capable of operating on alternative fuel and on gasoline or diesel fuel." (EPCA section 301(8)(A)). The purchase of an AFV does not assure that "alternative" or "replacement" fuel will be used to operate the AFV. As discussed below, fleets are not required to use alternative or replacement fuel in their AFVs (except for alternative fuel providers, which are required to use alternative

fuel in their AFVs by section 501(a)(4) of EPCA).

"Replacement fuel" is defined by EPCA to mean "*the portion of any motor fuel* that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquified fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers," or any other fuel that the Secretary determines meets certain statutory requirements. (42 U.S.C. 13211(14) (emphasis added)) "Alternative fuel" is defined to include many of the same types of fuels (such as methanol, natural gas, hydrogen and electricity), but also includes certain "mixtures" of petroleum-based fuel and other fuels. (10 CFR 490.2 (2002) <sup>2</sup>) Thus, a certain mixture might constitute an "alternative fuel," but only the portion of the fuel that fell within the definition of "replacement fuel" would actually constitute "replacement fuel." For example, a mixture of 85 percent methanol and 15 percent gasoline would, in its entirety, constitute "alternative fuel," but only the 85 percent that was methanol would constitute "replacement fuel." Also by way of example, gasohol (a fuel blend typically consisting of approximately 10 percent ethanol and 90 percent gasoline), considered as a total fuel blend, would not qualify as an "alternative fuel," but the 10 percent that is ethanol would qualify as "replacement fuel."

The rulemaking process for determining whether to promulgate a private and local government fleet rule is very different from the previous DOE rulemaking concerning State government and alternative fuel provider fleets. With that rule, DOE was not required to make any findings in order to promulgate a fleet rule; EPCA itself imposed the fleet program. The determination of whether to adopt AFV acquisition mandates for private and local government fleets, however, is conditional and depends on several critical findings by DOE. Regulations covering private and local government fleets, if adopted, in other respects would likely be similar to those already in place for State government and alternative fuel provider fleets. These regulations essentially require that a percentage of a covered fleet's annual acquisitions of light-duty vehicles must be AFVs. *See Alternative Fuel Transportation Program*, 10 CFR Part

<sup>1</sup> The replacement fuel goals call for a certain percentage of motor fuel demand to be supplied by "replacement fuels." Because petroleum (i.e., gasoline and diesel) is the dominant fuel used for motor vehicles, the replacement fuel goals are sometimes referred to in this document as petroleum replacement goals. DOE notes that because the EPCA goals reference "replacement fuel," they cannot be met by simply using less petroleum (such as through efficiency measures), but rather must be met by increasing the overall percentage of non-petroleum or replacement fuels that is used.

<sup>2</sup> EPCA defines "alternative fuel" (see 42 U.S.C. 13211(2)), but DOE has exercised its authority to modify, by regulation, this definition. Therefore, the currently effective definition of "alternative fuel" is set forth at 10 CFR 490.2 (2002).