

490 (2002). Section 507(g) sets forth a tentative schedule for implementing a program for covered fleets that would be enforced if DOE were to promulgate a private and local government AFV acquisition mandate.

In order to determine whether a fleet requirement program for private and local government fleets is “necessary” pursuant to section 507(e), DOE considered the number of fleets that likely would be covered by such a rule and the likely increase in the amount of replacement fuel that would be used by covered fleets as a result of the acquisition mandate. EPOA severely limits the universe of fleets that could be covered by a private and local government fleet rule. These limitations are described in the definitions, exceptions, and exemptions contained in the relevant sections of EPOA, as discussed below.

A “fleet” is defined in section 301(9) of EPOA as follows:

[T]he 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, leases, 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 motor 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.

The key limitations in this definition include: (1) Only light duty vehicles (*i.e.*, vehicles less than 8,500 GVWR) are covered, and all medium-duty and heavy duty vehicles are excluded; (2) the vehicles must be part of a fleet of 20 vehicles used primarily in a large metropolitan area; (3) the vehicles must be centrally fueled or capable of being centrally fueled; (4) they must be owned or controlled by a local government or an entity that owns at least 50 such

vehicles; (5) fleets of rental vehicles are excluded; (6) law enforcement and emergency vehicles are excluded; and (7) vehicles garaged at personal residences are excluded.

Moreover, even if it is determined that a particular private or local government fleet constitutes a “fleet” under EPOA, the statute provides several exemptions. Section 507(i) allows a fleet to obtain an exemption from DOE for all or part of its fleet, from an otherwise applicable fleet mandate, on grounds of: (1) Non-availability of appropriate AFVs and alternative fuels; (2) non-availability of appropriate alternative fuels; and (3) with respect to local government entities, for a financial hardship.

EPOA furthermore contains a petition provision in section 507(n). That section provides that “[a]s part of the rule promulgated * * * pursuant to subsection * * * (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program * * * nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet the needs of a fleet.” As a result, even to the extent a fleet constitutes a “fleet” under the narrow EPOA definition, and does not otherwise qualify for one of the statutory exemptions, it could petition for relief or suspension of a fleet mandate for any one of several different reasons.

Finally, AFV purchase requirements that DOE could impose under section 507(g) could only apply to the purchase of “light duty motor vehicles.” A light duty motor vehicle is defined as “a light duty truck or light duty vehicle * * * having a gross vehicle weight rating of 8,500 pounds or less, before any after-market conversion to alternative fuel operation.” See 10 CFR 490.2 (2002). Therefore, medium- and heavy-duty vehicles would not be covered by any mandatory section 507 private and local government fleet program.

DOE originally estimated that about 2 million private and local government fleet vehicles would be covered under a fleet program, were one to be adopted, with AFV acquisitions eventually rising to about 320,000 annually. As discussed below in Section III, however, DOE’s original estimate of the number of fleet vehicles that would be covered under a private and local government fleet rule, and thus the number of annual AFV acquisitions resulting from such a rule, probably was far too high.

The limitations on the potential contribution of a private and local government fleet program to the replacement fuel goal are discussed in Section III. In brief, however, one DOE report issued in 1996 estimated that total fuel use from all fleets, including private and local government fleets, potentially covered by EPOA fleet programs to be approximately 1.2 percent of U.S. gasoline use. See *Assessment of Costs and Benefits of Flexible and Alternative Fuel Use in the U.S. Transportation Sector, Technical Report Fourteen: Market Potential and Impacts of Alternative Fuel Use in Light-Duty Vehicles: A 2000/2010 Analysis* (DOE/PO-0042) (January 1996) [hereinafter *Technical Report 14*]. Similarly, a subsequent DOE report stated that, even if an AFV acquisition mandate for private and local government fleets was imposed, fleets covered by EPOA mandates would provide no more than about 1.5 percent replacement fuel use. These reports were issued before DOE had much experience with implementation and operation of EPOA Fleet programs. A more recent analysis (September 17, 2000), discussed in Section III of this notice of proposed rulemaking, indicated that replacement fuel use would increase only .25 percent if a private and local government rule was promulgated.

Section 504(c) of EPOA limits DOE’s authority to promote the use of replacement fuel. Specifically, DOE is precluded from promulgating rules that would mandate any of the following: “production of alternative fueled vehicles or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles subject to this Act.” Section 504(c) also precludes rules that would “mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels.” Thus, DOE’s authority under EPOA to promote the use of replacement fuels is primarily limited to the following: implementation of the limited fleet programs found in sections 303, 501 and 507; research and development (R&D) activities with industry under Title XX, subtitle B; and voluntary promotional efforts, such as those fostered by the Clean Cities Program under sections 405, 409, and 505.

EPOA section 507 directs DOE to determine whether private and local government fleets should be required to acquire AFVs as they replace their existing stock of light-duty vehicles. Requirements for private and local government fleets, if adopted, would