

expressed their interest in being included in a Replacement Fuel or Fleet Rewards Program. These fleets generally thought that it would be unfair and impracticable to set up two separate programs, one for covered State fleets, and another new one covering local government fleets.

At least one commenter expressed an interest in drastically reworking the existing EPCa fleet programs in order to provide credits for infrastructure investments. Several commenters favored providing credits for petroleum-fueled hybrid electric vehicles. Most commenters supported a Fleet Rewards or Replacement Fuel Program. Very few commenters were in favor of adopting a fleet program of the type set forth in EPCa section 507(g) (*i.e.*, an AFV acquisition only mandate). In fact, a number of commenters suggested that such a program would not result in significant petroleum replacement.

Several comments addressed enforcement and potential loopholes. One commenter asserted that if DOE is not serious about enforcement it should not adopt new mandates. It also noted that fleets could break up their fleets into smaller units or develop employee vehicle ownership programs as a way of avoiding the mandates. Several comments questioned DOE's authority to promulgate any new regulations. One comment noted that EPCa's deadline for promulgating a private and local government fleet rule had lapsed.

Only one organization addressed the issue of whether DOE had the legal authority to adopt a Fleet Rewards or Replacement Fuel Program. That organization asserted that DOE had authority under section 502 of EPCa to promulgate a Replacement Fuel Program but did not have that authority under section 507(g). The comments appear to assert that DOE has authority independent of section 507(g) to require fuel use regardless of the fleets that are covered.

D. November 2002 Meeting

In November of 2002, representatives of the National Association of Fleet Administrators (NAFA) met with DOE officials to express their views on the private and local government fleet rulemaking. DOE stated at that time that it was working on a draft. NAFA representatives stated that its members are opposed to additional mandates, including requirements to purchase AFVs. With respect to the replacement fuel goal, NAFA expressed concern that DOE would establish a replacement fuel goal that would not accomplish any societal objective or any of the stated objectives of EPCa, but that was

gerrymandered so that it would serve as the basis for DOE to establish an AFV acquisition mandate for private and local government fleets.

III. Private and Local Government Fleet Determination

A. Statutory Requirements

EPCa section 507(e) directs DOE to determine whether private and local government fleets should be required to acquire AFVs. In this respect, the rulemaking process for the private and local government fleet rule is very different from the previous rulemaking on the State government and alternative fuel provider fleet rule. In the case of the State government and alternative fuel provider fleet rule, DOE was not required to make any findings in order to promulgate a fleet rule. The determination of whether to adopt regulations for private and local government fleets, however, is conditional and depends on DOE first making several critical findings. Regulations covering private and local government fleets, if adopted, would in other respects likely be similar to those already in place for State government and alternative fuel provider fleets. As described above, 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 490. Section 507(g) sets forth a tentative AFV acquisition schedule for private and local government fleets should DOE establish such a program.

Section 507(e) sets forth the requirements for determining whether a private and local government fleet program is "necessary." Section 507(e)(1) states that:

* * * Such a program shall be considered necessary and a rule therefor shall be promulgated if the Secretary [of Energy] finds that—(A) the goal of replacement fuel use described in section 502(b)(2)(B), as modified under section 504, is not expected to be actually achieved by 2010, or such other date as is established under section 504, by voluntary means or pursuant to this title or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 502(b)(2)(A), as modified under section 504; and (B) such goal is practicable and actually achievable within periods specified in section 502(b)(2), as modified under section 504, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals. (42 U.S.C. 13257(e)(1))

The question addressed in this portion of this **SUPPLEMENTARY**

INFORMATION is whether a fleet rule is "necessary" under the section 507(e) standard. DOE believes that a determination of whether a fleet rule is "necessary" depends on the following factors: The amount of replacement fuel use that would result if such a program would be adopted (*i.e.*, whether it provides more than a very small percentage contribution to overall U.S. use of replacement fuels in motor vehicles); the level of certainty about the contribution such program might make; whether the replacement fuel use resulting from such a fleet rule could be encouraged through other means, including voluntary measures; and whether certain necessary market conditions (*e.g.*, whether alternative fuel and suitable AFVs are sufficiently available) exist to support a new fleet rule.

B. Rationale for the Private and Local Fleet Determination

Statutory Limitations

As described above, while EPCa authorizes DOE to mandate certain vehicle acquisitions, it severely limits the universe of fleets that would be covered by a private and local government fleet mandate, thus limiting the replacement fuel use that would result from such a program. The definition for "fleet" in EPCa section 301(9), (42 U.S.C. 13211(9)), limits coverage to large, centrally-fueled fleets located in major metropolitan areas. Only those fleets that operate or own at least 50 or more light duty vehicles may be considered for coverage. In addition, the definition of fleet specifically excludes from coverage a number of vehicle types and classes (*e.g.*, rental vehicles, emergency vehicles, demonstration vehicles, vehicles garaged at personal residences at night, etc.). Vehicles that tend to use larger amounts of fuel, medium- and heavy-duty vehicles, are also excluded from coverage.

Even for potentially covered fleets, EPCa section 507(i) provides several opportunities for regulatory relief through exemptions for non-availability of appropriate AFVs and alternative fuels. Specifically, any private and local government fleet rule "shall provide for the prompt exemption" by DOE of any fleet that demonstrates AFVs "that meet the normal requirements and practices of the principal business of the fleet owner are not reasonably available for acquisition," alternative fuels "that meet the normal requirement and practice of the principal business of the fleet owner are not available in the area in which the vehicles are to be