

alternative and replacement fuel use by covered fleets and thus would not alter the analysis described above as to whether a fleet program is "necessary." There is no evidence that the Fleet Rewards or Replacement Fuel Programs would result in enough fuel use to significantly change the economics and practicability of using alternative or replacement fuels, and therefore there is no evidence that such programs would affect covered fleets' willingness or ability to use alternative or replacement fuels to any appreciable degree.

Summary of Determination

For the reasons stated in this part of the **SUPPLEMENTARY INFORMATION**, DOE proposes to determine that a private and local government fleet requirement rule under sections 507(e) and (g) of EPCA is not "necessary," and therefore should not be imposed. Such a mandate would make no appreciable contribution (less than 0.2 to 0.8 percent of on-highway motor fuel use) toward achievement of the 2010 replacement fuel goal in EPCA section 502 or a revised goal, and even this extremely small contribution is highly uncertain. As a result, DOE cannot make either of the two determinations set forth in section 507(e), both of which must be determined in the affirmative before a private and local government fleet requirement program can be determined to be "necessary" and thus implemented. At this time, DOE cannot determine that the 2010 replacement fuel goal in EPCA (or a revised goal) is not expected to be achieved "without such a fleet requirement program," or that the replacement fuel goal can be achieved "through implementation of such a fleet requirement program" in combination with other means.

First, there are the limitations in EPCA itself, which include: (1) Limitations on the coverage of a private and local government fleet requirement program to only certain light-duty vehicle fleets; (2) procedures allowing case-by-case exemptions; and (3) DOE's lack of authority to require alternative or replacement fuel use or to create an effective substitute regulatory program. Second, even if DOE imposed AFV acquisition requirements, market conditions will encourage covered fleets to file petitions seeking modification and/or suspension of the entire fleet requirement program and/or its application to specific fleets and vehicles. Those conditions, which are likely to persist for the foreseeable future, are: (1) Lack of an alternative fuel infrastructure; (2) unavailability of suitable AFVs; and (3) high alternative

fuel costs (for certain fuels) relative to the costs of conventional motor fuels.

On the basis of the foregoing, DOE today proposes to determine that a private and local government fleet requirement program is not "necessary" under the standards set forth in EPCA section 507(e) and therefore cannot and should not be promulgated.

C. Determination for Fleet Requirements Covering Urban Transit Bus Option and Law Enforcement Vehicles

Section 507(k)(1) of EPCA provides in relevant part: "If the Secretary determines, by rule, that the inclusion of fleets of law enforcement motor vehicles in the fleet requirement program established under subsection (g) would contribute to achieving the [replacement fuel] goal described in section 502(b)(2)(B) * * * and the Secretary finds that such inclusion would not hinder the use of the motor vehicles for law enforcement purposes, the Secretary may include such fleets in such program * * *." (emphasis added). Section 507(k)(2) contains similar language with regard to new urban buses. 42 U.S.C. 13257(k)(1) and (2).

DOE considered whether to interpret section 507(k) to mean that law enforcement vehicle fleets and urban buses must be considered in making a determination under section 507(e) and (g) as to whether a private and local government fleet acquisition mandate program is "necessary" or, alternatively, whether a rulemaking to consider whether law enforcement fleets and urban buses should be covered by a fleet acquisition mandate only may follow completion of a rulemaking under section 507(e) and (g) that determines a private and local government fleet acquisition program is "necessary" and that promulgates such a program. In DOE's view, EPCA prohibits DOE from considering law enforcement vehicle fleets when making the "necessary" determination under sections 507(e) and (g) because such fleets are specifically excluded from the statutory definition of the term "fleet" (42 U.S.C. 13211(9)). Similarly, it is DOE's view that EPCA prohibits DOE from considering urban buses when making the "necessary" determination under sections 507(e) and (g) because the statutory definition of the term "fleet" is limited to "light duty vehicles" which are vehicles no more than 8,500 lbs. GVWR, and under the definition of "urban bus" referenced in section 507(k) and contained in 40 CFR 86.093-2, most urban buses would not qualify as light duty vehicles.

Furthermore, sections 507(k)(1) and (2) specifically refer to "the fleet

requirement program established under subsection (g)." In DOE's view, the better interpretation of section 507(g) is that it did not in and of itself "establish" a fleet requirement program. That section merely sets forth a vehicle acquisition schedule that, in order to have any applicability or force at all, must be implemented by DOE with a rule promulgated pursuant to a determination under section 507(e) that a private and local government fleet rule is "necessary." As a result, in order for section 507(k) to come into operation, a private and local government fleet program first must be "established" by DOE pursuant to the authority in sections 507(e) and (g). Although it is perhaps arguable that subsection (k) could be construed to merely refer to subsection (g) without the necessity for DOE to have first acted to establish a private and local fleet program under sections 507(e) and (g), this alternative interpretation is not as reasonable as DOE's interpretation in view of the text of the statutory definition of "fleet" and the use of that term in subsection (g).

Moreover, in DOE's view, this alternative interpretation is undesirable as a matter of policy. First of all, with respect to urban transit buses, during the earlier stages of this rulemaking some commenters argued that an AFV acquisition mandate should not be imposed on urban transit buses because the buses and their riders already were reducing petroleum consumption by the fact the riders were not using their personal cars. These commenters argued that imposing an AFV acquisition mandate could raise the cost of riding an urban transit bus, which could then reduce ridership and actually increase petroleum consumption by causing riders to return to driving their cars. DOE agrees with these concerns.

Second, and with respect to law enforcement vehicles, EPCA already expresses a policy that such vehicles should not be considered "fleets." DOE believes that, as a matter of policy, it should not seek to impose mandates on law enforcement authorities until a mandate first was extended to other local governmental fleets, both because the numbers are insufficient to appreciably change the overall analysis of the necessity or desirability of a private and local government fleet mandate program, and because commenters generally did not support imposing mandates on such fleets. Therefore, on the basis of the foregoing, today's rulemaking notice does not address law enforcement fleets and urban buses under section 507(k).