Rules and Regulations

Federal Register
Vol. 69, No. 19
Thursday, January 29, 2004

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH36

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –24PHB, and –32PT Revision; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an omission in a final rule appearing in the **Federal Register** on January 7, 2004 (69 FR 849). This action is necessary to add effective dates for Amendments 6 and 7 of Certificate of Compliance 1004.

EFFECTIVE DATE: This final rule became effective January 7, 2004.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

As published, the final rule entitled ''List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –24PHB, and –32PT Revision'' (January 7, 2004; 69 FR 849) contains an omission in § 72.214 which need to be added.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. Section 72.214, Certificate of Compliance 1004 is corrected to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: January 7, 2004.

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, NUHOMS®–24PHB, and NUHOMS®–32PT.

* * * * *

Dated at Rockville, Maryland, this 23rd day of January, 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 04–1900 Filed 1–28–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–03–001]

RIN No. 1904–AA98

Alternative Fuel Transportation Program; Private and Local Government Fleet Determination

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is publishing this final rule pursuant to the Energy Policy Act of 1992 (EPAct). In this final rule, DOE announces that it is not adopting a regulatory requirement that owners and operators of certain private and local government fleets acquire alternative fueled vehicles. DOE's decision is based on its findings that such a requirement would not appreciably increase the percentage of alternative fuel and replacement fuel used by motor vehicles

in the United States and thus would make no more than a negligible contribution to the achievement of the replacement fuel goals set forth in EPAct. As a result of these findings, DOE is precluded from promulgating a regulatory requirement for private and local government fleets because such a rule is not ''necessary'' within the meaning of EPAct. The findings and conclusions reached in this document are consistent with those proposed in DOE's March 4, 2003, notice of proposed rulemaking.

EFFECTIVE DATE: This rule is effective March 1, 2004.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking: Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9171; regulatory_info@afdc.nrel.gov. Copies of this final rule and supporting documentation for this rulemaking will be placed at the following Web site address: *http://www.ott.doe.gov/epact/private_fleets.shtml.* Interested persons also may access these documents using a computer in DOE's Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 2003, DOE published a notice of proposed rulemaking (NOPR) announcing its proposed determination not to promulgate regulations requiring private and local government fleets to acquire alternative fueled vehicles (AFVs). *See* 68 FR 10320. In the same notice, DOE also stated that it intended to forgo a determination concerning the achievability of the replacement fuel goals contained in EPAct. The NOPR invited the public to submit written comments and announced that DOE also would hold a hearing to receive public comment. In response, five written comments were submitted, and four statements were given at the public hearing held on May 7, 2003. The final rule issued today summarizes the comments received by DOE, and includes DOE's responses.

This final rule fulfills DOE's obligation under section 507(e) of EPAct (42 U.S.C. 13257(e)) to conduct a rulemaking to determine whether a private and local government fleet rule is necessary. DOE's final rule determines that a regulation requiring private and local government fleets to acquire AFVs is not ''necessary'' and, therefore, cannot be promulgated. The necessity determination is based on DOE's findings that a private and local government fleet vehicle acquisition mandate would not appreciably increase the percentage of alternative fuel or replacement fuel used in motor vehicles in the United States and thus would make no more than a negligible contribution to the achievement of EPAct's existing 2010 replacement fuel goal of 30 percent, or of a revised replacement fuel goal were one adopted.

The finding that the regulation by itself, if adopted, would not result in a meaningful increase in the percentage of alternative fuel or replacement fuel used by motor vehicles is based on the following factors. First and foremost, DOE has concluded that the number of fleets that would be covered by a private and local government fleet mandate and the number of AFV acquisitions that would occur in those fleets as a result of the mandate are too small to cause more than a negligible increase in the percentage of replacement fuel that is used as motor fuel. This is due in part to the limitations EPAct imposes on DOE's authority to promulgate a private and local government fleet AFV acquisition mandate. For example, a private and local government fleet program could only apply to light-duty vehicles (*i.e.*, less than or equal to 8,500 lbs. gross vehicle weight rating (GVWR)) and fleets of sufficient size that are located in certain metropolitan areas, and could not apply to a number of excluded vehicle classes and types (*e.g.*, rental vehicles, emergency vehicles, and vehicles garaged at residences overnight). It should be noted that automakers are already annually manufacturing several times the number of AFVs that would be required under this program. As a result, it is quite possible that a private and local government AFV acquisition mandate would not increase AFV production or sales at all, but rather would simply change the identity of the buyers of the vehicles. Therefore, increases in the production of AFVs due to the requirements of this fleet program are unlikely to occur.

Second, EPAct is structured such that even fleets potentially covered by a fleet mandate may avoid some or all of the acquisition requirements, if they qualify for one of the numerous exemptions set forth in the statute. This situation would still be expected to be an issue even if manufacturers continue to manufacture large numbers of FFVs because, in addition to requiring the right volume of AFVs, implementation of a fleet mandate would require the availability of the right combinations of vehicle models and alternative fuel types to meet fleets' operational needs. Based on experience with its existing fleet programs, DOE has found that the availability of some important vehicle types continues to be limited.

Third, even if DOE promulgated a private and local government fleet AFV acquisition mandate and substantial numbers of AFVs were acquired as a result, there is no assurance that the AFVs acquired by covered fleets would actually use replacement fuel. EPAct does not give DOE authority to require that vehicles acquired by private and local government fleets use any particular fuel. Moreover, DOE's experience with implementation of the Federal fleet, State fleet, and alternative fuel provider fleet programs required by EPAct leads DOE to conclude that given the current alternative fuel infrastructure and high alternative fuel costs relative to conventional motor fuels (despite availability of large total numbers of AFVs), market forces would prevent more than a very small increase in replacement fuel use in covered fleets, even if DOE were to impose a

private and local government fleet AFV vehicle acquisition requirement.

In the March 2003 NOPR, DOE also indicated that it did not intend in this rulemaking to revise the replacement fuel goals in EPAct, which call for replacement fuels to make up 10 percent and 30 percent of the total motor fuel used in the U.S. by 2000 and 2010, respectively. ''Replacement fuel'' is defined by EPAct to mean ''the portion of any motor fuel that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers,'' or any other fuel that the Secretary determines ''is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.'' ''Alternative fuel'' is defined to include many of the same types of fuels (such as methanol, ethanol, natural gas, liquid fuels domestically produced from natural gas, hydrogen and electricity), but also includes certain ''mixtures'' of alternative fuels blended with small portions of petroleum-based fuel and ''any other fuel the Secretary [of Energy] determines by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.'' (42 U.S.C. 13211) For example, a mixture of 85 percent methanol and 15 percent gasoline (by volume) 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 by volume), 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.''

In carrying out the rulemaking proceeding contemplated in section 507(e) of EPAct (42 U.S.C. 13257(e)), DOE is authorized to evaluate the replacement fuel goals and to modify them if they are not ''practicable and actually achievable * * * through implementation of * * * a fleet requirement program * * *'' and other means. DOE has concluded that it is not legally required to propose and finalize a revision of the replacement fuel goal as part of this rulemaking proceeding because, as indicated in the NOPR and in this final rule, the adoption of a revised goal would not impact its determination that a private and local government rule establishing a section 507(e) ''fleet requirements program'' would not provide any appreciable increase in replacement fuel use and is therefore not ''necessary'' within the meaning of section 507(e) of EPAct. DOE, however, will continue to evaluate this matter and may, if appropriate, modify the goals in the future. In the alternative, assuming arguendo that DOE is required to consider whether to revise the replacement fuel goal, DOE declines to revise for good cause, as explained below.

In addition, apart from the terms of section 507(e), DOE declines to broaden the scope of this rulemaking to encompass goal revision under section 504 because it is not an appropriate time to initiate such a rulemaking. A review of the current status of replacement fuels and alternative fuels reveals that only about 3 percent of total motor fuel use is non-petroleum. The NOPR acknowledged that meeting the 2010 goal of 30 percent would require extraordinary measures. DOE also expressed its belief that EPAct's replacement fuel goal is intended to establish an aggressive aspirational petroleum reduction target for the Federal government and the public. Based on its understanding of the purpose of the goal, DOE stated that it would be inappropriate and ill-advised to propose revising the goal downward at a time when the Administration and Congress are considering (and in some cases, already implementing) the passage of major new energy initiatives. These initiatives, discussed in greater detail in today's final rule, could significantly impact transportation motor fuel use and would have an important influence on any future replacement fuel goal. Based on these factors, DOE has decided that initiating a rulemaking to modify the replacement fuel goal at this time is not appropriate.

The final rule issued today addresses the March 4, 2003, NOPR and the comments received in response to it. It does not summarize the extensive actions that took place prior to March 4, 2003, with respect to this rulemaking. A detailed summary of those rulemaking proceedings is contained in the March 4, 2003, notice. In addition, DOE has established a Web site that contains information relating to this rulemaking activity. Persons interested in learning more about this rulemaking and its history should review the items contained on the Web site: *http://www.ott.doe.gov/epact/private_fleets.shtml.*

II. Discussion of Public Comments

In response to DOE's NOPR, five written comments were submitted, and four statements were given at the public hearing. The American Automobile Leasing Association (AALA), Congressman Joe Barton (R-TX), the Center for Biological Diversity (Center), the Electric Drive Transportation Association (ETDA), and Mr. J.E. Barker (Fleet Manager, City of Gadsden, Alabama), submitted written comments. The following individuals or organizations provided statements at the public hearing: AALA, the National Association of Fleet Administrators (NAFA), and Nic van Vuuren (Hampton Roads Clean City Coordinator). Two individuals presented separate testimonies on behalf of NAFA at the public hearing. The comments and statements are available on DOE's Web site.

These comments and statements can primarily be grouped according to whether they support or oppose DOE's proposed determination regarding adoption of a private and local government fleet mandate and the decision not to revise the replacement fuel goals contained in EPAct. However, the comments submitted by EDTA are not summarized below because they do not speak directly to the issues relevant to a determination under section 507(e) of EPAct. EDTA's comments instead urge DOE to support the adoption of incentives and to develop other programs that encourage the increased use of AFVs and alternative fuels.

A. Comments on Promulgating a Fleet Rule

The coordinator for the Hampton Roads Clean Cities Coalition (Nic van Vuuren), Mr. J.E. Barker (Fleet Manager, City of Gadsden, Alabama), and the Center each submitted comments opposing the proposed determination not to promulgate a new fleet rule. Mr. van Vuuren stated that DOE's NOPR ignores the fact that fleet AFV programs, including a private and local government fleet mandate, were intended to be a ''foundation for voluntary efforts,'' and were not expected by themselves to achieve the petroleum use reduction goals in EPAct. He also stated that the purpose of the replacement fuel goal in EPAct is not to achieve a specific percentage of petroleum replacement, but rather to further petroleum replacement in general. Therefore, he asserted that a private and local government fleet AFV acquisition requirement is necessary because it would contribute generally to petroleum replacement, even if it would not result in the achievement of the levels established in EPAct.

As DOE indicated in the NOPR, the existing fleet programs generate demand

for AFVs and alternative fuels to some extent and, in fact, account for a significant share of the existing market for each. However, EPAct establishes a much higher bar than that before DOE can promulgate a private and local government fleet regulation. Under section 507(e) of EPAct, it is not enough that a private and local government fleet AFV acquisition mandate simply increase the level of alternative or replacement fuel used; rather, in order for a mandate to be promulgated DOE must find that the 2010 goal actually is achieved ''through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs * * *.'' (42 U.S.C. 13257(e)).

As indicated in the NOPR, DOE estimates that implementation of the private and local government fleet AFV acquisition mandate could result in between 0.20–0.80 percent petroleum replacement. (*See* 68 FR 10339.) Several of the comments focused on the fact that the NOPR included an estimate that the private and local government fleet AFV acquisition mandate could potentially replace 1 percent of petroleum motor fuel use. However, the NOPR indicated that the 1 percent estimate overstates the potential impact that the program would have because the 1 percent estimate does not include motor fuel used in heavy-duty vehicles, primarily diesel fuel. If both light- and heavy-duty vehicle motor fuel use is considered, the maximum amount of replacement fuel use expected to result from a private and local government AFV acquisition mandate—even if EPAct required the AFVs to use alternative fuel—is only about 0.70–0.80 percent. While the Center questioned DOE's assertion that it could not require fuel use and expressed the view that DOE's fuel use projections were low, neither the Center nor any other commenter supplied any data or information to demonstrate that DOE's estimate was in error.

In DOE's view, the high relative cost of most alternative fuels makes it unlikely that the adoption of a private and local government fleet regulation would lead other fleets to voluntarily adopt alternative fuel programs or that some local governments might, as the coordinator for Hampton Roads indicated, adopt fuel use programs to compliment the vehicle acquisition requirement. In fact, representatives of fleet associations vigorously contested the idea that their members would voluntarily participate in any programs as long as the threat of future mandates exists.

The Center also submitted comments opposing DOE's proposed determination regarding whether to promulgate a private and local government fleet regulation. The Center commented that an AFV acquisition mandate for private and local government fleets ''will have a profound effect on the market for AFVs and alternative fuels.'' The Center asserted that a private and local government fleet regulation, if adopted, would significantly expand the number of AFVs acquired annually. However, the key consideration with respect to whether a private and local government fleet rule is necessary is not the number of AFVs that are acquired each year, but rather the resulting percentage of motor fuel use that will be replacement fuel. Thus, the number of AFVs that would be acquired under the program is largely irrelevant to the question of whether such a rule is ''necessary'' as that term is used in section 507(e).

The Center also argued that even if the private and local government fleet rule only provided a 1 percent reduction in petroleum consumption, this would not be insignificant given the amount of oil the U.S. consumes. This comment appears to imply that DOE could adopt a private and local government fleet regulation regardless of the actual amount of replacement fuel use that might result, and that a 1 percent reduction would be sufficient to justify the rule. As indicated above, the 1 percent estimate was based on earlier estimates of the potential impact of a private and local government fleet rule and it did not take into account fuel used in heavy-duty vehicles. As explained in the NOPR, DOE's analysis indicates that a private and local government fleet AFV acquisition mandate would replace at best between 0.20–0.80 percent of motor fuel consumption, with the probable amount toward the lower end of this range. (*See* 68 FR 10339.) In DOE's view, this amount of petroleum replacement is not sufficient to warrant such a program, and certainly is not enough to render the program ''necessary'' under the standards set forth in EPAct section 507(e).

The Center also argued that DOE underestimates the potential impact that a private and local government fleet rule would have by incorrectly concluding in the March 4, 2003 NOPR that DOE does not have legal authority to require private and local government fleets to use alternative fuels in their AFVs. In the NOPR, DOE said the following:

The only explicit requirement for fuel use in EPAct is contained in section 501, which extends only to alternative fuel provider fleets. Section 501(a)(4) states that ''vehicles purchased pursuant to this section shall operate solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable.'' Section 507, which concerns private and local fleets, does not contain similar provision, nor does it contain a provision either authorizing DOE to mandate fuel use or explicitly prohibiting DOE from mandating fuel use. Therefore, DOE recognizes that it may be argued that section 507's silence leaves the issue of imposing a requirement to use alternative fuel open to DOE rulemaking authority.

However, DOE believes the more appropriate interpretation is that, because Congress specifically required the use of alternative fuel in section 504(a)(4), but not in section 507, the omission was deliberate. As a result, DOE believes that Congress did not intend for DOE, when acting under section 507, to have the authority to promulgate regulations containing a requirement that fleet vehicles use particular types of fuel.

Although this textual analysis is sufficient to support DOE's determination that it should not impose a fuel use requirement under section 507(e) and (g), it also is worthwhile to revisit Congressman Philip Sharp's remarks when he called up the conference report on EPAct for House approval. Congressman Sharp was one of the key architects of EPAct, and the floor manager for the bill in the U.S. House of Representatives. Congressman Sharp said:

> Under section 501, covered persons must actually run their alternative fueled vehicles on alternative fuels when the vehicle is operating in an area where the fuel is available. This requirement was not included in the fleet requirement program under section 507, because the conferees were concerned that the alternative fuel providers might charge unreasonable fuel prices to the fleets that are not alternative fuel providers if such fleets were required to use the alternative fuel.

138 *Cong. Rec.* H11400 (October 5, 1992).

Thus, Congressman Sharp's floor statement is fully consistent with DOE's interpretation that it does not have statutory authority to mandate fuel use under section 507 fleet program, and that in enacting section 507, Congress specifically intended to withhold that authority from the agency.

See 68 FR 10338.

In evaluating the correctness of the foregoing statutory interpretation, DOE notes that the Center in its comments did not respond directly to the points that DOE made in the NOPR. The Center did not contest the relevance of either

DOE's textual comparison of sections 501 and 507 or the legislative history DOE quoted.

The Center instead relies exclusively on the text of section 507(g)(4) as the basis for its argument that DOE has authority under EPAct to require private and local government fleets to use alternative fuels in their AFVs. EPAct section 507(g)(4) reads as follows:

> A vehicle operating only on gasoline that complies with applicable requirements of the Clean Act Air shall not be considered an alternative fueled vehicle under subsection (b) or this subsection, except that the Secretary, as part of the rule under subsection (b) or this subsection, may determine that such vehicle should be treated as an alternative fueled vehicle for purposes of this section, for fleets subject to part C of title II of the Clean Air Act [42 U.S.C. 7581, *et seq.*], taking into consideration the impact on energy security and the goals stated in section 502(a).

(42 U.S.C. 13257(g)(4).) The Center appears to argue that section 507(g)(4) authorizes DOE to prohibit—and that DOE should exercise this authority to prohibit—private and local government fleets from complying with an AFV acquisition mandate by acquiring dual fueled or flexible fueled AFVs if these vehicles are operated only on gasoline (even though dual fueled and flexible fueled vehicles are, by definition, capable of operating on gasoline or diesel).

DOE believes that section 507(g)(4) is best read not as having the meaning ascribed to it by the Center, but rather as authorizing DOE to allow certain vehicles capable of (and thus necessarily) operating only on gasoline to be treated as AFVs for purposes of a fleet program promulgated under EPAct sections 507(b) and 507(g). The text, structure and context of section 507(g)(4) strongly militate against the construction of this section advanced by the Center, and in favor of DOE's construction.

DOE reads section 507(g)(4) as imposing the general rule, which is consistent with EPAct's definition of an AFV, that vehicles capable of and thus necessarily operating only on gasoline ordinarily may not be counted as AFVs. However, section 507(g)(4) allows DOE to treat some such vehicles as AFVs for purposes of a section 507 fleet program if it determines to do so after taking into consideration the impacts on energy security and the goals stated in EPAct section 502(a). Section 507(g)(4) thus was intended to allow DOE to mitigate the effect that a private and local government fleet rule otherwise might have on covered fleets under certain circumstances by expanding, not limiting, the vehicles that could be counted as AFVs for purposes of section 507. Therefore, DOE rejects the Center's argument that DOE mistakenly interpreted its authority under section 507(g)(4), and thus underestimated the amount of replacement fuel use that would result from a private and local government fleet program. If anything, DOE has overestimated resulting replacement fuel use by not accounting for the possibility that certain vehicles capable of operating solely on gasoline could be classified as AFVs for purposes of this program.

The Clean Air Act (CAA) Title II, Part C (the part of the CAA cited in EPAct section 507(g)(4)) addresses clean fuel vehicles and clean fuel fleets. Significantly, vehicles powered only by reformulated gasoline can meet the requirements of this Part, so long as they meet certain emission requirements. However, reformulated gasoline is not listed in EPAct as an alternative fuel, and because it is 80–90 percent petroleum, DOE previously has determined (in the notice of final rulemaking that established 10 CFR Part 490) that it cannot be designated as an ''alternative fuel'' under EPAct because it is ''substantially petroleum.'' Under EPAct section 301(2), DOE has the authority to add fuels to the statutory definition of ''alternative fuel'' only if, among other things, the fuel ''is substantially not petroleum'; the same is true with respect to ''replacement fuel'' under EPAct section 301(14).

DOE interprets section 507(g)(4) as authorizing DOE to allow a vehicle capable of operating only on gasoline and complying with the applicable clean fuel vehicle requirements under Title II of the CAA to be treated as an AFV for purposes of a fleet program under section 507, notwithstanding the exclusion of reformulated gasoline and diesel from EPAct's definition of ''alternative fuel,'' and even though the vehicle otherwise could not be counted as an AFV for purposes of an EPAct fleet program. This interpretation makes sense because, among other reasons, section 507(g)(4) explicitly provides that DOE can make this allowance only for fleets subject to both the EPAct section 507 and CAA Title II fleet programs. Given this interpretation, section 507(g)(4) does not mean, as the Center claims, that DOE has underestimated the amount of replacement fuel use that would result from a private and local government fleet rule. Rather, section 507(g)(4) provides DOE with authority which, if exercised, would reduce, not increase, the amount of replacement fuel use resulting from a private and local government fleet rule. DOE's interpretation is further supported by the fact that section 507(g)(4) appears in section 507 among various other subsections the clear object of which is to relieve the potential burdens that a private and local government fleet rule would place on covered fleets.

As DOE explained above, Congress displayed a willingness and ability to impose a fuel use requirement when and where it intended to do so, as it did in EPAct section 501. EPAct section 507(g)(4) does not contain any such explicit requirement. In light of the explicit terms with which Congress mandated fuel use in section 501, it would be incorrect to stretch the words of section 507(g)(4) to find a fuel use requirement, or an authorization for DOE to impose one.

Moreover, it is difficult to understand how the Center's proposed interpretation even makes sense or could be administered in practice. Dual fueled vehicles are by definition capable of operating on either alternative fuel or on gasoline or diesel; yet at any particular time a dual fueled vehicle is ''operating only'' (to use the words of section 507(g)(4)) on one particular fuel. Thus, if the Center's interpretation of section 507(g)(4) were to be adopted and DOE were to exercise its alleged authority to require covered fleets to use alternative fuels in their AFVs, a dual fueled vehicle would no longer be considered to be an AFV at any particular time it was operating on gasoline. Therefore, again under the Center's interpretation, the section potentially would prohibit (or authorize DOE to prohibit) a vehicle from being considered an AFV during any period in which it was in fact operated on gasoline, but allow the vehicle to be considered an AFV during any period of time when it was operated on an alternative fuel.

This interpretation would make section 507(g)(4) impossible to administer in practice. The Center has not indicated how such a requirement could be enforced, nor how vehicles operating on alternative fuels some of the time and gasoline at other times would be counted. Similarly, the Center did not clarify how a dual fueled vehicle would be counted when it was not operating at all—*i.e.*, when it was being garaged overnight. And since section 507(g)(4) speaks in terms of vehicles operated only on gasoline, its unclear how the Center would propose that DOE treat vehicles operating some or all of the time on diesel. Finally, the Center has not indicated if section 507(g)(4) should be interpreted as calling for the peculiar result of allowing dual fueled vehicles operating

all of the time on diesel to be counted as AFVs, but prohibiting dual fueled vehicles operating all of the time on gasoline from being counted as AFVs. Neither the Center nor any other commenter addressed these issues.

Finally, DOE is of the view that it would be inappropriate, as a matter of policy, to interpret section 507(g)(4) as authorizing DOE to impose a broad restriction on the use of gasoline in dual fueled vehicles for the purposes of a section 507 fleet program. DOE's interpretation of section 507(g)(4) is in keeping with the purpose of section 507, which is to promote acquisition of AFVs as a means of achieving replacement fuel goals while protecting covered fleets from bearing unfair financial burdens. The Center's proposed interpretation would result in imposition on private and local fleet operators of an unfunded mandate in the form of the higher costs of purchasing alternative fuels. Unfunded regulatory mandates of this nature have been disfavored at least since the enactment of the Unfunded Mandates Reform Act of 1995.

In summary, DOE believes its interpretation of section 507(g)(4) is both reasonable and consistent with the other sections of EPAct and with the Clean Air Act, and DOE declines to adopt the Center's proposed interpretation.

Comments supporting DOE's decision not to promulgate a fleet mandate were submitted by the AALA, Congressman Joe Barton (R-TX), and NAFA. AALA and NAFA, which represent hundreds of individual fleets and businesses that would be potentially covered by a private and local government fleet AFV acquisition mandate, agreed with DOE's analysis regarding the impact that a private and local fleet AFV acquisition mandate would have on the achievement of EPAct's replacement fuel goals and supported DOE's determination that such a mandate is not necessary.

AALA expressed the belief that the high cost of AFVs would make leasing costs prohibitive for many companies and that adoption of a fleet mandate would encourage more businesses to move away from leasing vehicles and toward employee-reimbursement programs, where employees operate their own vehicles and are reimbursed for expenses. EPAct excludes from its authorized fleet programs vehicles garaged at personal residences when not in use. Thus, AALA indicated that some fleets might also attempt to avoid having to comply with a private and local government fleet acquisition mandate by moving to employee reimbursement plans. AALA contended that this would not be conducive to cleaner air or energy efficiency because the vehicles owned and operated by employees would generally be less maintained, less fuel efficient, and more polluting than vehicles provided by leasing companies.

NAFA's comments reiterated concerns expressed to DOE in earlier rulemaking proceedings regarding the high cost of AFVs relative to non-AFVs, and the lack of supporting refueling infrastructure. Congressman Joe Barton, the Chairman of the Subcommittee on Energy and Air Quality of the U.S. House of Representatives Committee on Energy and Commerce, also submitted a short statement supporting DOE's proposed decision not to promulgate a fleet mandate and indicating his belief that efforts to increase the use of AFVs should be voluntary and market-oriented.

B. Comments on Revising the Replacement Fuel Goal

The Center comments fault the March 4, 2003, NOPR on the ground that DOE did not propose a revision of the 30 percent replacement fuel goal established for the year 2010 pursuant to sections 507(e) and 504 of EPAct. The Coordinator for the Hampton Roads Clean Cities Coalition also submitted comments arguing that DOE should have proposed a revision to the replacement fuel goals. In DOE's view, if an AFV acquisition mandate on private and local fleets under section 507(e) could make an appreciable contribution to achievement of a replacement fuel goal, there could be an obligation to consider revision of the existing 30 percent goal in this rulemaking. However, as explained in the NOPR and in this final rule (*see* section IV), DOE's analysis indicates that imposing such a vehicle acquisition mandate on private and local fleets would not appreciably increase the demand for and consumption of alternative fuels. Analysis of DOE's limited regulatory authority under title V of EPAct and existing market factors independently warrant a finding that a private and local fleet AFV acquisition mandate under section 507(e) is not ''necessary.'' Therefore, DOE is not required under section 507(e) to go further and revise EPAct replacement fuel goals.

DOE recognizes that section 504 of EPAct provides for ''periodic'' examination and revision of the statutory replacement fuel goals originally established in section 502(b) for reasons other than the requirement to make a necessity determination under section 507(e) of EPAct. More specifically, section 504(a) provides for DOE to publish in the **Federal Register** a notice providing an opportunity for public comment on the results of ''periodic'' examination of the statutory replacement fuel goals. However, as the word ''periodic'' indicates, section 504(a) generally leaves to DOE's discretion how often the statutory goals should be reexamined. More importantly, under section 504(b), DOE may only initiate a rulemaking proceeding to revise the statutory replacement fuel goals ''* * * after analysis of information in connection with carrying out subsection (a) * * *'' of section 504. In DOE's view, the pending legislative and the Administration proposals described in the March 4, 2003, NOPR (*see* 68 FR 10321) make it untimely to carry out a proceeding under subsection (a) of section 504. Furthermore, carrying out such a proceeding and broadening the scope of this rulemaking beyond section 507(e) would have likely delayed the issuance of this final rule.

On the basis of the foregoing, DOE rejects the Center's claim that DOE violated sections 507(e) and 504 of EPAct when it omitted a proposal to revise the statutory replacement fuel goals and declines to expand the scope of this rulemaking beyond issues necessary to comply with section 507(e).

C. Comments on Conducting an Environmental Assessment

The Center argues in its comments that DOE should have conducted an environmental assessment for its NOPR because this rulemaking does not qualify for application of the categorical exemption found in 10 CFR part 1021 at paragraph A.5 of appendix A to subpart D. Paragraph A.5 applies to: ''Rulemaking (interpreting/amending), no change in environmental effect.'' The Center first argues that paragraph A.5 does not apply to this rulemaking because DOE did not propose to ''* * * interpret or amend an existing rule * * *''. In the alternative, the Center argues that this rulemaking does not qualify for application of this categorical exemption because ''* * * DOE's decision not to promulgate a private and municipal fleet rule has a significant detrimental impact on the human environment by withholding action that would reduce petroleum consumption and its attendant environmental damage.''

DOE rejects the Center's first argument because this proceeding is a rulemaking to determine whether to amend 10 CFR part 490 by extending AFV acquisition mandates beyond alternative fuel providers under section

501 of EPAct and State government fleets under section 507(o) of EPAct to include mandates applicable to certain private and local government fleets under section 507(e) of EPAct. In DOE's view, the categorical exemption in paragraph A.5 applies to this rulemaking because DOE construes that exemption to cover rulemakings the purpose of which is to determine whether to amend an existing rule even if, as in this case, the rulemaking subsequently does not result in promulgation of amendatory language.

DOE also rejects the Center's argument that imposition of an AFV acquisition mandate would result in appreciable reductions in petroleum consumption. For the reasons explained in section II.A of this Supplementary Information, DOE has found that such a mandate would not have the effect of appreciably reducing petroleum consumption. On that basis, DOE continues to be of the view that a rulemaking determination for or against amending part 490 to impose such a mandate is environmentally neutral. Moreover, this rulemaking maintains the status quo with respect to private and local government fleets because it does not impose any new obligations or prohibitions on these fleets. For these reasons, an environmental assessment is not necessary.

III. Private and Local Government Fleet Determination

A. Statutory Requirements

Section 507(e) of EPAct directs DOE to determine whether private and local government fleets should be required to acquire AFVs. In this respect, the rulemaking process for a private and local government fleet rule is very different from DOE's 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 before it promulgated a fleet rule. (*See* 42 U.S.C. 13251.) The determination of whether to adopt regulations for private and local government fleets, however, is conditional and depends on DOE making several critical findings.

Sections 507(e) and 507(g), read together, authorize DOE to promulgate a private and local government fleet AFV acquisition mandate only if DOE determines such a program is ''necessary.'' 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).)

DOE believes that a determination of whether a private and local government fleet AFV acquisition mandate is ''necessary'' depends, in large part, on the following factors: the amount of replacement fuel use that would result if such a program was 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 Government Fleet Determination

1. Statutory Limitations

While EPAct authorizes DOE to mandate AFV 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 EPAct section 301(9), (42 U.S.C. 13211(9)), is limited in coverage only 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, such as medium- and heavy-duty vehicles, are also excluded from coverage.

Even for potentially covered fleets, EPAct 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 requirements and practices of the principal business of the fleet owner are not available in the area in which the vehicles are to be operated,'' or for government fleets, if the requirements of the mandate ''would pose an unreasonable financial hardship.'' Section 507(g)(3) further reinforces these exemptions: ''Nothing in [Title V of EPAct] shall be construed as requiring any fleet to acquire alternative fueled vehicles or alternative fuels that do not meet the normal business requirements and practices and needs of that fleet.''

Taken together, these statutory exemptions would likely dramatically lower the number of fleets and fleet vehicles subject to a private and local government AFV acquisition mandate. With respect to local government fleets, a number of these otherwise covered fleets might be exempted, for example, in times when local government budgets are particularly stretched and many local governments are required to cut services or raise taxes to maintain existing levels of service, since there will be greater likelihood that petitions for exemption from hard-pressed local governments would be granted. Even if DOE were disinclined to grant such petitions, the prospects that these petitions must be considered would create a ''stop and go'' quality about the local government portion of a private and local government fleet requirement program.

As explained in the NOPR and also in portions of the Supplementary Information for today's final rule, DOE lacks the authority under section 507 to require private and local government fleets to use alternative fuels in their AFVs. DOE's textual analysis of the statute and the legislative history provided in the NOPR (*see* 68 FR 10338) and above support its conclusion regarding its lack of authority to require fuel use. This lack of authority makes it doubtful that a fleet rule would have any appreciable impact on petroleum consumption. Many fleets might be compelled to buy AFVs, but would

operate the AFVs on petroleum-based fuels due to limited nature of the current alternative fuel infrastructure and the oftentimes high relative price of alternative fuels. DOE's experience with fleet programs demonstrates that vehicle acquisition requirements alone result in only a relatively small (in the context of overall U.S. fuel consumption) amount of petroleum replacement.

Finally, DOE is also limited in its authority to affect other market behavior. Section 504(c) precludes DOE from promulgating rules that would:

> * * * mandate the 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. Nothing in this Act shall be construed to give the Secretary authority to mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels.

(42 U.S.C. 13254(c).)

These limitations in EPAct severely restrict DOE's opportunities to affect the use of replacement fuel, or to establish the market conditions necessary to support a private and local government fleet rule. As a result, it is quite possible that a private and local government AFV acquisition mandate would not increase AFV production or sales at all, but rather would simply change the identity of the buyers of the vehicles.

In addition to all of the provisions discussed, Congress also enacted a petition provision in section 507(n). That section provides:

> As 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. In the event that the Secretary determines that a modification or suspension of the fleet requirements program on a regional basis would detract from the nationwide character of any fleet requirement program established by rule or would sufficiently diminish the economies of scale for the production of alternative fueled vehicles or alternative fuels and thereafter the practicability and effectiveness of such program, the Secretary may only modify or suspend the program nationally. The procedures shall include provisions for notice and public hearings. The Secretary shall deny or grant the petition within 180 days after filing.

(42 U.S.C. 13257(n).)

Thus, even if DOE had authority to require alternative fuel use, the ''normal requirements and practices'' provisions in sections 507(i)(1) and 507(g)(3), described above, and the petition procedure for modification or suspension of a fleet requirement program in section 507(n), would likely result in many fleets potentially covered by the fleet rule being able to obtain relief from the rule's requirements.

Title V of EPAct substantially limits the effectiveness of any private and local government fleet AFV acquisition program that might be promulgated under section 507. The nature of the exemption and petition procedures and the associated regulatory uncertainty undermine the potential effectiveness of a regulatory mandate to purchase significant numbers of AFVs. These factors support DOE's determination that a private and local government fleet program under section 507(g) would make no appreciable contribution to actual achievement of any replacement fuel goal and, therefore, is not ''necessary'' under the section 507(e) standard.

2. Analysis of Potential Replacement Fuel Use

Available analyses further support DOE's conclusion that only a very small amount of alternative or replacement fuel use would result from a private and local government fleet program. *Technical Report 14,* discussed in the NOPR, estimated total fuel use from all EPAct fleet programs to be approximately 1.2 percent of U.S. gasoline use (p. 63, table III–21).[1] DOE's *Section 506 Report*[2] was only slightly more optimistic, indicating that ''[a]lternative fuel use by EPAct covered fleets, even with the contingent mandates for private and local government fleets, is unlikely to provide more than about 1.5 percent replacement fuel use * * * '' *Section 506 Report* at p. 35. In either case, subtracting out the portion of replacement fuel use represented by the existing (Federal, State, and alternative fuel provider) fleet programs would leave the potential private and local government fleet program contribution closer to a maximum of 1 percent. However, both these earlier reports include calculations based only upon the percentage of light-duty gasoline fuel use. For purposes of the goals contained in EPAct, DOE believes that fuel replacement should be considered in the context of all on-highway motor fuel use, including heavy-duty vehicle fuel use, because the goals contained in section 502 of EPAct are to be considered in the context of the ''projected consumption of motor fuel in the United States.'' (42 U.S.C. 13252(b)(2).) This section does not refer only to light-duty fuel use. The figures provided in these earlier reports, when adjusted to reflect the impact on all on-highway motor fuel use, show that a private and local government fleet rule—even with a fuel use requirement, which as noted above DOE does not have the authority to impose—would provide at most on the order of 0.7–0.8 percent motor fuel replacement. After taking into account the fact that DOE has no authority to mandate fuel use, DOE estimates that a private and local government fleet AFV acquisition mandate would likely provide only about 0.2 percent motor fuel replacement.

Both the analyses in *Technical Report 14* and the *Section 506 Report* were conducted before DOE had much experience with implementation and operation of the EPAct fleet programs. DOE's experience with those programs now has shown that the number of fleets originally envisioned to be covered was far larger than the number of fleets covered in actual practice. DOE stated in the March 4, 2003, NOPR its belief that the figures in these reports probably overstate the potential impact of a private and local government fleet rule because they overestimate the total number of AFVs that would be acquired under such a program. This view is supported by analyses contained in a more recent DOE-supported report, *The Alternative Fuel Transition: Results from the TAFV Model of Alternative Fuel Use in Light-Duty Vehicles 1996–2000* (ORNL.TM2000/168) (September 17, 2000) [hereinafter *TAFV Model Report*], *http://pzl1.ed.ornl.gov/tafv99report31a_ornltm.pdf,* which incorporates more realistic assumptions regarding these fleet programs. The *TAFV Model Report* states that, ''In particular, over all of the price scenarios, we find that the [private and local government fleet] rule increases the alternative fuel penetration in 2010 from 0.12% (without the private and local government rule) to, at most, 0.37% [with a private and local government rule] of total fuel sales.'' *TAFV Model Report* at p. 28. Thus, this analysis placed contributions from the private and local government fleet rule

---

[1] *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) (1996).

[2] *See* Energy Efficiency and Renewable Energy, DOE, Replacement Fuel and Alternative Fuel Vehicle—Technical and Policy Analysis p. viii–ix (Dec. 1999—Amendments Sept. 2000); *http://www.ccities.doe.gov/pdfs/section506.pdf.*

at 0.25 percent. Like *Technical Report 14* and the *Section 506 Report,* these percentages were calculated based on the total fuel sales of the fuel used by light-duty vehicles only. Therefore, the contribution from a potential rule drops below 0.2 percent when evaluated as part of all on-highway motor fuel use.

No commenter presented any persuasive analysis or data to counter or dispute the data and conclusions in *Technical Report 14* or the *Section 506 Report.* The *TAFV Model Report* further supports the conclusions of the earlier reports. Therefore, DOE finds and concludes that a potential private and local fleet program under authority provided to DOE by EPAct section 507 would be expected to contribute, at best, an extremely small amount toward achievement of the replacement fuel goal (below 1 percent and likely below 0.2 percent of all on-highway motor fuel use). Even without the additional statutory limitations described above that EPAct places on such a private and local government fleet mandate, the contribution from such a mandate to the EPAct replacement fuel goals would be very small.

3. Infrastructure and Fuel Availability

Throughout the proceedings associated with this rulemaking (including the advanced notice of proposed rulemaking and public workshops), numerous comments received by DOE expressed concern that the level of alternative fuel infrastructure is not adequate to support a private and local government fleet rule. In the NOPR, DOE noted that alternative fuel provider investments in alternative fuel infrastructure actually have slowed down in recent years. Shortly after EPAct's passage in 1992, a significant number of natural gas and electric utilities entered the transportation fuels market, hoping to market alternative fuels to fleets subject to the Clean Air Act and EPAct. The number of alternative fuel stations, natural gas stations in particular, grew from little more than a handful to several thousand by the end of the 1990s. While the number of ethanol refueling stations has grown over the past few years, the total number of alternative fuel stations appears to have stalled or slightly declined. *See* Department of Energy, Alternative Fuel Data Center, *Refueling Stations (http://www.afdc.doe.gov/refuel/state_tot.shtml)* (Dec. 2002) [hereinafter *AFDC Refueling Stations].* Restructuring in the utility industry has played a significant part in the reduced investment by utilities in alternative fuel stations and therefore in the lack of growth in the total number of alternative fuel stations.

In the NOPR, DOE stated that the ethanol industry has made only a limited investment in building infrastructure for supplying E–85, the fuel used by ethanol FFVs, of which there are several million in service today. The ethanol industry has primarily focused its attention on supplying the gasohol and gasoline-oxygenate market. Consequently, today there are only approximately 180 fueling outlets nationwide that provide E–85. *See AFDC Refueling Stations (http://www.afdc.doe.gov/refueling.html).* Some efforts are underway to expand the number of E–85 refueling sites. However, the number of E–85 stations would have to grow significantly to have a measurable impact on overall U.S. motor fuel consumption.

As DOE explained in the NOPR, major energy suppliers, principally oil companies, have largely been unwilling to date to invest in the alternative fuels market (or they have actively opposed it) and instead have primarily focused their attention on ensuring that gasoline and diesel fuels meet current and future environmental regulations. No commenter disputed the discussion in the NOPR regarding this issue. Thus, DOE does not expect that the major oil and fuel retailers would install the infrastructure necessary to support alternative fuel use by AFVs were DOE to promulgate a private and local government fleet mandate, given the extremely small amount of replacement fuel use that likely would result from such a mandate; certainly that infrastructure is not in place now. This limited infrastructure would likely result in exemption requests and petitions to suspend any fleet requirement program DOE might impose under section 507(e), and DOE possibly granting these requests.

4. AFV Availability

Automakers have for several years now offered some variety of AFVs, including passenger cars, light-duty pickup trucks and vans. The availability of these vehicles stands in stark contrast to when EPAct was enacted. In 1992, there were virtually no original equipment manufacturer (OEM) vehicles available that operated on alternative fuel. Consumers and fleets had to have existing gasoline vehicles converted by aftermarket shops if they wanted AFVs. The AFVs that are available today are built by auto manufacturers for two primary purposes: (1) To provide credits to automakers that can be used to meet the corporate average fuel economy (CAFE) standards; and, (2) to meet the needs of the fleets currently subject to fleet mandates.

Automobile manufacturers are awarded CAFE credits as an incentive to develop AFVs. The sale of these vehicles in turn could potentially lead to the development of infrastructure to support alternative fuel use. Data available to DOE indicates that manufacturers currently offer over a million new flexible fuel vehicles (FFVs) each year (at virtually no incremental purchase price). Other AFVs (such as gaseous fuel vehicles) are available in significantly lower numbers, and generally combine for a total of less than 10,000 vehicles per year (often at incremental purchase prices of approximately $2000 to $8000).

It should be noted that the total number of AFVs available each year is several times the number projected to be required to meet the annual acquisition requirements of a private and local government AFV fleet program. We believe such a fleet program would be unlikely to result in large numbers of additional AFVs being produced because most AFVs are manufactured as a result of the CAFE incentive provisions contained in the Alternative Motor Fuels Act of 1988 (AMFA) (49 U.S.C. 32905), and the ability to earn additional credits is constrained. Therefore, DOE expects that, for the most part, imposition of a private and local government AFV fleet program would largely result in a shift of these already-available vehicles to fleets covered under this program. No commenter explained why a different outcome might reasonably be expected.

DOE is also concerned that if it were to adopt a requirement for private and local government fleets to acquire AFVs, there may not necessarily be the right mix of vehicle types required by fleets. DOE explained this concern in the NOPR and no commenter offered any information or explanation why DOE's concern was not well-grounded. *See* 68 FR at 10340. The number of AFVs that likely would be acquired under a private and local government fleet mandate are, in DOE's view and based on the comments it has received, insufficient to create the market demand that would cause manufacturers to modify their product plans and build the range of models and fuel type combinations required by fleets. It should be noted that section 504(c) of EPAct (42 U.S.C. 13254(c)) expressly prohibits DOE from mandating the production of AFVs or to specify the types of AFVs that are made available.

Under the existing State government and alternative fuel provider fleet programs, DOE has been obliged to provide a number of exemptions to fleets that were unable to acquire AFVs that meet their ''normal requirements and practices.'' Unless automakers significantly expand their current offerings of AFVs, DOE likely would be forced to process and approve thousands of exemption requests each year made by private and local government fleets, thus further watering down the effect a private and local government fleet mandate would have in causing use of alternative fuels.

5. Alternative Fuel Costs and Alternative Fuel Use

At the present time, the cost of some alternative fuels (such as biofuels) exceeds the cost of conventional motor fuel, and it is reasonable to assume that, absent changes in technology, in the supply of petroleum, or in policy as established by law, this price differential will continue and will influence fleet owners and operators for the foreseeable future. DOE set forth this assumption in the NOPR, and no commenters offered any evidence or persuasive arguments to dispute it. *See* 68 FR at 10340. The likely effect of the price differential is predictable in light of DOE's experience in administering the State government fleet requirement program under section 507(o) of EPAct. Most State government fleets are acquiring significant numbers of FFVs and operating them lawfully using conventional motor fuels. Although this practice in part may be a function of lack of ready access to sufficient alternative fuel infrastructure, the fuel cost differential of ethanol (in some geographic areas) is likely a contributing factor.

6. Summary of Determination

DOE determines that a private and local government fleet AFV acquisition mandate under sections 507(e) and (g) of EPAct is not ''necessary,'' and, therefore, DOE is precluded from imposing it. Such a mandate would make no appreciable contribution (from less than 0.2 percent to a maximum of 0.8 percent of on-highway motor fuel use) toward achievement of the 2010 replacement fuel goal in EPAct section 502 or a revised goal, and even this extremely small contribution is highly uncertain.

As a result, DOE cannot make the determinations set forth in section 507(e), both of which must be made in the affirmative before a private and local government fleet requirement program can be determined to be ''necessary'' and thus implemented. DOE cannot determine that the 2010 replacement fuel goal in EPAct (or a revised goal) will not be achieved ''without such a fleet requirement program'' because the existence of the fleet rule would have no appreciable impact (indeed almost no measurable impact at all) on the goal's achievement. For the same reason, DOE cannot determine that the replacement fuel goal can be achieved ''through implementation of such a fleet requirement program'' in combination with other means.

DOE has come to these conclusions for all of the reasons explained above. To summarize, there are the limitations in EPAct 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. In addition, 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, are: (1) Lack of ready access to sufficient alternative fuel infrastructure; (2) limited availability 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 determines that a private and local government fleet requirement program is not ''necessary'' under the standards set forth in EPAct section 507(e) and, therefore, will not be promulgated.

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

Section 507(k)(1) of EPAct 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)). Both section 507(k)(1) and 507(k)(2) limit DOE to only one rulemaking opportunity for implementing requirements for law enforcement and urban bus fleets.

As discussed in the NOPR, DOE considered interpreting section 507(k) to mean that law enforcement vehicle fleets and urban buses could be considered as part of the determination process under sections 507(e) and (g) as to whether a private and local government fleet AFV acquisition mandate program is ''necessary.'' DOE, however, believes that EPAct only allows it to consider whether law enforcement fleets and urban buses should be covered by a fleet acquisition mandate after DOE has completed the rulemaking contemplated by sections 507(e) and (g), and only if DOE has determined that a private and local government fleet acquisition program is ''necessary.'' DOE does not believe that these programs can be considered as part of the rulemaking that section 507(e) directs DOE to conduct regarding private and local government fleets. This view is supported by the fact that the provisions relating to law enforcement vehicles and urban buses require DOE to conduct separate rulemakings to consider whether to adopt these programs.

DOE further interprets EPAct to prohibit 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 EPAct 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.

No commenter presented any persuasive argument as to why DOE's interpretation of sections 507(k), 507(e) and 507(g) as discussed in this section C of this Supplementary Information is incorrect. Thus, since DOE is not adopting a private and local government fleet requirement, it also is precluded from adopting a fleet requirement for law enforcement vehicles and urban buses.

IV. Replacement Fuel Goal

DOE has decided not to modify the 2010 replacement fuel goal of 30 percent in this final rule. As noted earlier, the process of determining whether to adopt

an AFV acquisition mandate for private and local government fleets depends on whether such a rule is ''necessary'' to achieve EPAct's petroleum replacement fuel goals. As part of the process of evaluating whether to propose AFV acquisition mandates for private and local government fleets pursuant to EPAct section 507, DOE reviewed the replacement fuel goals in EPAct section 502 and considered whether to revise them, but decided for several reasons that it would not propose any such modifications.

DOE has decided not to propose or finalize any revisions to the replacement fuel goal because, first, DOE does not believe that EPAct requires it to revise the petroleum replacement fuel goal in order to determine whether a private and local government fleet rule is ''necessary.'' Revising the goal as part of this rulemaking would serve no purpose because, as indicated in the NOPR and in this final rule, the adoption of a revised goal would not impact DOE's determination that a private and local government fleet rule provides no appreciable increase in replacement fuel use. In addition, the limited regulatory authority under Title V of EPAct and existing market factors independently warrant a finding that an AFV acquisition mandate under section 507(e) is not ''necessary.'' Therefore, DOE is not required under section 507(e) to revise the EPAct 2010 percent replacement fuel goal, since it would not influence DOE's decision regarding whether or not to implement a private and local government fleet regulation.

Second, DOE believes that revising the 2010 replacement fuel goal at this time would not serve the aims of EPAct to promote or encourage the use of replacement fuels. Congress created by statute (in EPAct section 502(b)(2)) an initial national goal of using replacement fuels for at least 10 percent of motor fuel used in the United States by 2000, and a long-term goal of at least 30 percent by 2010, on a petroleum fuel energy equivalent basis. Neither the text of EPAct nor the legislative history explains why Congress chose these particular goals and dates. Nor does the text or legislative history provide any analysis supporting them. However, and in light of the overall purposes of EPAct, DOE believes that Congress set these particular goals to establish aggressive aspirational petroleum reduction targets for the Federal government and the public. Congress apparently intended to encourage action that would aggressively advance the availability and use of replacement fuels. DOE believes that the goals in EPAct were intended to encourage actions that would lead to significant increases in replacement fuel use.

Since EPAct's enactment in late 1992, the Federal government has implemented a number of regulatory and voluntary programs in an effort to increase the use and availability of replacement fuels. While these programs have increased the availability of AFVs and the use of alternative fuels and replacement fuels, these programs have not had the desired effect of greatly increasing the availability or use of alternative and replacement fuels, or of causing the use of replacement fuels to become a viable alternative, on a large-scale basis, to the use of petroleum-based fuels in vehicles. The result is that although the use of replacement and alternative fuels has increased since 1992, the overall use of these fuels relative to total petroleum consumption remains relatively small. In 1992, replacement fuels accounted for slightly less than 2 percent of total motor fuel consumption; by 2001, replacement fuels accounted for less than 3 percent. *See Transportation Fuels 2000* at Table 10. Thus, to date, very little progress has been made toward achieving the aggressive replacement fuel goals established by EPAct and little progress will be made in the future without major new initiatives.

At the same time, DOE takes note of the fact that Congress is currently considering 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. Moreover, the President and DOE have proposed bold initiatives to dramatically increase the availability, use and commercial viability of replacement fuels in the transportation sector. DOE's transportation efforts are focused on the goal of developing advanced motor vehicle technologies (such as hydrogen-based fuel cells) that could someday significantly offset demand for petroleum motor fuels. These efforts also support the shorter-term objective of more efficiently utilizing existing petroleum resources. These efforts, if fully supported with necessary enabling legislation and funding as DOE has proposed, offer the potential to achieve the long-term EPAct goal of replacing petroleum as the primary transportation fuel.

In light of the momentum that these various efforts are gaining; in light of what DOE understands to be the principal purpose of EPAct's replacement goals in section 502(b)(2)—to encourage policymakers, industry and the public to engage in aggressive action to expand the use of alternative and replacement fuels; and in light of the possibility of new legislation that would have significant bearing on these issues, DOE has concluded that it should not make a determination under EPAct concerning the achievability of the 2010 goal at this time. Therefore, DOE is not modifying the 2010 replacement fuel goal set forth in EPAct section 502(b)(2). DOE will continue to evaluate this issue and may in the future, if it considers it appropriate, review and modify the 2010 replacement fuel goal pursuant to its authority in EPAct Title V.

V. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. Executive Order 12988 does not apply to this rulemaking because DOE has determined that a private and local government fleet program is not ''necessary'' under sections 507(e) and (g) of EPAct, and, therefore, DOE is not promulgating regulations to implement such a program.

VI. Review Under Executive Order 12866

This regulatory action has been determined to be a ''significant

regulatory action'' under Executive Order 12866, Regulatory Planning and Review. *See* 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

VII. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 63461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.* DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE's negative determination under EPAct section 507(e) will not impose compliance costs on small entities. On the basis of the foregoing, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

VIII. Review Under the Paperwork Reduction Act

Because DOE has determined not to promulgate requirements for private and local government fleets, no new record keeping requirements, subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, would be imposed by today's regulatory action.

IX. Review Under the National Environmental Policy Act

This rule determines that a regulatory requirement for the owners and operators of certain private and local government light-duty vehicle fleets to acquire AFVs would make no appreciable contribution to actual achievement of the replacement fuel goal in EPAct or a revised goal, and, therefore, is not ''necessary'' under EPAct section 507(e). The negative determination regarding the necessity for a private and local government fleet requirement program will not require any government entity or any member of the public to act or to refrain from acting. Accordingly, for this reason and reasons discussed in section II.C of the Supplementary Information, DOE has determined that its determination is covered under the Categorical Exclusion found at paragraph A.5 of appendix A to subpart D, 10 CFR Part 1021, which applies to rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being interpreted or amended.

X. Review Under Executive Order 13132

Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's determination and determines that it will not preempt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

XI. Review of Impact on State Governments—Economic Impact on States

Section 1(b)(9) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), established the following principle for agencies to follow in rulemakings: ''Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated State, local and tribal regulatory and other governmental functions.''

Because DOE has determined that a private and local government fleet AFV program is not ''necessary'' under section 507(e) and, therefore, is not promulgating such a program, no significant impacts upon State and local governments are anticipated. The position of State fleets currently covered under the existing EPAct fleet program is unchanged by this action. Prior to issuance of its NOPR, DOE sought and considered the views of State and local officials. The March 4 NOPR contains a full discussion of these consultations. *See* 68 FR 10320.

XII. Review Under Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires each Federal agency to assess the effects of Federal regulatory actions on State, local and tribal governments and the private sector. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published in the **Federal Register** a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820). The final rule published today does not propose or contain any Federal mandate, so the requirements of the Unfunded Mandates Reform Act do not apply.

XIII. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's action will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

XIV. Review of Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has

reviewed today's final rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

XV. Review Under Executive Order 13175

Under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), 65 FR 67249 (November 9, 2000), DOE is required to consult with Indian tribal officials in development of regulatory policies that have tribal implications. Today's action would not have such implications. Accordingly, Executive Order 13175 does not apply to this final rule.

XVI. Review Under Executive Order 13045

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), 62 FR 19885 (April 23, 1997), contains special requirements that apply to certain rulemakings that are economically significant under Executive Order 12866. Today's action is not economically significant. Accordingly, Executive Order 13045 does not apply to this rulemaking.

XVII. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001), requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. A determination that a private and local government fleet AFV acquisition program is not ''necessary'' under EPAct section 507(e) does not require private and local government fleets, suppliers of energy, or distributors of energy to do or to refrain from doing anything. Thus, although today's negative determination is a significant regulatory action, the finalization of this determination will not have a significant adverse impact on the supply, distribution, or use of energy. Consequently, DOE has concluded there is no need for a Statement of Energy Effects.

XVIII. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

XIX. Approval by the Office of the Secretary

The issuance of the final rule for the Private and Local Government Fleet Determination has been approved by the Office of the Secretary.

Issued in Washington, DC, on January 23, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 04–1923 Filed 1–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–28–AD; Amendment 39–13438; AD 2004–02–03]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Agusta S.p.A. (Agusta) model helicopters that requires modifying each passenger compartment sliding door (door) by applying a kit to replace the levers and links. This amendment is prompted by instances of a door inadvertently opening during flight due to the unstable configuration of the door. The actions specified by this AD are intended to prevent the inadvertent opening of a door during flight and loss of a passenger or other objects from the cabin.

DATES: Effective March 4, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified Agusta model helicopters was published in the **Federal Register** on October 22, 2003 (68 FR 60300). That action proposed to require modifying the doors by installing a new lever and link and other hardware contained in kits, part number (P/N) 109–0823–25–101 (left hand) and P/N 109–0823–25–102 (right hand).

The Ente Nazionale per l'Aviazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109E helicopters. ENAC advises that the doors should be modified.

Agusta has issued Alert Bollettino Tecnico No. 109EP–33, dated March 19, 2003 (ABT), which specifies modifying the opening and closing mechanism of the passenger compartment sliding doors by installing a new lever and a new link to avoid the possibility of the mechanism not reaching the stowed position. Agusta reports the accidental opening during flight of one of the doors, on a few helicopters, without any harm to the passengers. ENAC classified this ABT as mandatory and issued AD No. 2003–109, dated March 27, 2003, to ensure the continued airworthiness of these helicopters in Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 34 helicopters of U.S. registry, and the required actions will take approximately 4 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $3000 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $110,840 ($3260 per helicopter). However Agusta states in its ABT that it will supply the parts at no cost and will reimburse up to 4 work hours to modify the doors at a fixed rate of $40. Assuming this warranty coverage, the estimated total cost impact of this AD on U.S. operators is $3400 ($100 per helicopter).

The regulations adopted herein will not have a substantial direct effect on