

(3) the actual and potential availability of various domestic replacement fuels and dedicated vehicles and dual fueled vehicles.

(c) Publication

The Secretary shall publish a proposed version of each analysis under this section in the Federal Register for public comment before transmittal to the President and the Congress. Public comment received in response to such publication shall be preserved for use in rulemaking proceedings under section 13257 of this title.

(Pub. L. 102-486, title V, §506, Oct. 24, 1992, 106 Stat. 2891.)

§ 13257. Fleet requirement program

(a) Fleet program purchase goals

(1) Except as provided in paragraph (2), the following percentages of new light duty motor vehicles acquired in each model year for a fleet, other than a Federal fleet, State fleet, or fleet owned, operated, leased, or otherwise controlled by a covered person subject to section 13251 of this title, shall be alternative fueled vehicles:

(A) 20 percent of the motor vehicles acquired in model years 1999, 2000, and 2001;

(B) 30 percent of the motor vehicles acquired in model year 2002;

(C) 40 percent of the motor vehicles acquired in model year 2003;

(D) 50 percent of the motor vehicles acquired in model year 2004;

(E) 60 percent of the motor vehicles acquired in model year 2005; and

(F) 70 percent of the motor vehicles acquired in model year 2006 and thereafter.

(2) The Secretary may not establish percentage requirements higher than those described in paragraph (1). The Secretary may, if appropriate, and pursuant to a rule under subsection (b) of this section, establish a lesser percentage requirement for any model year. The Secretary may, by rule, establish a date later than 1998 (or model year 1999) for initiating the fleet requirements under paragraph (1).

(3) The Secretary shall publish an advance notice of proposed rulemaking for the purpose of—

(A) evaluating the progress toward achieving the goals of replacement fuel use described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(B) identifying the problems associated with achieving those goals;

(C) assessing the adequacy and practicability of those goals; and

(D) considering all actions needed to achieve those goals.

The Secretary shall provide for at least 3 regional hearings on the advance notice of proposed rulemaking, with respect to which official transcripts shall be maintained. The comment period in connection with such advance notice of proposed rulemaking shall be completed within 7 months after publication of the advance notice.

(4) After the completion of such advance notice of proposed rulemaking, the Secretary shall publish in the Federal Register a proposed rule for the rule required under subsection (b) of this

section, and shall provide for a public comment period, with hearings, of not less than 90 days.

(b) Early rulemaking

(1) Not earlier than 1 year after October 24, 1992, and after carrying out the requirements of subsection (a) of this section, the Secretary shall initiate a rulemaking to determine whether a fleet requirement program to begin in calendar year 1998 (when model year 1999 begins), or such other later date as he may select pursuant to subsection (a) of this section, is necessary under this section. Such rule, consistent with subsection (a)(1) of this section, shall establish the annual applicable model year percentage. No rule under this subsection may be promulgated after December 15, 1996, and be enforceable. A fleet requirement program shall be considered necessary and a rule therefor shall be promulgated if the Secretary finds that—

(A) the goal of replacement fuel use described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, is not expected to be actually achieved by 2010, or such other date as is established under section 13254 of this title, by voluntary means or pursuant to this subchapter 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 13252(b)(2)(A) of this title, as modified under section 13254 of this title;

(B) such goal is practicable and actually achievable within periods specified in section 13252(b)(2) of this title, as modified under section 13254 of this title, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals; and

(C) by 1998 (when model year 1999 begins) or the date specified by the Secretary in such rule for initiating a fleet requirement program—

(i) there exists sufficient evidence to ensure that the fuel and the needed infrastructure, including the supply and deliverability systems, will be installed and located at convenient places in the fleet areas subject to the rule and will be fully operational when the rule is effective to offer a reliable and timely supply of the applicable alternative fuel at reasonable costs (as compared to conventional fuels) to meet the fleet requirement program, as demonstrated through use of the provisions of section 13255(1) of this title regarding voluntary commitments or other adequate, reliable, and convincing forms of agreements, arrangements, or representations that such fuels and infrastructure are in existence or will exist when the rule is effective and will be expanded as the percentages increase annually;

(ii) there will be a sufficient number of new alternative fueled vehicles from original equipment manufacturers that comply with all applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] and chapter 301 of title 49;

(iii) such new vehicles will meet the applicable non-Federal and non-State fleet per-

formance requirements of such fleets (including range, passenger or cargo-carrying capacity, reliability, refueling capability, vehicle mix, and economical operation and maintenance); and

(iv) establishment of a fleet requirement program by rule under this subsection will not result in unfair competitive advantages or disadvantages, or result in undue economic hardship, to the affected fleets.

(2) The Secretary shall not promulgate a rule under this subsection if he is unable to make affirmative findings in the case of each of the subparagraphs under paragraph (1), and each of the clauses under subparagraph (C) of paragraph (1).

(3) If the Secretary does not determine that such program is necessary under this subsection, the provisions of subsection (e) of this section shall apply to the consideration in the future of any fleet requirement program. The record of this rulemaking, including the Secretary's findings, shall be incorporated into a rulemaking under that subsection. If the Secretary determines under this subsection that such program is necessary, the Secretary shall not initiate the later rulemaking under subsection (e) of this section.

(c) Advance notice of proposed rulemaking

Not later than April 1, 1998, the Secretary shall publish an advance notice of proposed rulemaking for the purpose of—

(1) evaluating the progress toward achieving the goals of replacement fuel use described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(2) identifying the problems associated with achieving those goals;

(3) assessing the adequacy and practicability of those goals; and

(4) considering all actions needed to achieve those goals.

The Secretary shall provide for at least 3 regional hearings on the advance notice of proposed rulemaking, with respect to which official transcripts shall be maintained. The comment period in connection with such advance notice of proposed rulemaking shall be completed within 7 months after publication of the advance notice.

(d) Proposed rule

Before May 1, 1999, the Secretary shall publish in the Federal Register a proposed rule for the rule required under subsection (g) of this section, and shall provide for a public comment period, with hearings, of not less than 90 days.

(e) Determination

(1) Not later than January 1, 2000, the Secretary shall, through the rule required under subsection (g) of this section, determine whether a fleet requirement program is necessary under this section. Such a program shall be considered necessary and a rule therefor shall be promulgated if the Secretary finds that—

(A) the goal of replacement fuel use described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, is not expected to be actually achieved by 2010,

or such other date as is established under section 13254 of this title, by voluntary means or pursuant to this subchapter 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 13252(b)(2)(A) of this title, as modified under section 13254 of this title; and

(B) such goal is practicable and actually achievable within periods specified in section 13252(b)(2) of this title, as modified under section 13254 of this title, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals.

(2) The rule under subsection (b) or (g) of this section shall also modify the goal described in section 13252(b)(2)(B) of this title and establish a revised goal pursuant to section 13254 of this title if the Secretary determines, based on the proceeding required under subsection (a) or (c) of this section, that the goal in effect at the time of that proceeding is inadequate or impracticable, and not expected to be achievable. Such goal as modified and established shall be applicable in making the findings described in paragraph (1). If the Secretary modifies the goal under this paragraph, he may also modify the percentages stated in subsection (a)(1) or (g)(1) of this section and the minimum percentage stated in subsection (a)(2) or (g)(2) of this section shall be not less than 10 percent.

(f) Explanation of determination that fleet requirement program is not necessary

If the Secretary determines, based on findings under subsection (b) or (e) of this section, that a fleet requirement program under this section is not necessary, the Secretary shall—

(1) by December 15, 1996, with respect to a rulemaking under subsection (b) of this section; and

(2) by January 1, 2000, with respect to a rulemaking under subsection (e) of this section,

publish such determination in the Federal Register as a final agency action, including an explanation of the findings on which such determination is made and the basis for the determination.

(g) Fleet requirement program

(1) If the Secretary determines under subsection (e) of this section that a fleet requirement program is necessary, the Secretary shall, by January 1, 2000, by rule require that, except as provided in paragraph (2), of the total number of new light duty motor vehicles acquired for a fleet, other than a Federal fleet, State fleet, or fleet owned, operated, leased, or otherwise controlled by a covered person under section 13251 of this title—

(A) 20 percent of the motor vehicles acquired in model year 2002;

(B) 40 percent of the motor vehicles acquired in model year 2003;

(C) 60 percent of the motor vehicles acquired in model year 2004; and

(D) 70 percent of the motor vehicles acquired in model year 2005 and thereafter,

shall be alternative fueled vehicles.

(2) The Secretary may not establish percentage requirements higher than those described in paragraph (1). The Secretary may, if appropriate, and pursuant to a rule under subsection (g) of this section, establish a lesser percentage requirement for any model year. The Secretary may, by rule, establish a date later than 2002 (when model year 2003 begins) for initiating the fleet requirements under paragraph (1).

(3) Nothing in this subchapter 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.

(4) A vehicle operating only on gasoline that complies with applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] shall not be considered an alternative fueled vehicle under subsection (b) of this section or this subsection, except that the Secretary, as part of the rule under subsection (b) of this section 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 13252(a) of this title.

(h) Extension of deadlines

The Secretary may, by notice published in the Federal Register, extend the deadlines established under subsections (e), (f)(2), and (g) of this section for an additional 90 days if the Secretary is unable to meet such deadlines. Such extension shall not be reviewable.

(i) Exemptions

(1) A rule issued under subsection (b), (g), or (o) of this section shall provide for the prompt exemption by the Secretary, through a simple and reasonable process, of any fleet from the requirements of subsection (b), (g), or (o) of this section, in whole or in part, if it is demonstrated to the satisfaction of the Secretary that—

(A) alternative fueled vehicles that meet the normal requirements and practices of the principal business of the fleet owner are not reasonably available for acquisition;

(B) 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

(C) in the case of State and local government entities, the application of such requirements would pose an unreasonable financial hardship.

(2) In the case of private fleets, if the motor vehicles, when under normal operations, are garaged at personal residences at night, such motor vehicles shall be exempt from the requirements of subsections (b) and (g).

(j) Conversions

Nothing in this subchapter or the amendments made by this subchapter shall require a fleet owner to acquire conversion vehicles.

(k) Inclusion of law enforcement vehicles and urban buses

(1) 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) of this section would contribute to achieving the goal described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, 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. The Secretary may only initiate one rulemaking under this paragraph.

(2) If the Secretary determines, by rule, that the inclusion of new urban buses, as defined by the Administrator under title II of the Clean Air Act [42 U.S.C. 7521 et seq.], in a fleet requirement program established under subsection (g) of this section would contribute to achieving the goal described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, the Secretary may include such urban buses in such program, if the Secretary finds that such application will be consistent with energy security goals and the needs and objectives of encouraging and facilitating the greater use of such urban buses by the public, taking into consideration the impact of such application on public transit entities. The Secretary may only initiate one rulemaking under this paragraph.

(3) Rulemakings under paragraph (1) or (2) shall be separate from a rulemaking under subsection (g) of this section, but may not occur unless a rulemaking is carried out under subsection (g) of this section.

(l) Consideration of factors

In carrying out this section, the Secretary shall take into consideration energy security, costs, safety, lead time requirements, vehicle miles traveled annually, effect on greenhouse gases, technological feasibility, energy requirements, economic impacts, including impacts on workers and the impact on consumers (including users of the alternative fuel for purposes such as for residences, agriculture, process use, and non-fuel purposes) and fleets, the availability of alternative fuels and alternative fueled vehicles, and other relevant factors.

(m) Consultation and participation of other Federal agencies

In carrying out this section and section 13256 of this title, the Secretary shall consult with the Secretary of Transportation, the Administrator, and other appropriate Federal agencies. The Secretary shall provide for the participation of the Secretary of Transportation and the Administrator in the development and issuance of the rule under this section, including the public process concerning such rule.

(n) Petitions

As part of the rule promulgated either pursuant to subsection (b) or (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 established under either subsection 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 requirement 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.

(o) Mandatory State fleet programs

(1) Pursuant to a rule promulgated by the Secretary, beginning in calendar year 1995 (when model year 1996 begins), the following percentages of new light duty motor vehicles acquired annually for State government fleets, including agencies thereof, but not municipal fleets, shall be alternative fueled vehicles:

- (A) 10 percent of the motor vehicles acquired in model year 1996;
- (B) 15 percent of the motor vehicles acquired in model year 1997;
- (C) 25 percent of the motor vehicles acquired in model year 1998;
- (D) 50 percent of the motor vehicles acquired in model year 1999;
- (E) 75 percent of the motor vehicles acquired in model year 2000 and thereafter.

(2)(A) The Secretary shall within 18 months after October 24, 1992, promulgate a rule providing that a State may submit a plan within 12 months after such promulgation containing a light duty alternative fueled vehicle plan for State fleets to meet the annual percentages established under paragraph (1) for the acquisition of light duty motor vehicles. The plan shall provide for the voluntary conversion or acquisition or combination thereof, beyond any acquisition required by this subchapter, of such motor vehicles by State, local, or private fleets, in numbers greater than or equal to the number of State alternative fueled vehicles required pursuant to paragraph (1).

(B) The plan, if approved by the Secretary, would be in lieu of the State meeting such annual percentages solely through purchases of new State-owned vehicles. All conversions or acquisitions or combinations thereof of any alternative fueled vehicles under the plan must be voluntary and must conform with the requirements of section 247 of the Clean Air Act [42 U.S.C. 7587] and must comply with applicable safety requirements. The Secretary of Transportation shall within 3 years after enactment promulgate rules setting forth safety standards in accordance with chapter 301 of title 49 applicable to all conversions.

(Pub. L. 102-486, title V, §507, Oct. 24, 1992, 106 Stat. 2891.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (b)(1)(C)(ii), (g)(4), and (k)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. Title II of the Act, known as the National Emission Standards Act, is classified

generally to subchapter II (§7521 et seq.) of chapter 85 of this title. Part C of title II of the Act is classified generally to part C (§7581 et seq.) of chapter 85 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

This subchapter, referred to in subsecs. (b)(1)(A), (e)(1)(A), (g)(3), (j), and (o)(2)(A), was in the original “this title” meaning title V of Pub. L. 102-486, Oct. 24, 1992, 102 Stat. 2887, which is classified generally to this subchapter.

CODIFICATION

In subsecs. (b)(1)(C)(ii) and (o)(2)(B), “chapter 301 of title 49” substituted for “the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted sub-titles II, III, and V to X of Title 49, Transportation.

§ 13258. Credits

(a) Definitions

In this section:

(1) Fuel cell electric vehicle

The term “fuel cell electric vehicle” means an on-road or non-road vehicle that uses a fuel cell (as defined in section 16152 of this title).

(2) Hybrid electric vehicle

The term “hybrid electric vehicle” means a new qualified hybrid motor vehicle (as defined in section 30B(d)(3) of title 26).

(3) Medium- or heavy-duty electric vehicle

The term “medium- or heavy-duty electric vehicle” means an electric, hybrid electric, or plug-in hybrid electric vehicle with a gross vehicle weight of more than 8,501 pounds.

(4) Neighborhood electric vehicle

The term “neighborhood electric vehicle” means a 4-wheeled on-road or nonroad vehicle that—

- (A) has a top attainable speed in 1 mile of more than 20 mph and not more than 25 mph on a paved level surface; and
- (B) is propelled by an electric motor and on-board, rechargeable energy storage system that is rechargeable using an off-board source of electricity.

(5) Plug-in electric drive vehicle

The term “plug-in electric drive vehicle” means a vehicle that—

- (A) draws motive power from a battery with a capacity of at least 4 kilowatt-hours;
- (B) can be recharged from an external source of electricity for motive power; and
- (C) is a light-, medium-, or heavy duty motor vehicle or nonroad vehicle (as those terms are defined in section 7550 of this title).

(b) In general

(1) Allocation

The Secretary shall allocate a credit to a fleet or covered person that is required to acquire an alternative fueled vehicle under this subchapter, if that fleet or person acquires an alternative fueled vehicle in excess of the number that fleet or person is required to acquire under this subchapter or acquires an alternative fueled vehicle before the date that