

June 2, 2003

BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY
WASHINGTON, D.C.

10 C.F.R. Part 490)
Alternative Fuel Transportation) Docket No. EE-RM-FCVT-03-001
Program; Private and Local)
Government Fleet Determination;)
Notice of Proposed Rulemaking)

COMMENTS OF THE ELECTRIC DRIVE TRANSPORTATION ASSOCIATION

These comments on the Department of Energy's (DOE or Department) Notice of Proposed Rulemaking, *Alternative Fuel Transportation Program: Private and Local Government Fleet Determination*, 68 Fed. Reg. 10320 (March 4, 2003), are submitted on behalf of the Electric Drive Transportation Association (EDTA). EDTA, formerly named the Electric Vehicle Association of the Americas (EVAA), is the industry association working to advance electric transportation technologies in the United States. EDTA defines "electric transportation" to include battery, hybrid and fuel cell electric vehicles.

EDTA's membership is comprised of representatives from the electric utility industry, vehicle manufacturers, universities, battery and component manufacturers, state and local governments as well as others interested in furthering the use of electric drive systems to improve the environmental, energy security and energy efficiency characteristics of the transportation sector. A copy of EDTA's membership roster is attached and made a part of these formal comments. (Attachment A)

INTRODUCTION

In the March 4, 2003 Federal Register Notice (Notice) for the *Alternative Fuel Transportation Program: Private and Local Government Fleet Determination*, DOE proposes to determine that it is "not necessary" to promulgate a regulation mandating alternative fuel vehicle (AFV) requirements for private and local government fleets under Section 507(e) of the Energy Policy Act of 1992 (EPAct). For support of the proposed determination, DOE explains that implementation of such a program would not "appreciably contribute to the achievement of EPAct's existing 2010 replacement fuel goal of 30 percent, or of a revised replacement fuel goal were one to be adopted." 68 Fed. Reg. at 10320. Further, DOE states that a review of EPAct, the existing fleet programs, and the current status of the AFV market leads to a conclusion that a private and local government fleet requirement would not result in an "appreciable increase in the percentage of alternative fuel and replacement fuel used by motor vehicles in the United States." *Id.*

Since the first Advanced Notice of Proposed Rulemaking issued by DOE in 1996 to solicit comment on the progress made toward achieving the replacement fuel goals in EPAct, EDTA's members have been actively involved in each phase of DOE's efforts to fulfill its obligations under Section 507(e). We have consistently recommended in prior comments, testimony, and informal discussions at stakeholder meetings and workshops that DOE take a leadership role in supporting the development of a market for electric drive and other alternative fuels and vehicles. To accomplish this goal, EDTA's members have urged DOE during the Section 507(e) process to take action on voluntary measures and

incentives. And, in determining the type/level of incentives to be provided, EDTA has maintained that DOE should recognize those technologies that best address the petroleum displacement goals of EPCa, as well as national environmental goals, and, therefore, should encourage such technologies to the greatest extent possible. Electric drive technologies hold the promise of near-zero to zero emissions in operation and, importantly, the means to power the transportation sector without use of petroleum-based fuels. As such, members of EDTA believe that any federal programs or policies related to advanced transportation technologies should be designed to reflect the superior environmental and energy efficiency characteristics of electric drive.

In prior comments, EDTA also recommended that DOE focus its efforts and resources on adding flexibility (either legislative or regulatory) to the AFV acquisition programs already in place, particularly the State and Alternative Fuel Provider Fleet Programs. Facilitating compliance with these existing programs will greatly contribute to reducing oil imports, improving the health of the nation's economy, and reducing greenhouse gas emissions.

In addition to adding flexibility and additional compliance mechanisms to the existing EPCa programs, the most effective way for DOE to ensure that the goals in EPCa are met is to develop and/or endorse other federal programs that can provide incentives for the purchase and use of vehicles with electric drive systems. These additional activities could take the form of support for both non-financial and financial incentives, including consumer-based tax incentives.

I. DOE SHOULD FOCUS ITS EFFORTS ON ADDING FLEXIBILITY TO EXISTING FLEET PROGRAMS.

As recommended by EDTA members in past comments submitted on the four options considered for a potential Local Government and Private Fleet Rule (65 Fed. Reg. 44987 (July 20, 2000)), DOE should take action to further the achievement of the goals set forth in EPCa. DOE points out in the preamble to the proposed determination that

Since EPCa'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. . . . 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. (68 Fed. Reg. at 10342.)

DOE's report issued pursuant to Section 506 and cited in the preamble, *Replacement Fuel and Alternative Fuel Vehicle—Technical and Policy and Analysis* (Dec. 1999—Amendments Sept. 2000), estimated that “alternative fuel use by EPCa 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” (68 Fed. Reg. at 10339) (citing DOE's Section 506 Report at 35). After evaluating the status of EPCa, the General Accounting Office in *The Energy Policy Act of 1992, Limited Progress in Acquiring Alternative Fuel Vehicles and Reaching Fuel Goals* (GAO/RCED-00-59, Feb. 11, 2000) (“GAO Report”) stated that

[a]ny policies designed to help reach [EPCa's] goals will have a greater chance for success if they involve a larger section of the driving public. Currently, if the fleets subject to the act comply fully with its mandates, only 2 percent of gasoline and diesel consumption would be replaced in 2010, according to DOE. (GAO Report at 19.)

Given these statistics, it is clear that significant changes in the implementation of EPAct are needed in order to achieve the impressive goals outlined in Section 502(b) (*i.e.*, at least 30 percent fuel replacement by 2010).

Importantly, state and alternative fuel provider fleets alone cannot achieve the goals set forth in EPAct. By adding greater flexibility to those regulatory programs already in place and by creating optional, voluntary programs, DOE can greatly assist in the displacement of petroleum. To provide those fleets already covered by existing programs with flexibility, EDTA has suggested that DOE expand the activities fleets can use to satisfy their requirements: the purchase of neighborhood electric vehicles, medium and heavy-duty AFVs (*e.g.*, battery electric and engine and plug-in hybrid electric buses and trucks); the investment in and ongoing support for AFV infrastructure; the purchase and/or loan of battery electric and engine and plug-in hybrid electric vehicles and/or buses for placement in covered and non-covered fleets; the purchase of battery EVs or engine and plug-in hybrid off-road vehicles and/or equipment (*e.g.*, material handling equipment); the support of battery electric and hybrid electric buses (infrastructure and operational costs); and the purchase of engine or plug-in hybrid vehicles or heavy-duty hybrid vehicles. Many of these options are contained in the EPAct amendments in either Title V of the House-passed energy bill (HR. 6) or Title VII of the Senate energy bill (S. 14) currently being considered by the full Senate. EDTA urges DOE to support these amendments and work with Congress to ensure that state and alternative fuel provider fleets obtain the necessary flexibility they need to fulfill the requirements of EPAct.

Given the lack of progress in achieving the EPAact goals to date, merely adding flexibility to the existing EPAct fleet programs is clearly not enough. As the statistics cited above demonstrate, even with all the fleet programs in place, *including* a Private and Local Government Fleet Program, it is estimated that only approximately 1.5 percent replacement fuel use will be accomplished. Another means through which the DOE might facilitate the achievement of EPAct's replacement fuel goals is embodied in the Alternative Compliance provision in Section 709 of Title VII of S. 14. If enacted, Section 709 would allow state and alternative fuel provider fleets the option of complying with the fleet requirements by showing that a fleet will achieve a reduction in its annual consumption of petroleum equal to the reduction that would result from compliance with the fleet requirements. Given the limited success of the fleet programs to date, this alternative compliance method might allow covered fleets to use a variety of electric drive options, including non-road electric drive applications, to meet EPAct requirements.

Finally, in the event that Congress does not enact a comprehensive energy bill, DOE can still provide flexibility to existing EPAct-covered fleets by revising the Department's policy with regard to low-speed vehicles to allow fleets to acquire neighborhood electric vehicles as a compliance option. As EDTA has advised DOE in past correspondence, neighborhood electric vehicles that are licensed for on-road use meet the definition of "alternative fueled vehicle" in EPAct and fleets should receive EPAct credit for acquisitions of these vehicles. (See attached EVAA (now EDTA) correspondence to the Secretary of Energy Spencer Abraham under date of February 1, 2002, which is made a part of these formal comments.) (Attachment B)

II. DOE SHOULD ADDRESS "MARKET BARRIERS" OF AFVs .

Providing state and alternative fuel provider fleets with multiple pathways for meeting AFV acquisition requirements has the additional benefit of addressing "market barriers" for AFVs. As noted by DOE in the preamble to the proposed determination, there is a "lack of alternative fuel infrastructure, lack of suitable AFV models, lack of reasonable vehicle prices, and high alternative fuel

costs relative to conventional motor fuels.” (68 Fed. Reg. at 10320.) Expanding the types of activities that satisfy EPCRA requirements can encourage and catalyze the widespread use of electric drive vehicles and AFVs by establishing the necessary infrastructure and lowering the cost of vehicles through the increased demand for many different types of electric drive products. Indeed, by broadening the EPCRA fleet programs to include acquisitions of medium and heavy-duty vehicles, supporting infrastructure or reduction of baseline petroleum consumption, DOE will allow fleets to “tap” into available AFV and electric drive products outside the limited light-duty AFV market.

According to the House Report on EPCRA, the acquisition requirements were intended to “establish the Federal government as a market leader.” (H.R. Rep. No. 102-474(I), at 137, *reprinted in* 1992 U.S.C.C.A.N. 1954, 1960.) As DOE is aware, these early markets are essential for the widespread adoption and acceptance of new technologies in the transportation sector since these forums expose consumers to these vehicles, increase vehicle usage, and, through increased demand, drive down vehicle costs. It is critical, therefore that the federal government embrace the goals of EPCRA.

Section 101 of Executive Order 13149 states that the purpose of the Order is to “ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles (AFVs) and alternative fuels.” (Section 101, Exec. Order No. 13149, 65 Fed. Reg. 24607 (Apr. 26, 2000).) Unfortunately, aside from a few notable exceptions in certain years, on average, the federal government continues to struggle to meet the requirements of EPCRA. Indeed, in January of 2002, several environmental groups filed a lawsuit in federal court in California alleging that 17 federal agencies failed to comply with the AFV acquisition requirements in the Act. (*See Center for Biological Diversity v. Abraham*, No. CV-00027 (N.D.C.A. 1/2/02).) By increasing compliance options for the existing EPCRA fleet programs, DOE can ensure greater compliance among the federal agencies which will in turn stimulate the AFV market.

III. DOE SHOULD ESTABLISH A VOLUNTARY URBAN TRANSIT BUS ACQUISITION PROGRAM.

The proposed determination also includes a conclusion by DOE that an Urban Transit Bus Fleet Program can only be established pursuant to Section 507(k) of EPCRA once DOE promulgates a rule requiring AFV acquisitions by Private and Local Government Fleets under Section 507(e). (68 Fed. Reg. at 10341.)

As discussed in the March Notice, DOE’s experience with voluntary programs such as the Clean Cities Program has demonstrated that niche market fleets present the best opportunity for overcoming the market barriers that limit AFV use (*e.g.*, limited refueling infrastructure, high acquisition costs, limited range). (68 Fed. Reg. at 10325.) According to DOE, niche markets that involve high-mileage, high-fuel use (*i.e.*, frequent stopping and idling), or predictable routes (*e.g.*, taxis, delivery fleets, shuttles, and transit bus fleets) are ideal for alternative fuel use. With many of these niche markets in communities across the nation, DOE states that “market penetration for alternative fuels and vehicles is viable and can have an impact on alternative fuel growth.” *Id.* Therefore, public transit presents an important opportunity for expanding the use of alternative fuels in the transportation sector, which is 97 percent dependent on oil as a fuel.

A number of areas (*e.g.*, New York, NY, Chattanooga, TN, Santa Barbara, CA, Miami Beach, FL) already have electric and hybrid electric buses in service. The lower (or zero in the case of electric buses) levels of pollution and noise improve air quality and lower the noise levels in congested urban areas. As encouraged in our prior comments, to take advantage of an important market for AFVs and vehicles with electric drive systems, DOE should establish an Urban Transit Bus Acquisition Program

which would allow transit operators maximum flexibility to purchase products that meet their needs while also improving energy efficiency and displacing petroleum use in their fleets. Such a program could also include a baseline reduction in petroleum consumption similar to the provisions in S. 14 discussed above.

IV. IF DOE DOES NOT REVISE THE EFACT GOALS AT THIS TIME, ADDITIONAL EFFORTS MUST BE TAKEN TO ACHIEVE THE 30 PERCENT REPLACEMENT FUEL GOAL.

DOE states that a modification of the 2010 replacement fuel goal of 30 percent will not be proposed at this time. (68 Fed. Reg. at 10342.) DOE explains that such a modification is not required if DOE makes a determination that a Private and Local Government Fleet Rule is not necessary. DOE also notes that a modification would not “promote the right incentives or actions” given Congressional efforts to pass a comprehensive energy bill and new demonstration and grant programs focused on “dramatically increasing” the availability and use of replacement fuels. *Id.* However, earlier in the preamble, DOE acknowledges that “extraordinary measures would be required to achieve the current goal of 30 percent petroleum replacement by 2010.” (68 Fed. Reg. at 10321.) To address this problem, DOE should first try to work with Congress to implement the amendments and additional options recommended in these comments and included, in part, in the House and Senate energy bills for the existing fleet programs in EFACT. As noted above, the existing fleet programs in their current shape cannot lead to the attainment of the replacement fuel goals in EFACT. While expansion of the mechanisms that fleets can use to comply with the existing EFACT programs can help, additional efforts must be taken by DOE and other federal agencies to achieve significant displacement of petroleum.

V. DOE CAN ADDRESS MARKET BARRIERS IN OTHER WAYS.

DOE can foster the use of electric drive technologies and AFVs by supporting the adoption and establishment of federal programs and policies that provide incentives for the purchase and use of these vehicles and related infrastructure.

As noted in our prior comments, federal tax policy offers an important mechanism for providing limited, but critical, support for early commercial electric and engine and plug-in hybrid electric light, medium and heavy-duty vehicles. EDTA members support a number of tax incentives designed to stimulate the electric drive technology market. Such tax-related recommendations are under consideration as the Congress addresses comprehensive energy legislation. EDTA believes properly structured incentives can accelerate the introduction of advanced technology vehicles.

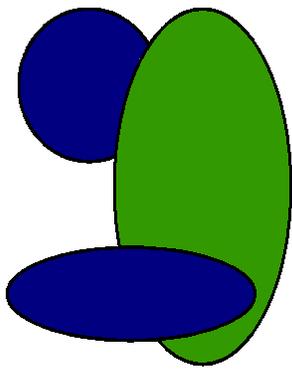
In addition to a focus on developing and establishing hydrogen infrastructure, DOE also is encouraged to support the installation of charging infrastructure necessary to fuel other electric drive vehicles through tax incentives or direct grants. Battery electric vehicles are growing in popularity as short-range commuter vehicles. This type of support will assist in developing the infrastructure necessary for these smaller electric vehicles. Finally, DOE should continue to examine mechanisms to encourage markets for battery electric vehicles and plug-in hybrid electric vehicles by advancing programs to create secondary markets for EV componentry, e.g., advanced batteries. The development of such markets could assist in reducing the overall costs of these components thereby reducing the cost of the vehicle itself. The House-passed energy bill authorizes the Secretary of Energy to establish and conduct a \$25 million federal cost-share program with industry to research, develop and demonstrate secondary, stationary applications for used EV batteries. The Senate energy bill authorizes \$32 million for a similar program.

CONCLUSION

EDTA members strongly believe that flexibility is a significant part of achieving the ambitious fuel replacement goals set forth in EPAct. Programs that allow for a host of options, the participation of many different fleets and individuals, and the use of many different types of electric drive products (*e.g.*, passenger cars, neighborhood electric vehicles, low-speed vehicles, medium and heavy-duty vehicles, material handling equipment) ultimately will have a greater impact in reducing oil imports, improving the health of our economy, and reducing greenhouse gas emissions. In addition, an alternative compliance option that allows fleet managers to determine the best approach for reducing petroleum consumption has the potential to achieve even greater increases in replacement fuel use by permitting such persons to use a variety of electric drive products in a variety of applications. This two-level approach will have greater success in stimulating the widespread acceptance and acquisition of vehicles with electric drive systems and AFVs.

Finally, the Federal Government must set an example for prudent decision making that consistently brings focus on the need to reduce our dependency upon foreign petroleum by utilizing alternative fuel options in government, state and federally-funded fleets.

Attachments



Electric Drive Transportation Association 2003 Membership List

****BATTERY**HYBRID**FUEL CELL****

Advanced Transportation Technology Institute	Maxwell Technologies
Air Products and Chemicals, Inc.	Memphis Light, Gas and Water
Alabama Power	Michelin North America, Inc.
Altarum	Mid-Del Lewis Eubanks AVTS
American Honda Motor Company, Inc.	Millennium Cell
American Public Power Association	National Alternative Fuels Training Consortium
Avestor	New York Power Authority
Azure Dynamics Corporation	Nissan North America/Nissan R&D
Ballard Power Systems	Northeast Sustainable Energy Association (NESEA)
Carolina EV Coalition	NYSERDA
CEREVEH	Potomac Electric Power Company
Chattanooga Area Regional Transportation Authority	PSA Peugeot-Citroen/USTR
ChevronTexaco	Rae-Beck Automotive
CITELEC	Sacramento Municipal Utility District
City of New York	SAFT America, Inc.
Club Car, Inc.	Salt River Project
Compact Power, Inc.	Saminco
Curtis Instruments	San Bernardino Associated Governments
DaimlerChrysler Corporation	San Diego State University
Edison Electric Institute	Santa Barbara Metropolitan Transit District
Electric Vehicle Association of Canada	Southern California Economic Partnership
Electric Vehicle Technology, Inc.	Southern California Edison Company
Electricite de France	Sunline Transit
eMotion Mobility, LLC	TM4, Inc.
Energy Conversion Devices/Ovonics	Tennessee Valley Authority
Enova Systems	Textron E-Z-GO
EPRI	Tokyo Electric Power Company
Florida Power and Light Company	Toyota
Ford Motor Company	TRI-MET
General Energy Technologies, Inc.	Trolley Enterprises, Inc.
General Motors Corporation	UQM Technologies, Inc.
Georgia Power Company	University of California, Davis/ITS
Global Electric MotorCars, LLC	US Department of Energy
Global Venture Investments, LLC	Volkswagen
Georgetown University	Voltage Vehicles/ZAP
Hydrogenics Corporation	Wavecrest Laboratories
Hydro-Quebec	Yamaha Motor Manufacturing Corporation of America
Hyundai America Technical, Inc.	York Technical College
International Lead Zinc Research Organization, Inc.	
John Deere	
Long Island Power Authority	
Massachusetts Division of Energy Resources	

Bold denotes EDTA Board member.



701 Pennsylvania Avenue, NW
Third Floor
Washington, DC 20004
202-508-5995
Fax: 202-508-5924
www.electricdrive.org

As of 5-29-2003