

or even any demonstrable likelihood that utilities would invest in the infrastructure needed to support these fleets.

The ethanol industry also has made only limited investment in building infrastructure for supplying E-85, the fuel used by ethanol FFVs, of which there are several million in service today. That industry has primarily focused its attention on supplying the gasohol and gasoline oxygenate market. DOE furthermore has concerns that if, in the future, the demand for ethanol blends increases as a result of market forces outside of any DOE mandate, there could be a lack of domestic ethanol to meet the demand for E-85. Today, there are only approximately 150 fueling outlets nationwide that provide E-85. *See AFDC Refueling Stations.*

Major energy suppliers, principally oil companies, have been unwilling 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. Thus, DOE does not expect that the major oil retailers would install infrastructure necessary to support a private and local government fleet rule 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 lack of infrastructure is likely to result in exemption requests and petitions to suspend any fleet requirement program DOE might impose under section 507(e), and DOE's granting of those requests.

Alternative Fueled Vehicle 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 is in stark contrast to when EPCA was passed. In 1992, there were virtually no OEM vehicles available that operated on alternative fuel. Consumers and fleets had to have an existing gasoline vehicle converted by an aftermarket shop if they wanted an AFV. The AFVs that are available today are built by auto manufacturers for two primary purposes: (1) To meet the needs of the fleets currently subject to fleet mandates; and, (2) to provide credits to automakers that can be used to meet the corporate average fuel economy (CAFE) standards. Automobile manufacturers are awarded CAFE credits as an incentive develop a fleet of AFVs that will in turn lead to the development of infrastructure to support alternative fuel use. Manufacturers currently offer up to a

million new FFVs each year. Other AFVs are available in significantly lower numbers, generally on the order of 10,000 per year.

DOE is concerned that if it adopts a requirement for private and local government fleets to acquire AFVs, there may not be an adequate supply of suitable AFVs available. 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 build sufficient numbers of AFVs, suitable for the covered fleets, at affordable prices. Under the existing State government and alternative fuel provider fleet programs, DOE has been obliged to provide exemptions to a number of fleets that are unable to acquire AFVs that meet their business needs. Unless automakers significantly expand their current offerings of AFVs, DOE likely would be forced to process and approve thousands of exemption requests each year.

Because EPCA expressly prohibits DOE from mandating the production of AFVs or to specify the types of AFVs that are made available, there is little that DOE can do, outside of the voluntary efforts already underway with vehicle manufacturers, to ensure that adequate supplies suitable of AFVs would be available.

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, the price differential will continue and will influence fleet owners and operators for the foreseeable future. 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 EPCA. 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 infrastructure, the fuel cost differential of ethanol is probably a significant contributing factor. There is no reason to assume that the result would be any different—and substantial reason to believe that the result would be exactly the same—if DOE were to impose a private and local government fleet requirement program under section 507(e).

Discussion of Previous Proposals

DOE considered but ultimately has decided not to propose a Fleet Rewards or Replacement Fuel Program, or any of the tax credit, tax incentive, or other programs discussed in the earlier stages of this rulemaking proceeding. Many commenters supported these concepts, but few offered any arguments that DOE had authority to implement such programs under section 507(e). On the other hand, a number of comments did question whether DOE had sufficient legal authority to promulgate or implement them. DOE believes it has no legal authority under EPCA to promulgate the tax credit and tax incentive programs that were discussed by DOE and commenters, and believes it is doubtful DOE has authority to promulgate the other types of incentive programs discussed.

One advantage of the Fleet Rewards program was that it did not require fuel use, so it was not an explicit fuel use requirement; it would have allowed fuel use credits to be used instead of requiring vehicle acquisitions. Therefore, the program would not have been an explicit fuel use mandate, which DOE believes it has no authority to promulgate. Even so, DOE still has serious doubt about its authority to adopt such a program under section 507 because EPCA only provides credits for vehicle acquisitions. Specifically, EPCA section 508 sets forth a detailed crediting system, but allows credits to be earned only for AFV acquisitions, not fuel use or some other action. Moreover, even if DOE did have authority to provide credits for fuel use, DOE believes that there would be little incentive for most fleets to choose this option, since they could comply by acquiring FFVs that have little or no incremental cost, and could operate them on gasoline.

In any event, a Fleet Rewards or Replacement Fuel Program would be of little use unless it was accompanied by a mandate for vehicle acquisitions or fuel use; those programs would be alternative methods to comply with the mandates. Because DOE is proposing to determine that a private and local government program is not "necessary" and thus cannot and should not be promulgated, there is no reason or need for DOE to consider or propose adopting a Fleet Rewards or Replacement Fuel Program in this notice. Furthermore, coupling a Fleet Rewards or Replacement Fuel Program with a private and local government fleet AFV acquisition mandate would be extremely unlikely to change significantly the amount of estimated