

likely be similar to those mandated by EPOA (42 U.S.C. 13251, 13257(o)) and already in place for State government and alternative fuel provider fleets. *See Alternative Transportation Fuel Program*, 10 CFR part 490 (2002).

EPOA authorizes DOE to conduct two separate rulemakings in order to determine whether to promulgate a private and local government fleet rule. First, section 507(b) allows for an early rulemaking, to be completed by December 15, 1996. As part of that rulemaking, section 507(a)(3) of EPOA required DOE to publish an Advance Notice of Proposed Rulemaking (ANOPR). If no final rule was promulgated by December 15, 1996, then sections 507(b)(3)(c), and (e) require a later rulemaking to determine whether vehicle acquisition requirements are "necessary" under the standards set forth in section 507(e) and should be imposed on private and local government fleets.

The relevant guidance for determining whether a private and local government fleet rule should be implemented is set forth in EPOA section 507(e). This section states that DOE shall promulgate a private and local government fleet requirement program only if it determines that such a program is "necessary." Section 507(e) further states that such a program is "necessary" if "the Secretary finds that" the replacement fuel goal, or a revised replacement fuel goal, "is not expected to be actually achieved by 2010 * * * without such a fleet requirement program" and the goal is practicable and achievable "through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals."

Section 507(l) requires: "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." Section 507(e) is equally categorical in requiring DOE to promulgate a private and local fleet requirement program only upon a determination that such a program is "necessary" to achieve the replacement fuel goal, and section 507(e) sets forth the criteria DOE is to

apply in determining whether such a program is "necessary."

It is not clear that section 507(l) should be interpreted to apply to a rulemaking proceeding under section 507(e). Section 507(l) includes factors such as greenhouse gas and economic effects that have no bearing on a determination of "necessity" under section 507(e). Moreover, the section 507(l) factors seem geared to helping decide the proper contours of a fleet acquisition mandate once DOE has decided to promulgate such a program, rather than to the threshold determination of whether a program should be promulgated in the first place.

Regardless, it is not necessary in this proceeding to determine whether section 507(l) is properly interpreted as applying to a section 507(e) rulemaking proceeding. Even assuming that it does apply, consideration of the section 507(l) factors would not alter DOE's proposed determination that a private and local government fleet program is not "necessary" under section 507(e).

As explained below, DOE proposes to determine that because implementation of a private and local government fleet AFV acquisition mandate would result in no appreciable increase in the use of replacement fuel, such a program is not "necessary" under the standard set forth in section 507(e). None of the section 507(l) factors could change the outcome of the analysis because they would not change the conclusion that there would be no appreciable increase in the use of replacement fuels. Therefore, even if all of the section 507(l) factors pointed uniformly and strongly in favor of the implementation of a private and local government fleet mandate, and they do not, consideration of those factors could not and would not alter DOE's proposed determination that a fleet program is not "necessary" because such a mandate still would not appreciably increase the use of replacement fuel.

Section 507(m) of EPOA requires DOE to consult with the Secretary of Transportation (DOT) and Administrator of the Environmental Protection Agency (EPA) and other appropriate agencies in carrying out the requirements of section 507. DOE provided a pre-publication draft of today's notice of proposed rulemaking to DOT, EPA, and the Office of Management and Budget for their review.

B. Regulatory Time Line

On August 7, 1996, and as required by EPOA sections 507(a) and (b), DOE published in the **Federal Register** an ANOPR to evaluate progress toward achievement of the replacement fuel

goals in EPOA, identifying problems with achieving those goals, assess the adequacy and practicability of the goals, and consider actions needed to achieve the goals. *See* 61 FR 41031. DOE intended this notice to stimulate comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and AFVs. Three hearings were held to receive oral comments on the ANOPR. They were held on September 17, 1996, in Dallas, Texas; on September 25, 1996, in Sacramento, California; and on October 9, 1996, in Washington, DC. A total of 70 persons spoke at the three hearings, and 105 written comments were received by November 5, 1996.

On April 23, 1997, DOE published in the **Federal Register** a Notice of Termination stating that DOE would not promulgate regulations to implement AFV requirements for private and local government fleets pursuant to the early rulemaking schedule of EPOA section 507(a)(1). *See* 62 FR 19701.

On April 17, 1998, and for the purposes of EPOA sections 507(e), (g), and (k), DOE published in the **Federal Register** an ANOPR that asked for comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles. *See* 63 FR 19372. DOE held three hearings to receive oral comments on the ANOPR. They were held on May 20, 1998, in Los Angeles, California; on May 28, 1998, in Minneapolis, Minnesota; and on June 4, 1998, in Washington, DC. A total of 110 persons spoke at the three hearings, and/or submitted written comments.

On January 12, 2000, consistent with section 507(h) of EPOA (42 U.S.C. 13257(h)), DOE published in the **Federal Register** a notice, stating that it was extending by 90 days the January 1, 2000, deadline contained in section 507(e) in order to provide additional time for consultations with State and local officials, as required by Executive Order 13132. *See* 65 FR 1831. On July 20, 2000, DOE published in the **Federal Register** a notice stating that DOE was further delaying the section 507 rulemaking proceedings concerning private and local government fleets until after it had completed consultations with State and local government officials. *See* 65 FR 44987. DOE said that it was preserving the option of promulgating, at a later time, requirements for private and local government vehicle fleets. In the notice, DOE announced that it would hold three public workshops in order to discuss regulatory options and other