further provides for a State right to appeal to the Department's Office of Hearings and Appeals, whose decision would be final for the purpose of judicial review. Further discussion on the exemption process is found in section-by-section analysis for the Alternative Fuel Provider Vehicle Acquisition Mandate.

The Act requires that the exemption process be reasonable and simple. The DOE invites comments on the proposed process for States to request exemptions, in whole or in part.

Proposed Section 490.205 Reporting Requirements

Proposed § 490.205 will require each state that is subject to the vehicle acquisition mandate to submit to DOE an annual report. This report will assist DOE in determining if a state has met the requirements of this subpart as well as to determine how successfully the goals and requirements of this subpart are being met. For further discussion on reporting requirements, see proposed section 490.309. DOE invites comment as to the reasonableness of these reporting requirements, as well as recommendations for additional, substitute or reduced requirements which would achieve the desired results.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

I. Background

The Alternative Fuel Provider Vehicle Acquisition Mandate is intended to cover a broad range of alternative fuel providers in a flexible, workable program that will allow for compliance in the most economical fashion possible. The program allows alternative fuel providers flexibility in the acquisition of new alternative fuel vehicles via purchase, lease, or conversion, and in the geographical placement of alternative fuel vehicles. It also provides a minimum of restrictions on how the alternative fueled vehicles are to be used.

The program specifies the criteria for determining whether an alternative fuel provider is covered and under what circumstances exemptions from the program will be granted. Only those alternative fuel providers who are classified as "covered persons" are subject to the requirements of this proposed regulation and only that affiliate, division, or other business unit which is substantially engaged in the alternative fuels business may be subject to the acquisition mandate requirements of the Act.

Proposed Section 490.300 Purpose and Scope

Proposed § 490.300 defines the purpose and scope of part 490 Subpart D as implementing the statutory requirements of section 501 of the Energy Policy Act of 1992, which sets forth a mandate for those alternative fuel providers, who are classified as covered persons, to acquire alternative fuel vehicles at an escalating percentage of their new vehicle acquisitions.

Proposed Section 490.301 Definitions

Proposed § 490.301 sets forth the definitions for part 490. Subpart D.

Proposed § 490.301 defines the term "alternative fuels business" as meaning an activity undertaken to derive revenue from: (1) Producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity; or (2) generating, transmitting, importing, or selling at wholesale or retail electricity. This definition tracks the language of section 501(a)(2).

Proposed § 490.301 provides definitions for the terms "affiliate," "division," and "business unit" which are used in section 501 of the Act and proposed §§ 490.303 and 490.304. The first two are dictionary definitions. "Business unit" is defined to make clear the grouping of business activities must be similar in autonomy to affiliates and divisions.

Proposed § 490.301 defines the term "normal requirements and practices" as meaning the operating business practices and required conditions under which the principal business of the covered person operates. In a request for an interpretive ruling or in a civil penalty proceeding, the burden would be on the fuel provider to show that actions to acquire alternative fuel vehicles and/or obtain alternative fuel are outside the normal practices of the covered person's principal business.

Proposed § 490.301 defines the term "principal business" as meaning the largest sales-related gross revenue producing activity. If an organization derives a plurality of gross revenue from sales-related alternative fuels activity then the organization's principal business is alternative fuels. As it is used above, plurality does not require that over 50 percent of an organization's sales-related gross revenue be based on activities related to alternative fuels. Sales-related in this context means that the gross revenue does not come from investments such as corporate stocks.

In determining whether an organization's principal business is

alternative fuels, the important criterion to look at is what is the organization's single largest source of sales-related gross revenue. For example, if an organization derives 35 percent of its sales-related gross revenue from alternative fuels and the next largest single source of sales-related gross revenue comprises 25 percent of the organization's gross revenue, the organization's principal business is alternative fuels.

Proposed § 490.301 defines the term "substantially engaged" to mean that a covered person, or affiliate, division, or other business unit thereof, regularly derives sales-related gross revenue from an alternative fuels business. To determine whether a covered person or affiliate, division, or other business unit thereof is "substantially engaged" in the alternative fuels business, it is important to look at the involvement the covered person, affiliate, division, or other business unit has with the alternative fuels business. Thus, only that affiliate, division, or business unit that meets the substantially engaged criteria, as defined above, is subject to the acquisition requirements of this program.

The covered person is responsible for clearly defining the specific affiliate, division, or other business unit that is substantially engaged and is therefore subject to the acquisition requirements of this rule. If this designation is not made or is not made clearly, DOE will assume that the entire organization is subject to the acquisition requirements of this rule and will enforce it as such.

Proposed § 490.301 defines the term "substantial portion" to mean that at least 2 percent of a covered person's refinery yield of petroleum products is composed of alternative fuels. Alternative fuel is as defined in proposed § 490.2. This proposed definition was formulated using reliable data compiled by the Energy Information Administration and published in its Petroleum Supply Annual 1993, Volume 1 (DOE/EIA-0340(93)/1). Table 19 provides aggregate data on refinery yield for the Petroleum Administration for Defense districts and can be readily verified.

The 2% threshold was chosen because it represents the average yield for the production of alternative fuel by petroleum refiners as reported by the Energy Information Administration. DOE believes that the use of this percentage in the definition of "substantial portion" allows for the initial identification of that group of covered persons described in Sec. 501(a)(2)(c) of the Act and provides a sound basis for identifying those