affiliates, divisions, or other business units of such covered persons which are substantially engaged in the alternative fuel business.

The Department considered including some measure of the gross revenue attributed to the production of alternative fuels as an alternative in the definition of "substantial portion." The first measure that was considered was setting a minimum level of gross revenue from the sale of alternative fuels that an organization would have to equal or exceed to be classified as an alternative fuel provider. The second measure that was considered was establishing a minimum percentage, that reflects the percent of total gross revenue attributed to the sale of alternative fuels, that an organization would have to equal or exceed to be classified as an alternative fuel provider. Unfortunately, the information available on these measures is too fragmented to be the basis for proposed regulatory language. DOE seeks comment on whether reliable information exists that would allow establishment of a monetary measure (or any measure apart from the measure in the proposed rule) for determining whether alternative fuels production comprises a substantial portion of a company's business. DOE also seeks comment recommending any other alternative definitions for 'substantial portion.'

Proposed Section 490.302 Vehicle Acquisition Mandate Schedule

Proposed §490.302 describes the vehicle acquisition schedule that alternative fuel providers must comply with if they are classified as covered persons. Proposed paragraph (a) requires that of the new light duty motor vehicles acquired by alternative fuel providers, the following percentages shall be alternative fueled vehicles for the following model years:

- (A) 30 percent for model year 1996.(B) 50 percent for model year 1997.
- (C) 70 percent for model year 1998.

(D) 90 percent for model year 1999 and thereafter. For example, if an alternative fuel provider purchases or leases 50 light duty motor vehicles in model year 1996, 30 percent, or 15, of the vehicles have to be alternative fueled vehicles.

Proposed paragraph (b) states that, except as provided by § 490.304, these requirements apply to all new light duty vehicles acquired by a "covered" person," not just those vehicles acquired for the fleets which initially qualified the alternative fuel provider as a "covered person." These requirements also apply regardless of where the new vehicles are to be located. For example,

if an alternative fuel provider, which is a covered person, is acquiring new light duty motor vehicles for a location that is not in a subject MSA or CMSA, the required percentage of these vehicles must be alternative fueled vehicles. The MSA/CMSA requirement is used for classifying "covered persons," not for determining how many light duty vehicles must be alternative fueled vehicles. The provisions of proposed §490.302(b) are not discretionary because they follow the wording of section 501(a)(1) of the Act. 42 U.S.C. 13251(a)(1).

Proposed paragraph (c) provides for rounding off to the next higher number if application of a percent to the base number of new light duty vehicles acquired results in a requirement to acquire a fraction of a vehicle. This procedure is consistent with the statutory objective of promoting the acquisition of alternative fuel vehicles.

Proposed paragraph (d) states that only acquisitions satisfying the mandate, as described in proposed §490.305, and/or Alternative Fueled Vehicle credits will be counted toward compliance with the acquisition schedule in proposed paragraph (a).

Proposed Section 490.303 Who Must Comply

Proposed § 490.303 gives an answer to the question: who is a covered person that must comply? This proposed section tracks section 501(a)(2) of the Act. There are two components to this determination. The first component involves determining whether the organization fits the profile of an alternative fuel provider as provided by section 501(a)(2) of the Act. The second component eliminates from coverage those alternative fuel providers whose principal business uses alternative fuel to create a product that is not an alternative fuel.

Types of companies likely to be covered persons subject to the alternative fuel providers mandate include, but are not limited to, private and public electric and natural gas utilities; natural gas distribution companies; pipeline companies; petroleum companies; propane producers, distributors, and suppliers; methanol providers; ethanol providers; and fuel transport companies.

Municipal utilities possessing the required fleet size, fueling characteristics, and located within the specified geographical areas are classified as alternative fuel providers under section 501(a)(2)(B). Therefore, they are expected to comply with the requirements of the mandate under § 490.302 and will not be subject to any

future municipal fleet mandate imposed by rule under section 507 of the Act.

If an organization produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum, and regularly derives gross revenue from the production of alternative fuels, that organization has a "substantial portion" of its business in alternative fuels. To determine whether an organization has a substantial portion of its business in alternative fuels it is important to look at the organization's involvement in the alternative fuels business, not just the amount of gross revenue from alternative fuels production or the level of investment in alternative fuels production. DOE's determination of whether an organization has a substantial portion of its business in alternative fuels will be made on a case-by-case basis. Comment is invited as to what criteria might be used in making this determination.

Paragraph (b) of proposed § 490.303 deals with covered persons who are excluded from having to comply with this subpart. This section tracks the language of section 501(a)(3)(B) of the Act. Two types of covered persons may be excluded from the requirements of this regulation: (1) Those who transform alternative fuels into a product that is not an alternative fuel; and (2) those who consume alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

An example of an excluded person described in paragraph (b)(1) would be a manufacturer of windshield washer fluid. The manufacturer would be classified as an excluded person because it blends an alternative fuel, methanol, in producing windshield washer fluid, which is not an alternative fuel.

An example of an excluded person described in paragraph (b)(2) would be a company that burns natural gas to provide a heat source for a manufacturing operation.

An example of an excluded person under paragraphs (b)(1) and (b)(2)would be an entity whose principal business is the production of alcoholic beverages.

Proposed Section 490.304 Which New Light Duty Motor Vehicles Are Covered

Under section 501(a)(3)(A) of the Act, if the covered person has more than one affiliate, division, or other business unit, only the vehicles of an affiliate, division, or business unit that is "substantially engaged in the alternative fuels business" are subject to the vehicle acquisition mandate. Proposed § 490.304 reflects the provisions of