

contained in Docket No. EE-RM-95-110A. This Docket is available for examination in DOE's Freedom of Information Reading Room, 1E-090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-586-6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On February 28, 1995, DOE published a notice of proposed rulemaking on implementation of statutorily-required alternative fueled vehicle acquisition requirements applicable to certain alternative fuel providers and State government fleets. Since the close of the 60-day comment period on that notice of proposed rulemaking, the Department has been reviewing the public comments. As a result of this review, the Department is now considering several policy options that are sufficiently different from the terms of the notice of proposed rulemaking to warrant an additional, focused opportunity for public comment.

On June 12, 1995, the Department published a notice reopening the record for additional public comment on options being considered for providing more lead time between the date the final rule is promulgated and the date the obligation to comply begins. 60 FR 30795. Today the Department publishes a notice reopening the record for additional public comment on issues relating to the definitions of "substantial portion" and "alternative fuel." In addition, the Department is taking this opportunity to give notice of the receipt of new information regarding the availability of alternative fueled vehicles.

##### II. Definition of "Substantial Portion"

Section 501(a)(2) of the Energy Policy Act of 1992 (the "Act") defines the class of alternative fuel providers potentially subject to the alternative fueled vehicle acquisition requirements to include persons who: (1) qualify as a "covered person" under section 301(5) of the Act, 42 U.S.C. 13211(5), and (2) produce or import an average of 50,000 barrels per day or more of petroleum and "a substantial portion of whose business is producing alternative fuels." 42 U.S.C. 13251(a)(2)(C). Thus, the term

"substantial portion" is a key statutory determinant of whether a covered person that produces or imports petroleum is an alternative fuel provider required by the Act to acquire alternative fueled vehicles.

However, even if an entity meets all of the qualifications for a section 501(a)(2)(C) alternative fuel provider, including the "substantial portion" test, it nevertheless may be excepted from the vehicle acquisition requirements under section 501(a)(3) or exempted by DOE under section 501(a)(5). Under section 501(a)(3)(A), the vehicle acquisition requirements only apply to an affiliate, division or business unit of a covered person who is substantially engaged in the alternative fuels business. See proposed § 490.304. Moreover, under section 501(a)(3)(B), the vehicle acquisition requirements do not apply to any entity whose principal business is transforming alternative fuel into a product other than alternative fuel or consuming such fuel to manufacture a product that is not an alternative fuel. Under section 501(a)(5), DOE may exempt alternative fuel providers from the vehicle acquisition requirements if they can show either that (1) alternative fuels that meet their normal business requirements and practices are not available; or (2) that alternative fueled vehicles that meet their normal business requirements and practices are not offered for purchase or lease on reasonable terms and conditions. See proposed § 490.308.

In the February 28, 1995 notice of proposed rulemaking, DOE proposed to define the term "substantial portion" to mean that at least two percent of a covered person's refinery yield of petroleum products is composed of alternative fuels. See proposed § 490.301. DOE explained that it chose the two percent of refinery yield threshold because it represented the average yield for the production of alternative fuels by petroleum refiners, as reported by the Energy Information Administration. 60 FR 10978.

The notice of proposed rulemaking also explained that in developing the proposed definition of "substantial portion," the Department had considered, as an alternative, basing the definition on the portion of the gross revenue an entity derives from the production of alternative fuels. Ultimately, DOE did not propose a gross revenue threshold because the information needed to support that alternative was more fragmented than that available to support the two percent of refinery yield criterion, and DOE believed the percent of refinery yield criterion would adequately define the

class of petroleum producers and importers who are "covered persons" under the Act. 60 FR 10979.

Nevertheless, DOE asked for comment on whether reliable information exists that would allow establishment of a revenue measure for determining whether alternative fuels production comprises a substantial portion of a company's business, and it solicited suggestions for any other alternative definitions of "substantial portion." 60 FR 10979.

DOE received many comments on the definition of "substantial portion." Some commenters supported DOE's proposed definition of "substantial portion," agreeing that if at least two percent of a refinery's product yield is composed of an alternative fuel, the fuel provider should have to meet the Act's acquisition requirements. However, most comments on this issue criticized the two percent of refinery yield as being too low a threshold. Some commenters stated that the two percent refinery yield of petroleum products threshold would impose vehicle acquisition requirements on many refineries that only produce alternative fuels (principally propane) as incidental by-products of the refining process. Several commenters recommended that DOE modify the rule to provide that at least 10 percent of a covered person's refinery yield criterion which focuses solely on refining operations.

Despite the lack of comprehensive, publicly available information about petroleum producers' and importers' revenue sources on a product-by-product basis, DOE has been able to collect enough information about their sales of alternative fuels to frame a possible definition of "substantial portion" based on percent of gross revenue derived from alternative fuels.

One option DOE is considering is whether to define "substantial portion" to mean that at least 30 percent of the annual gross revenue of a covered person is derived from the sale of alternative fuels. This percentage of gross revenue appears to be an appropriate gross revenue threshold for two reasons. First, available information shows that major U.S. energy producing companies historically derive at least 30 percent of their annual gross revenue from the sale of alternative fuels.<sup>1</sup> Major energy producers are typically consolidated or integrated companies that are involved in oil and gas

<sup>1</sup> Sources used were: Energy Information Administration's *Performance Profiles of Major Energy Producers*, 1993 (DOE/EIA-0206); Moody's 1994 Industrial Manual; 1995 U.S.A. Oil Industry Directory; and Standard & Poor's 1994 Register—Corporations.