

exploration, oil and gas production or importing, petroleum refining and marketing, transportation of products, other energy operations (coal, nuclear and other energy) and nonenergy businesses (primarily chemicals). Second, this definition would exclude from the class of covered persons subject to the vehicle acquisition person's refinery yield of petroleum products must be composed of alternative fuels before that person would be deemed to have a "substantial portion" of its business involved in the production of alternative fuels. Other commenters urged DOE to adopt a definition of "substantial portion" that would be the same as the "principal business" criterion used in section 501(a)(2) for defining other categories of alternative fuel providers.

A few of the commenters recommended that DOE adopt a percentage of gross revenue derived from the sale of alternative fuels as the basis for the definition of "substantial portion." They pointed out that gross revenue is the measure used for determining whether other alternative fuel providers are "covered persons" because their "principal business" is in alternative fuels. In their view, if gross revenue can be used to determine whether an entity's principal business involves alternative fuels, it also should be used for determining whether a petroleum producer or importer has a substantial portion of its business in the production of alternative fuels.

After carefully reviewing all of the comments received on this issue, DOE thinks that a percentage of gross revenue derived from the sale of alternative fuels may be a better measure of an entity's involvement in the alternative fuels business than is the percentage of refinery yield of petroleum products included in the proposed rule's definition of "substantial portion." As pointed out by some commenters, a gross revenue measure can be applied to all producers and importers of petroleum, unlike the requirements those refiners who produce alternative fuels only as an incidental by-product of the refining process. Refiners are typically involved only in petroleum refining and marketing operations.

DOE also believes this gross revenue percentage comports with the terms of section 501(a)(2) of the Act, 42 U.S.C. § 13251(a)(2). If the term "substantial portion" were defined to include a percentage of gross revenue derived from alternative fuels that was higher than 30 percent, the distinction in the Act between "substantial portion" which applies to covered petroleum producers and importers (§ 501(a)(2)(C))

and "principal business" which applies to other alternative fuel providers (§ 501(a)(2)(A) and (B)) would be rendered meaningless. As noted in the preamble to the notice of proposed rulemaking, alternative fuels constitute an entity's "principal business" if the entity derives a plurality of its gross revenue from sales of alternative fuels, and a plurality may be less than 50 percent. 60 FR 10978. Therefore, DOE believes that 30 percent of gross revenue from alternative fuels may constitute a reasonable basis for the definition of "substantial portion."

This possible interpretation of "substantial portion" also appears to be consistent with the underlying intent of Congress with regard to petroleum-related entities. That intent was to apply the alternative fueled vehicle acquisition requirements only to major energy producers and importers.

DOE requests comments from interested members of the public on this possible option for defining "substantial portion" or any alternative options they would like DOE to consider. DOE is particularly interested in receiving data or analysis that are relevant to this issue.

III. Definition of "Alternative Fuel"

Section 301(2) of the Energy Policy Act,² 42 U.S.C. 13211, defines the term "alternative fuel" to mean "methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits."

²The conference report on the Energy Policy Act of 1992 states that "the intent of section 501(a)(1) is not to cover all affiliates or divisions of the many large energy companies which have some, but not all, of their corporate units engaged in alternative fuels operations. For example, the oil and gas production affiliate or division of a major energy company described in 501(a)(1)(C) would be covered; so might a propane pipeline unit or a natural gas processing division, if the "substantially engaged" test is met. But an oil tanker division, a gasoline marketing affiliate, or a petrochemical unit whose major operations are the production of plastics, for example, would not be covered. . . ." H.R. Rep. 1018, 102d Cong., 2d Sess. 387 (1992).

A. Alcohol Blends

In proposed § 490.2, DOE defined "alternative fuel" to include mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols. However, the proposal did not decrease the alcohol percentage to no less than 70 percent as authorized by section 301(2) of the Act. DOE received comments requesting that the definition of "alternative fuel" include alcohol blends down to no less than 70 percent alcohol by volume. These comments point out that automobile manufacturers' winter test programs have shown that lower level alcohol blends are required for improved cold start performance in winter conditions and are recommended in Owners' Manuals. Some comments also point out that recent cold weather testing by American Automobile Manufacturers Association (AAMA) members on alcohol blends indicates that the cold start threshold (the lowest temperature at which a vehicle will start) can be lowered by 10–15 degrees Fahrenheit by decreasing the alcohol content from 85% down to 70%. However, none of these commenters submitted test data to support their request to lower the minimum alcohol percentage.

DOE recognizes the concerns that these commenters have with the cold start capability of alcohol-fueled vehicles in winter conditions. DOE, therefore, invites interested persons to provide additional data, reports and analyses that are relevant to this matter. DOE will evaluate any information it receives in response to this invitation and decide whether to amend the proposed definition of "alternative fuel" to include a lower alcohol percentage as provided in section 301(2).

B. Biodiesel

Many commenters requested that biodiesel be included in the Department's regulatory definition of "alternative fuel." As described in the comments, biodiesel is produced from vegetable oils, such as soybean oil, which are biological materials. The commenters stated that biodiesel offers significant reduction in harmful tailpipe emissions of hydrocarbons, carbon monoxide and particulate matter; is essentially free of sulfur and harmful aromatics; and is non-toxic and biodegradable. These commenters also submitted information to show that biodiesel can be made wholly from domestic products, and that it has a positive energy balance in its production process.