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 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 percent of 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. 1 Major energy producers are typically consolidated or integrated companies that are involved in oil and gas 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 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 (section 501(a)(2)(C)) and "principal business" which applies to other alternative fuel providers (section 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.²

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.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 950609150-5150-01]

RIN 0648-AI06

Jade Collection in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserve Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow small-scale, non-intrusive collection of jade from the Sanctuary. This advance notice of proposed rulemaking (ANPR) discusses the reasons NOAA is considering authorizing jade collection in the MBNMS, and, if it is determined to proceed with rulemaking to allow jade collection, the possible restrictions NOAA might place on such collection to ensure that Sanctuary resources or qualities would not be adversely impacted. NOAA is issuing this ANPR specifically to invite advice, recommendations, information and other comments from interested parties on whether to allow jade collection in

¹ 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.

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).