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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110A]

RIN 1904–AA64

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Correction to notice of limited reopening of the comment period.

SUMMARY: This document contains corrections to the Notice of Limited Reopening of the Comment Period that was published Monday, July 31, 1995, 60 FR 38974, FR Doc. 95–18737. The notice of limited reopening of the comment period requests public comment on possible options for defining the term ''substantial portion,'' which is used to determine coverage for certain petroleum producers and importers, and on possible modifications of the proposed definition of ''alternative fuel'' with respect to alcohol fuels and biodiesel. In addition, this notice announces DOE's receipt of new information regarding automakers' alternative fueled vehicle production plans for the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6116.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the notice of limited reopening of the comment period contains errors in the sequence of text in Part II which may be confusing and, therefore, are in need of correction. The substance of Part II is unchanged.

Correction of Publication

Accordingly, the publication on July 31, 1995, of the Notice of Limited Reopening of the Comment Period, which was the subject of FR Doc. 95–18737, is corrected by reprinting Part II, Definition of ''Substantial Portion,'' beginning on page 38975, col. 1, and ending on page 38976, col. 2, in its entirety:

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 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]

[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.

[2] The 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).

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.

Thomas J. Gross,

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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