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PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. A new § 319.56–2ss would be added to read as follows:

§ 319.56–2ss Conditions governing the entry of grapes from Namibia.

Grapes (*Vitis vinifera*) may be imported into the United States from Namibia only under the following conditions:

(a) The grapes must be cold treated for *Cryptophlebia leucotreta, Ceratitis capitata*, *Ceratitis rosa*, and *Epichoristodes acerbella* in accordance with part 305 of this chapter.

(b) The grapes must be fumigated for *Aleurocanthus spiniferus, Apate monachus, Bustomus setulosus, Ceroplastes rusci,Cryptoblabes gnidiella, Dischista cincta, Empoasca lybica, Eremnus atratus, Eremnus cerealis, Eremnus setulosus, Eutetranychus orientalis, Helicoverpa armigera, Icerya seychellarum, Macchiademus diplopterus, Oxycarenus hyalinipennis*, *Pachnoda sinuata*, *Phlyctinus callosus*, *Scirtothrips aurantii*, *Scirtothrips dorsalis*, *Spodoptera littoralis*, and *Tanyrhynchus* carinatus in accordance with part 305 of this chapter.

(c) Each shipment of grapes must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of Namibia bearing the following additional declaration: ''The grapes in this shipment have been inspected and found free of *Maconellicoccus hirsutus*, *Nipaecoccus vastator*, *Rastrococcus iceryoides*, *Cochlicella ventricosa*, and *Theba pisana*.''

(d) The grapes may be imported in commercial shipments only.

Done in Washington, DC, this 20th day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–10017 Filed 6–23–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 451

RIN 1904–AB62

Renewable Energy Production Incentives

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy today proposes to amend its regulations for the Renewable Energy Production Incentives (REPI) program to incorporate changes made to the enabling statute by section 202 of the Energy Policy Act of 2005. The REPI program provides for production incentive payments to owners or operators of qualified renewable energy facilities, subject to the availability of appropriations. The statutory changes that DOE is proposing to implement through amendments to Part 451 relate primarily to allocation of available funds between owners or operators of two categories of qualified facilities, incorporation of additional ownership categories, extension of the eligibility window and program termination date, and expansion of applicable renewable energy technologies. In addition to the changes required by the Energy Policy Act of 2005 (EPAct 2005), DOE is modifying the method for accrued energy accounting in light of the new law. DOE also is taking this opportunity to make minor changes to update the regulations.

DATES: Public comments on this proposed rule will be accepted until July 26, 2006.

ADDRESSES: You may submit comments, identified by RIN 1904–AB62, by any of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

2. E-mail to *repi.rulemaking@ee.doe.gov*. Include RIN 1904–AB62 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.

3. Mail: Address the comments to Teresa Carroll, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585. Comments should be identified on the outside of the envelope and on the documents themselves with the designation ''REPI NOPR, RIN 1904–AB62.'' Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

You may obtain copies of comments received by DOE by contacting Teresa Carroll of the Office of Energy Efficiency and Renewable Energy at the address and telephone number given in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Daniel Beckley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7691. For questions regarding the administrative file maintained for this rulemaking, contact Teresa Carroll, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6477.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy Act of 1992, Pub. L. 102–486, established the REPI program to encourage production of electric energy by State-owned (or political subdivisions of a State) entities and non-profit electric cooperative utilities using certain renewable energy resources. Subject to availability of appropriations, DOE was authorized to pay 1.5 cents, adjusted annually for inflation, to facility owners or operators for each kilowatt-hour of electric energy produced by qualified renewable energy facilities. As specified in the statute as originally enacted, the first energy production year was fiscal year 1994 and a ten-year eligibility window was prescribed. Therefore, DOE did not accept applications for the REPI program after September 30, 2003. Qualified facility owners are eligible for payment for ten successive years beginning with the first year for which an energy payment is made. As a result, incentive payments were expected to continue through 2013. DOE has continued to make incentive payments, based on available appropriations, to those applicants whose ten successive years of participation in the program have not expired.

Section 202 of EPACT 2005 (Pub. L. 109–58) modifies the REPI program by: (a) Extending the eligibility window, (b) extending the termination date for the program, (c) increasing the number of renewable energy technologies eligible under the program, (d) broadening the category of qualified owners, and (e) altering the procedure for determining payment distributions if insufficient funds are appropriated to make full incentive payments for all approved applications. This proposed rule would amend the current REPI program regulations (10 CFR Part 451) to implement these statutory amendments. Additionally, this proposed rule would modify the method of incorporating accrued energy into *pro rata* calculations when insufficient funds are appropriated to cover all qualified kilowatt-hours. DOE is proposing the accrued methodology change to avoid inequity or unfairness that it believes may otherwise result from the new funds distribution method specified by the new law.

The changes made by EPACT 2005 reinforce the program as it has been conducted by DOE for over 12 years and do not alter its basic structure. Consequently, the rule amendments that DOE is proposing today are limited to changes needed to implement EPACT 2005 and to revise provisions that have become outdated since DOE initially implemented the program in 1995.

II. Description of Rule Amendments

Section 451.1 (Purpose and scope). In describing the purpose and scope of the REPI program, DOE proposes to revise references to the types of organizations that qualify for payment by: (a) Substituting the EPACT 2005 term ''not-for-profit'' for ''non-profit'' when referring to electric cooperative utilities; (b) describing public utilities by reference to section 115 of the Internal Revenue Service Code; (c) citing State, Commonwealth, U.S. territory or possession, and the District of Columbia as eligible facility owners as indicated in EPACT 2005; and (d) including as eligible recipients Indian tribal governments and Native corporations, as required by EPACT 2005.

Section 451.2 (Definitions). DOE proposes to add a definition of ''ocean,'' which was made an eligible renewable energy source by EPACT 2005. Because the REPI program is available only for renewable energy generated in the United States, DOE is proposing to define the term ''ocean'' to mean the parts of the Atlantic Ocean (including the Gulf of Mexico) and the Pacific Ocean that are contiguous to the United States coastline and from which energy may be derived through application of tides, waves, currents, thermal differences, or other means.

DOE also proposes a definition for the term ''biomass.'' The proposed definition codifies the broad interpretation of the term that has been used by the program to date, and which EPACT 2005 implicitly recognizes by including landfill gas and livestock methane among the technologies included in the definition of qualified renewable energy facility (42 U.S.C. 13317(b)).

DOE proposes to add a definition for the term ''date of first use.'' This proposed definition would accommodate the new statutory language regarding use of permits to establish first use (42 U.S.C. 13317(d)) and add clarity to the Part 451 provisions discussing time of first use.

DOE proposes to update the existing definition of ''Deciding Official'' to reflect DOE's designation of the Manager of the Golden Field Office as the Deciding Official shortly after the REPI program was established.

DOE proposes to replace the definition of ''non-profit electrical cooperative'' with the term ''not-for-profit electrical cooperative'' in § 451.2 to conform to the change in terminology made by EPACT 2005.

DOE also proposes to add definitions for ''Indian tribal government'' and for ''Native corporation.'' Section 202 of EPACT 2005 amends 42 U.S.C. 13317(b) to include Indian tribal governments and subdivisions thereof among the owners of qualified renewable energy facilities, but it does not define the term ''Indian tribal government.'' DOE proposes to define ''Indian tribal government'' to mean the governing body of an Indian tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). This definition of ''Indian tribe'' is incorporated into Title XXVI of the Energy Policy Act of 1992 by section 503 of EPACT 2005 (amending 25 U.S.C. 3501). The proposed definition of ''Native corporation'' follows section 202(b)(1) of EPACT 2005, which adopts the definition of the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

DOE proposes to amend the definition of ''renewable energy source'' to include ''ocean'' as a qualified renewable source. The ocean, as well as landfill gas and livestock methane captured by DOE's proposed definition of ''biomass,'' were added by section 202(b)(1) of EPACT 2005 to the list of eligible sources of energy.

DOE proposes to amend the definition of ''State'' to specifically reference Commonwealths, consistent with section 202(b)(1) of EPACT 2005.

Section 451.4 (What is a qualified renewable energy facility). DOE proposes five changes to this section to conform to the EPACT 2005 amendments: (a) The description of owner qualifications includes Indian tribal governments and Native corporations; (b) the date on which a renewable energy facility must first be used is extended to 2016; (c) a designated date of first use is provided for facilities placed in operation after the expiration date for new applicants specified in the statute as originally enacted and prior to the first fiscal year of energy production receiving payment under this proposed rule; (d) ocean energy is added to the provisions describing the conversion of non-qualified facilities; and (e) U.S. territorial waters are included as an acceptable facility location.

In regard to the date of first use, DOE notes that nearly one year and ten months elapsed between expiration of the original eligibility period for new facilities (September 30, 2003) and the extension of the eligibility period enacted by EPACT 2005 (August 8, 2005). DOE interprets the extension to apply to the interim period without interruption. As a result, qualifying facilities for which date of first use occurred in fiscal years 2004 (October 1, 2003–September 30, 2004) and 2005 (October 1, 2004–September 30, 2005) become eligible participants. Those facilities for which date of first use and subsequent energy production occur in fiscal year 2005 may apply for payment from fiscal year 2006 available funds as provided under these proposed rule amendments. Facilities with date of first use in fiscal year 2004 are deemed to have a date of first use of October 1, 2004, and may apply for fiscal year 2005 energy production under these same rule amendments. For the latter applicants, fiscal year 2004 energy production will be disregarded and fiscal year 2005, assuming application for payment for qualifying energy produced therein is made, will be deemed the first year of the ten-year eligibility period for payments.

Section 451.5 (Where and when to apply). DOE proposes to eliminate the special provision, at § 451.5(b)(2), regarding the application period for the program's initial 1994 fiscal year because it is no longer applicable. In its place, DOE is proposing a new paragraph (b)(2) that would provide an extended application submission period for owners or operators of facilities

whose date of first use occurs during the period October 1, 2003, and September 30, 2005.

Section 451.8 (Application content requirements). DOE proposes changes to the required content of each annual application for payment that are made necessary by other proposed rule amendments. Because DOE proposes to maintain a permanent record of accrued energy for each participant, the submission of accrued energy totals, currently required by § 451.8 (h), would no longer be required with each annual application. Proposed § 451.8 (i) identifies supporting materials to be submitted by entities claiming date of first use based on receipt of construction permits. Because the Federal Government has adopted electronic funds transfer as the preferred method for financial transactions with commercial and institutional entities, DOE proposes to remove the option to select other methods of payment from § 451.8 (j). Lastly, DOE proposes to substitute the new statutory term ''not-for-profit'' for ''non-profit'' when referring to an electrical cooperative.

Section 451.9 (Procedures for processing applications.) To conform to EPACT 2005 requirements, DOE proposes several amendments in the procedures for processing applications. As specified in EPACT 2005, available funds will be divided in a 60:40 ratio between two categories of eligible renewable energy facility types. The composition of the 60 percent category corresponds to Tier 1 under the existing regulations except for the addition of ocean energy as a qualifying technology. The 40 percent category will be identical to the prior Tier 2. Also as specified in EPACT 2005, the rule adds the provision to allow the Secretary to modify the 60:40 distribution for any given year, provided that Congress is notified of the reasons for such change. DOE anticipates that this option would be employed primarily in the event that one of the two categories of payment has excess available funds for the year under the standard distribution ratio, while the other has insufficient funds.

DOE also proposes to amend the provisions dealing with incentive payments when there are insufficient funds to make payments for all qualifying energy. Under both the existing and proposed amended rule, the total qualified electrical energy consists of (a) the energy produced in the most recent year and (b) the accrued energy (which is the qualified energy produced in all preceding years for which payment was not made). To more fairly accommodate the change to the 60:40 funds allocation, DOE proposes to amend the process for partial payment calculations. After funds have been determined to be insufficient and the 60:40 allocations have been made to the respective categories, the amended rule would require DOE to calculate potential payments, on a *pro rata* basis if necessary, based on the prior year's energy production. Excess funds in either of the 60 percent or 40 percent categories would be reallocated to the category still insufficiently funded and *pro rata* calculations based on prior year energy would continue. If funding is not exhausted by this first set of calculations, remaining funds are allocated to the two categories on a 60:40 basis and a second set of calculations is undertaken based on accrued energy. Under this approach, recent annual energy competes for energy payments with recent annual energy, and accrued energy competes with accrued energy. To support its accrued energy calculations, DOE would maintain a record of each applicant's accrued energy total.

To illustrate, assume applicants A and B have equivalent eligible facilities that produced 100 kWh of qualified energy in the prior year and that A has no accrued energy and B has 200 kWh accrued energy total. Under the existing rule, B's energy basis for all calculations would be 300 kWh, while A's would be 100 kWh and B would receive three times the energy payment of A regardless of the funding levels. Under the proposed amended process, if available funds were sufficient to make payments for the total qualified energy, B (with total energy basis of 300 kWh) would receive three times the payment of A as before. If funds were sufficient to make payments for only part (or all) of the prior year energy production, A and B (each with prior year energy basis of 100 kWh) would receive equal payments as determined by *pro rata* calculations. If funds were sufficient to exceed prior year energy payments, but insufficient to make full accrued energy payments, B (with accrued energy basis of 200 kWh) would receive an additional payment as determined by *pro rata* calculations, while A (with accrued energy basis of zero) would receive no further payment.

DOE believes that this proposed method of accounting for accrued energy would be more equitable for all program participants in view of the potential for both payment categories to be subject to *pro rat*a calculations in any given year. Without this proposed amendment, applicants with several years in the REPI program and large accrued energy backlogs, who have already received multiple REPI payments, would be weighted more heavily than newer applicants who have facilities producing equal annual energy, but have zero or small accrued energy backlogs. This would have had minor effect in the original program where the two categories, or tiers, were paid successively and Tier 1 was fully compensated or nearly so. Under these prior conditions, *pro rata* calculations affected small percentages of the total qualified electrical energy and/or a small fraction of program participants. Under the new 60:40 funding division and with the 60 percent and 40 percent categories being considered in parallel, insufficient funding and *pro rata* calculations may occur for both categories and, therefore, apply to all participants. This could result in accrued energy having excessive influence on funding distributions. DOE's proposed amendment would require DOE to consider annual energy first, and accrued energy thereafter, when making *pro rata* calculations. DOE believes the proposed approach is consistent with the legislation. Both the statute as originally enacted and the amendments prescribed in EPACT 2005 describe a REPI program based on annual energy production and annual incentive payments, and neither includes provisions for addressing backlog or accrued energy. Accrued energy was introduced in DOE's implementation of the REPI program to allow for potential payment of backlogged unpaid energy in the event that available funding exceeded the total payments needed for qualified annual energy production.

The proposed amendment would not alter the 60:40 division between categories and would not change DOE's continued recording and recognition of accrued energy totals. The proposed provisions would alter slightly, and more equitably, funding distribution within each category, while maintaining the 60:40 legislative intent. DOE emphasizes that, irrespective of the method used to calculate incentive payments, no owner or operator should assume that all, or any, accrued energy will ultimately receive incentive payments.

III. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views, or comments with respect to the proposed rule. Written comments should be submitted to the address given in the **ADDRESSES** section of this notice of proposed rulemaking and must be received by the date given in the DATES section of this notice. Comments should be identified

on the outside of the envelope and on the documents themselves with the designation ''REPI NOPR, RIN 1904–AB62.'' Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. All written comments received will be available for public inspection as part of the administrative record on file for this rulemaking maintained by the Office of Energy Efficiency and Renewable Energy at the address provided at the beginning of this notice of proposed rulemaking.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure, should submit one complete copy of the document, as well as two copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

DOE has determined that this rulemaking does not raise the kinds of substantial issues or impacts that, pursuant to 42 U.S.C. 7191, would require DOE to provide an opportunity for oral presentation of views, data and arguments. Therefore, DOE has not scheduled a public hearing on these proposed amendments to Part 451. DOE may reconsider this determination based on the written comments it receives.

IV. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to not be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in the Department's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov*.

DOE has reviewed today's proposed procedures under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. These proposed amendments revise DOE's regulations for its program for making production incentive payments to owners or operators of qualified renewable energy facilities, subject to the availability of appropriations. The regulations are procedural in nature and affect only entities that choose to apply for incentive payments under the program. The proposed procedures will not have a significant economic impact on any class of entities. On the basis of the foregoing, DOE certifies that the proposed procedures, if implemented would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

This proposed rule would not impose any new collection of information subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

These proposed procedures would not impose a Federal mandate on State, local or tribal governments. The proposed rule would not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the

States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed procedures meet the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA), as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's Notice of Proposed Rulemaking. Issued in Washington, DC, on June 19, 2006.

List of Subjects in 10 CFR Part 451

Electric utilities, Grant programs, Renewable energy.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 451 of title 10, chapter II of the Code of Federal Regulations as follows:

PART 451—RENEWABLE ENERGY PRODUCTION INCENTIVES

1. The authority citation for part 451 is revised to read as follows:

Authority: 42 U.S.C. 7101, *et seq.*; 42 U.S.C. 13317.

2. Section 451.1(a) is revised to read as follows:

§ 451.1 Purpose and scope.

(a) The provisions of this part cover the policies and procedures applicable to the determinations by the Department of Energy (DOE) to make incentive payments, under the authority of 42 U.S.C. 13317, for electric energy generated in a qualified renewable energy facility owned by: A not-for-profit electric cooperative; a public utility described in section 115 of the Internal Revenue Code of 1986; a State, Commonwealth, territory or possession of the United States, the District of Columbia, or political subdivision thereof; an Indian tribal government or subdivision thereof; or a Native corporation as defined in section 3 of the Alaskan Native Claims Settlement Act (43 U.S.C. 1602).

* * * * *

3. Section 451.2 is amended by:

a. Adding in alphabetical order new definitions of ''Biomass,'' ''Date of first use,'' ''Indian tribal government,'' ''Native corporation,'' ''Not-for-profit electrical cooperative,'' and ''Ocean''.

b. Revising the definitions of ''Closed loop biomass,'' ''Deciding Official,'' ''Renewable energy source'' and ''State.''

c. Removing the definition of ''Nonprofit electrical cooperative.''

The revisions and additions read as follows:

§ 451.2 Definitions.

* * * * *

Biomass means biologically generated energy sources such as heat derived from combustion of plant matter, or from combustion of gases or liquids derived from plant matter, animal wastes, or sewage, or from combustion of gases derived from landfills, or hydrogen derived from these same sources.

Closed-loop biomass means any organic material from a plant which is planted exclusively for purposes of being used at a qualified renewable energy facility to generate electricity.

Date of first use means, at the option of the facility owner, the date of the first kilowatt-hour sale, the date of completion of facility equipment testing, or the date when all approved permits required for facility construction are received.

Deciding Official means the Manager of the Golden Field Office of the Department of Energy (or any DOE official to whom the authority of the Manager of the Golden Field Office may be redelegated by the Secretary of Energy).

* * * * *

Indian tribal government means the governing body of an Indian tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Native corporation has the meaning set forth in the Alaska Native Claims Settlement Act (25 U.S.C. 1602).

* * * * *

Not-for-profit electrical cooperative means a cooperative association that is legally obligated to operate on a not-for-profit basis and is organized under the laws of any State for the purpose of providing electric service to its members.

Ocean means the parts of the Atlantic Ocean (including the Gulf of Mexico) and the Pacific Ocean that are contiguous to the United States coastline and from which energy may be derived through application of tides, waves, currents, thermal differences, or other means.

* * * * *

Renewable energy source means solar heat, solar light, wind, ocean, geothermal heat, and biomass, except for—

(1) Heat from the burning of municipal solid waste; or

(2) Heat from a dry steam geothermal reservoir which—

(i) Has no mobile liquid in its natural state;

(ii) Is a fluid composed of at least 95 percent water vapor; and

(iii) Has an enthalpy for the total produced fluid greater than or equal to 2.791 megajoules per kilogram (1200 British thermal units per pound).

State means the District of Columbia, Puerto Rico, and any of the States, Commonwealths, territories, and possessions of the United States.

4. Section 451.4 is amended by:

a. Revising paragraphs (a)(2) and (a)(3) and adding new paragraphs (a)(4) and (a)(5).

b. Revising paragraph (e).

c. Adding the word ''ocean'' after the word ''wind'' in paragraphs (f)(1) and (f)(2).

d. Adding the words ''or in U.S. territorial waters'' after the word ''State'' in paragraph (g).

The revisions and additions read as follows:

§ 451.4 What is a qualified renewable energy facility.

* * * * *

(a) * * *

(2) A public utility described in section 115 of the Internal Revenue Code of 1986;

(3) A not-for-profit electrical cooperative;

(4) An Indian tribal government or subdivision thereof; or

(5) A Native corporation.

* * * * *

(e) *Time of first use.* The date of the first use of a newly constructed renewable energy facility, or a facility covered by paragraph (f) of this section, must occur during the inclusive period beginning October 1, 1993, and ending on September 30, 2016. For facilities whose date of first use occurred in the period October 1, 2003, through September 30, 2004, the time of first use shall be deemed to be October 1, 2004.

* * * * *

5. Section 451.5 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 451.5 Where and when to apply.

* * * * *

(b) * * *

(1) An application for an incentive payment for electric energy generated and sold in a fiscal year must be filed during the first quarter (October 1 through December 31) of the next fiscal year, except as provided in paragraph (2) of this section.

(2) For facilities whose date of first use occurred in the period October 1, 2003, through September 30, 2005, applications for incentive payments for electric energy generated and sold in fiscal year 2005 must be filed by August 31, 2006.

* * * * *

§ 451.6 [Amended]

6. Section 451.6 is amended by adding the word ''consecutive'' before the words ''fiscal years'' in the first sentence, and in the last sentence, by removing the date ''2013'' and adding in its place the date ''2026''.

7. Section 451.8 is amended by:

a. Removing the comma after the word ''owner,'' where it is first used in paragraph (a).

b. Removing paragraph (h) and redesignating (i) as paragraph (h).

c. Revising redesignated paragraph (h).

d. Adding a new paragraph (i).

e. Revising paragraph (j).

f. Removing the word ''nonprofit'' and adding in its place the term ''not-for-profit'' in paragraph (m).

The revisions and additions read as follows:

§ 451.8 Application content requirements.

* * * * *

(h) The total amount of electric energy for which payment is requested, including the net electric energy generated in the prior fiscal year, as determined according to paragraph (f) or (g) of this section;

(i) Copies of permit authorizations if the date of first use is based on permit approvals and this is the initial application;

(j) Instructions for payment by electronic funds transfer;

* * * * *

8. Section 451.9 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 451.9 Procedures for processing applications.

* * * * *

(c) *DOE determinations.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall determine the extent to which appropriated funds are available to be obligated under this program for each fiscal year. Subject to paragraph (e) of this section and upon evaluating each application and any other relevant information, DOE shall further determine:

(1) Eligibility of the applicant for receipt of an incentive payment, based on the criteria for eligibility specified in this part;

(2) The number of kilowatt-hours to be used in calculating a potential incentive payment, based on the net electric energy generated from a qualified renewable energy source at the qualified renewable energy facility and sold during the prior fiscal year;

(3) The number of kilowatt-hours to be used in calculating a potential additional incentive payment, based on the total quantity of accrued energy generated during prior fiscal years;

(4) The amounts represented by 60% of available funds and by 40% of available funds; and

(5) Whether justification exists for altering the 60:40 payment ratio specified in paragraph (e) of this section.

(d) *Calculating payments.* Subject to the provisions of paragraph (e) of this section, potential incentive payments under this part shall be determined by multiplying the number of kilowatt-hours determined under § 451.9(c)(2) by 1.5 cents per kilowatt-hour, and adjusting that product for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions, calendar year 1993 shall be substituted for calendar year 1979. Using the same procedure, a potential additional payment shall be determined for the number of kilowatt-hours determined under paragraph (c)(3) of this section. If the sum of these calculated payments does not exceed the funds determined to be available by the Assistant Secretary for Energy Efficiency and Renewable Energy under § 451.9(c), DOE shall

make payments to all qualified applicants.

(e) *Insufficient funds.* If funds are not sufficient to make full incentive payments to all qualified applicants, DOE shall—

(1) Calculate potential incentive payments, if necessary on a *pro rata* basis, not to exceed 60% of available funds to owners or operators of qualified renewable energy facilities using solar, wind, ocean, geothermal, and closed-loop biomass technologies based on prior year energy generation;

(2) Calculate potential incentive payments, if necessary on a *pro rata* basis, not to exceed 40% of available funds to owners or operators of all other qualified renewable energy facilities based on prior year energy generation;

(3) If the amounts calculated in paragraphs (e)(1) and (2) of this section result in one owner group with insufficient funds and one with excess funds, allocate excess funds to the owner group with insufficient funds and calculate additional incentive payments, on a pro rata basis if necessary, to such owners or operators based on prior year energy generation.

(4) If potential payments calculated in paragraphs (e)(1), (2), and (3) of this section do not exceed available funding, allocate 60% of remaining funds to paragraph (e)(1) recipients and 40% to paragraph (e)(2) recipients and calculate additional incentive payments, if necessary on a *pro rata* basis, to owners or operators based on accrued energy;

(5) If the amounts calculated in paragraph (e)(4) of this section result in one owner group with insufficient funds and one with excess funds, allocate excess funds to the owner group with insufficient funds and calculate additional incentive payments, on a *pro rata* basis if necessary, to such owners or operators based on accrued energy.

(6) Notify Congress if potential payments resulting from paragraphs (e)(3) or (5) of this section will result in alteration of the 60:40 payment ratio;

(7) Make incentive payments based on the sum of the amounts determined in paragraphs (e)(1) through (5) of this section for each applicant;

(8) Treat the number of kilowatt-hours for which an incentive payment is not made as a result of insufficient funds as accrued energy for which future incentive payment may be made; and

(9) Maintain a record of each applicant's accrued energy.

* * * * *

[FR Doc. E6–9998 Filed 6–23–06; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA35

Risk-Based Capital Regulation Amendment

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing technical amendments to Appendix A to Subpart B Risk-Based Capital Regulation Methodology and Specifications of 12 CFR part 1750, (Risk-Based Capital Regulation). The proposed amendments are intended to enhance the accuracy and transparency of the calculation of the risk-based capital requirement for the Enterprises and updates the Risk-Based Capital Regulation to incorporate approved new activities treatments.

DATES: Comments regarding this Notice of Proposed Rulemaking must be received in writing on or before July 26, 2006. For additional information, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the proposed rulemaking, identified by ''RIN 2550–AA35,'' by any of the following methods:

- U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550–AA35, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- Hand Delivery/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550–AA35, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- E-mail: Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at RegComments@OFHEO.gov. Please include ''RIN 2550–AA35'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Isabella W. Sammons, Deputy General Counsel, telephone (202) 414-3790 or Jamie Schwing, Associate General Counsel, telephone (202) 414–3787 (not toll free numbers), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

The Office of Federal Housing Enterprise Oversight (OFHEO) invites comments on all aspects of the proposed regulation, and will take all comments into consideration before issuing the final regulation. OFHEO requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5″ disk or CD–ROM.

Copies of all comments will be posted on the OFHEO Internet web site at http://www.ofheo.gov. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, titled the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*) established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are adequately capitalized, operate safely and soundly, and comply with applicable laws, rules and regulations.

In furtherance of its regulatory responsibilities, OFHEO published a final regulation setting forth a risk-based capital test which forms the basis for determining the risk-based capital requirement for each Enterprise.[1] The Risk-Based Capital Test has been amended to incorporate corrective and technical amendments that enhance the accuracy and transparency of the calculation of the risk-based capital requirement.[2] Since the last amendment

[1] Risk-Based capital, 66 FR 47730 (September 13, 2001), 12 CFR part 1750.

[2] Risk-Based Capital, 66 FR 47730 (September 13, 2001), 12 CFR part 1750, as amended, 67 FR 11850 (March 15, 2002), 67 FR 19321 (April 19, 2002), 68 FR 7309 (February 13, 2003).