

# Proposed Rules

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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 AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 305 and 319

[Docket No. APHIS–2006–0025]

#### Importation of Table Grapes From Namibia

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to allow the importation into the United States of fresh table grapes from Namibia under certain conditions. As a condition of entry, the grapes would have to undergo cold treatment and fumigation with methyl bromide and would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the specified pests. In addition, the grapes would also be subject to inspection at the port of first arrival. This action would allow for the importation of grapes from Namibia into the United States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** We will consider all comments that we receive on or before August 25, 2006.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and, in the lower “Search Open Regulations and Federal Actions” box, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select APHIS–2006–0025 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the

docket after the close of the comment period, is available through the site’s “User Tips” link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0025, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0025.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPD, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Namibia has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh table grapes from Namibia to be imported into the United States. As part of our evaluation of Namibia’s request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and risk management document may be obtained from the person listed under **FOR**

**FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instruction for accessing Regulations.gov).

The PRA, titled “Qualitative Pathway—Initiated Risk Assessment of the Importation of Fresh Table Grapes *Vitis vinifera* L. from Namibia into the United States” (November 2005), evaluates the risks associated with the importation of table grapes into the United States from Namibia. The PRA and supporting documents identified 30 pests of quarantine significance present in Namibia or in nearby countries<sup>1</sup> that could be introduced into the United States via table grapes. These pests include 28 insect pests and 2 mollusks. Four of the insect pests are internal feeders: The moths *Cryptophlebia leucotreta* and *Epichoristodes acerbella* and the fruit flies *Ceratitidis capitata* and *Ceratitidis rosa*. The other 24 insect pests are external feeders: The whitefly *Aleurocanthus spiniferus*; the twig borer *Apate monachus*; the weevils *Bustomus setulosus* and *Phlyctinus callosus*; the scales *Ceroplastes rusci* and *Icerya seychellarum*; the moth *Cryptoblabes gnidiella*; the beetles *Dischista cincta*, *Eremnus atratus*, *Eremnus cerealis*, *Eremnus setulosus*, and *Pachnoda sinuata*; the cotton jassid *Empoasca lybica*; the mite *Eutetranychus orientalis*; the bollworm *Helicoverpa armigera*; the chinch bug *Macchiademus diplopterus*; the mealybug *Maconellicoccus hirsutus*, *Nipaeococcus vastator*, and *Rastrococcus iceryoides*; the cottonseed bug *Oxycarenus hyalinipennis*; the thrips *Scirtothrips aurantii* and *Scirtothrips dorsalis*; the leafworm *Spodoptera littoralis*; and the bud nibbler *Tanyrhynchus carinatus*. The two mollusks, *Cochlicella ventricosa* and *Theba pisana*, are also external feeders.

APHIS has determined that measures beyond standard port of entry inspection are required to mitigate the risks posed by these plant pests. Therefore, we propose to require that the grapes be subjected to a combined treatment of cold treatment in accordance with schedule T107–e and

<sup>1</sup> Due to Namibia being a part of South Africa until 1990 and grape production in Namibia as a commercial export being relatively new, the PRA takes into account pest data from grape growing regions in neighboring regions of southern Africa as well as Namibia.

methyl bromide fumigation in accordance with schedule T104-a-1.

Cold treatment schedule T107-e is described in § 305.16 of the phytosanitary treatments regulations in 7 CFR part 305. Under that schedule, the grapes would have to be held at a temperature of 31 °F (-0.55 °C) or colder for a period of 22 days. The 22-day treatment period would begin only after all temperature sensors indicate the grapes have been precooled to 31 °F or below. If the temperature exceeds

31.5 °F, the treatment period would have to be extended by one-third of a day for each day or part of a day that the temperature is above 31.5 °F. If the exposure period is extended, the temperature during the extension period must be 34 °F or below. If the temperature exceeds 34 °F at any time, the treatment is nullified. This cold treatment schedule has been proven effective in treating false codling moth (*Cryptophlebia leucotreta*) on grapes from South Africa. This treatment

would also mitigate the risks associated with the fruit flies *Ceratitis capitata* and *Ceratitis rosa* and the moth *Epichoristodes acerbelli*, which are less adaptable to colder temperatures than false codling moth.

In addition, we would require that the grapes be fumigated with methyl bromide fumigation in accordance with schedule T104-a-1, which is described in § 305.6(a) of the phytosanitary treatments regulations.

Treatment schedule	Pressure	Temperature (°F)	Dosage rate (lb/1,000 cubic feet)	Exposure period (hours)
T104-a-1 .....	NAP <sup>1</sup> .....	80 or above ..	1.5	2
		70-79 .....	2	2
		60-69 .....	2.5	2
		50-59 .....	3	2
		40-49 .....	4	2

<sup>1</sup> Normal atmospheric pressure.

This methyl bromide fumigation treatment schedule has been proven effective in treating external pests on imported fruits and vegetables from around the world, except for mealybugs. Therefore this treatment will effectively mitigate the risks associated with *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*, *Spodoptera littoralis*, and *Tanyrhynchus carinatus*.

Because the cold and methyl bromide treatments we would require do not effectively mitigate the pest risk posed by the mealybugs, *Maconellicoccus hirsutus*, *Nipaeococcus vastator*, *Rastrococcus iceryoides*, or the mollusks, *Cochlicella ventricosa* and *Theba pisana*, the NPPO of Namibia would be required to conduct phytosanitary inspections for those pests. Each shipment of grapes would have to be accompanied by a phytosanitary certificate bearing the additional declaration: "The grapes in this shipment have been inspected and found free of *Maconellicoccus hirsutus*, *Nipaeococcus vastator*, *Rastrococcus iceryoides*, *Cochlicella ventricosa* and *Theba pisana*." Specifically listing the pests on the additional declaration alerts U.S. inspectors to the specific pests of concern.

In addition, we would restrict the importation of fresh table grapes from Namibia to commercial shipments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe and is often grown with little or no pest control. Commercial shipments, as defined in § 319.56-1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer.

The proposed conditions described above for the importation of table grapes from Namibia into the United States would be added to the fruits and vegetables regulations as a new § 319.56-2ss. In addition, we would also amend the table in § 305.2(h)(2)(i) of the phytosanitary treatments regulations to add an entry for grapes from Namibia and designate methyl bromide schedule T104-a-2 and cold treatment schedule T107-e as approved treatments for the specific pests named in this document.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive

Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the fruits and vegetables regulations to allow the importation into the United States of fresh table grapes from Namibia under certain conditions. As a condition of entry, the grapes would have to undergo cold treatment and fumigation with methyl bromide and would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the specified pests. In addition, the grapes would also be subject to inspection at the port of first arrival. This action would allow for the importation of grapes from Namibia into the United States while continuing to provide protection against the introduction of quarantine pests.

According to the Trade Law Center for Southern Africa, 7 grape companies in Namibia are currently cultivating 1,300 hectares, irrigated by water from the Orange River, and another 2,000 hectares are expected to be put to cultivation soon. Because of the climate in Namibia, grapes mature in November, which gives producers there a competitive advantage over producers in other southern hemisphere countries where the grape harvest begins in December. Imports of Namibian table grapes into the United States in the first year are expected to reach 22.5 40-foot containers (approximately 744,000 pounds), which would account for less than one-tenth of 1 percent of current U.S. fresh table grape imports.

The Regulatory Flexibility Act requires agencies to specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm. The proposed rule may affect producers and wholesalers of table grapes in the United States.

The small business size standards for grape farming without making wine, as identified by the SBA based upon NAICS code 111332, is \$750,000 or less in annual receipts.<sup>2</sup> While the available data do not provide the number of U.S. grape-producing entities according to size distribution as it relates to annual receipts, it is reasonable to assume that the majority of the operations are considered small businesses by SBA standards. According to the 2002 Census of Agriculture data, there were a total of 23,856 grape farms in the United States in 2002.<sup>3</sup> It is estimated that approximately 93 percent of these grape farms had annual sales in 2002 of \$500,000 or less, and are considered to be small entities by SBA standards.

The United States is a net importer of fresh table grapes. In 2004, the United States imported 1,322.8 million pounds of fresh table grapes with approximately 79 and 19 percent arriving from Chile and Mexico, respectively. In that same year, the United States exported approximately 606.3 million pounds of table grapes. Canada is the largest importer of U.S. fresh grapes, accounting for 44 percent of U.S. exports. The second and third largest importers of U.S. fresh grapes are Malaysia and Mexico, accounting for approximately 9 and 7 percent of U.S. grape exports, respectively.<sup>4</sup> U.S. imports of table grapes experienced an average increase of 6.6 percent annually over the last decade while exports have increased an average of 3.4 percent.<sup>5</sup> Fresh utilization of U.S. grape production only accounts, on average, for 13 percent of total utilized U.S. grape production annually. U.S. wine production and raisin production

account for an average of 60 percent and 25 percent, respectively, of U.S. grape utilization annually.<sup>6</sup>

Domestic consumers would benefit because Namibian table grapes mature a month earlier than table grapes from other countries in the southern hemisphere, providing access to an increased supply of fresh table grapes for a longer period of time. The competitive impact of imports from Namibia would likely be minimal for domestic producers, whose grapes are mainly intended for processed utilization. As noted previously, forecast Namibian table grape imports would comprise less than one-tenth of 1 percent of total U.S. table grape imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This proposed rule would allow table grapes to be imported into the United States from Namibia. If this proposed rule is adopted, State and local laws and regulations regarding table grapes imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### Use of Methyl Bromide

Under this proposed rule, table grapes imported into the United States from Namibia must be fumigated with methyl bromide in accordance with schedule T104-a-1 to kill external feeder insects. We estimate that between 1 and 22.5 40-foot containers of fresh table grapes would be imported from Namibia during the first shipping season. Importations may increase in future years. Fumigation using schedule T104-a-1 would require no more than 10 pounds of methyl bromide per container. No alternative treatment is currently available for these pests.

The United States is fully committed to the objectives of the Montreal

Protocol, including the reduction and ultimately the elimination of reliance on methyl bromide for quarantine and pre-shipment uses in a manner that is consistent with the safeguarding of U.S. agriculture and ecosystems. APHIS reviews its methyl bromide policies and their effect on the environment in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Decision XI/13 (paragraph 5) of the 11th Meeting of the Parties to the Montreal Protocol, which calls on the Parties to review their "national plant, animal, environmental, health, and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and pre-shipment where technically and economically feasible alternatives exist."

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. In some circumstances, however, methyl bromide continues to be the only technically and economically feasible treatment against specific quarantine pests. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions. In connection with this rulemaking, we welcome comments, especially data or other information, regarding other treatments that may be efficacious and technically and economically feasible that we may consider as alternatives to methyl bromide.

#### National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed importation into the United States of table grapes from Namibia, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

<sup>2</sup> Based upon 2002 Census of Agriculture—State Data and the "Small Business Size Standards by NAICS Industry," Code of Federal Regulations, Title 13, Chapter 1.

<sup>3</sup> The number of grape farms in the United States, as reported by the 2002 Census of Agriculture, is the total number of grape-producing operations, which also include grapes produced for processed utilization.

<sup>4</sup> Source: Global Trade Atlas.

<sup>5</sup> Source: USDA FAS, PS&D Online. "Table Grapes: Production, Supply and Distribution in Selected Countries," [http://www.fas.usda.gov/psd/complete\\_tables/HTTP-table6-104.htm](http://www.fas.usda.gov/psd/complete_tables/HTTP-table6-104.htm).

<sup>6</sup> USDA ERS Briefing Room, Fruit and Tree Nut Yearbook, 2005.

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2006-0025. Please send a copy of your comments to: (1) Docket No. APHIS-2006-0025, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the fruits and vegetables regulations to allow the importation into the United States of fresh table grapes from Namibia. As a condition of entry, the grapes would have to undergo cold treatment and fumigation with methyl bromide, and would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the specified pests. In addition, the grapes

would also be subject to inspection at the port of first arrival.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
  - (2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
  - (3) Enhance the quality, utility, and clarity of the information to be collected; and
  - (4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).
- Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

*Respondents:* Growers of grapes, the Namibian NPPO.

*Estimated annual number of respondents:* 16,000.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 16,000.

*Estimated total annual burden on respondents:* 2,560 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

**Government Paperwork Elimination Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

**List of Subjects**

*7 CFR Part 305*

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

*7 CFR Part 319*

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 305 and 319 as follows:

**PART 305—PHYTOSANITARY TREATMENTS**

1. The authority citation for part 305 would continue to read as follows:

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

2. In paragraph (h)(2)(i) of § 305.2, the table would be amended by adding, in alphabetical order, an entry for Namibia to read as follows:

**§ 305.2 Approved treatments.**

*	*	*	*	*
(h)	*	*	*	
(2)	*	*	*	
(i)	*	*	*	

Location	Commodity	Pest	Treatment schedule
*	*	*	*
Namibia	Grape	External feeders <i>Cryptophlebia leucotreta</i> , <i>Ceratitis capitata</i> , <i>Ceratitis rosa</i> , <i>Epichoristodes acerbella</i> .	MB T104-a-1 CT T107-e
*	*	*	*

\* \* \* \* \*

**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*, *Cryptoblabe 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 (EPA 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](mailto: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
- II. Description of Rule Amendments
- III. Opportunity for Public Comment
- IV. Regulatory Review
- V. Approval of the Office of the Secretary

**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.