(b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky; (c) Southwest Region: Oklahoma and Texas; (d) Western Region: Arizona, California-Nevada, and New Mexico.''

The amendments proposed herein would allow the States of Kansas, Virginia, and Florida to have at least one member and an additional member for each 1 million bales or major fraction (more than half) thereof of cotton produced in the state and marketed above one million bales during the period specified in the regulations for determining Board membership.

Finally, AMS proposes to make any such changes as may be necessary to the Order to conform to any amendment that may result from the hearing.

The hearing is called pursuant to the provisions of the Cotton Act and the applicable rules of practice and procedure governing proceedings under research, promotion, and information programs (7 CFR part 1200). The public hearing is held for the purpose of determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act, as amended by the 2008 Farm Bill.

Evidence also will be taken to determine whether emergency conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 1200.13(d)) with respect to any proposed amendments.

Testimony is invited at the hearing on the proposals contained in this notice. All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Cotton and Tobacco Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

PART 1205—COTTON RESEARCH AND PROMOTION

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to the proposal.

Proposals submitted by USDA:

Proposal Number 1

3. Revise § 1205.314 to read as follows:

§ 1205.314 Cotton-producing State.

''Cotton-producing State'' means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; and Virginia.

Proposal Number 2

4. Revise § 1205.319, to read as follows:

§ 1205.319 Cotton-producing region.

''Cotton-producing region'' means each of the following groups of cotton producing States:

(a) Southeast Region: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia;

(b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky;

(c) Southwest Region: Kansas, Oklahoma and Texas;

(d) Western Region: Arizona, California-Nevada, and New Mexico.

Proposal Number 3

Make other such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: November 24, 2008.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E8–28569 Filed 11–28–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 1010

RIN 1990–AA31

Conduct of Employees and Former Employees; Exemption From Post-Employment Restrictions for Communications; Furnishing Scientific or Technological Information

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for comment.

SUMMARY: The Department of Energy (DOE) today issues a proposed rule to establish procedures under which a former employee of the executive branch may obtain approval from DOE to make communications to DOE solely for the purpose of furnishing scientific or technological information during the period the former employee is subject to post-employment restrictions set forth in 18 U.S.C. 207(a), (c), and (d). The proposed rule also would further define the term ''scientific or technological information,'' for which an exemption is provided by 18 U.S.C. 207(j)(5).

DATES: Public comment on this proposed rule will be accepted until December 31, 2008.

ADDRESSES: You may submit comments, identified by RIN 1990–AA31, by any of the following methods:

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

2. E-mail to *standardsofconduct@hq.doe.gov.* Include RIN 1990–AA31 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 written comments to Sue E. Wadel, Deputy Assistant General Counsel for General Law, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–77, Room 6A–211, 1000 Independence Avenue, SW., Washington, DC 20585.

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 submitted in response to this notice of proposed rulemaking from the contact person.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure

has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

FOR FURTHER INFORMATION CONTACT: Sue E. Wadel, Deputy Assistant General Counsel for General Law, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–77, Room 6A–211, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–1522 or *Sue.Wadel@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

DOE proposes to revise the title of 10 CFR Part 1010 from ''Conduct of Employees'' to ''Conduct of Employees and Former Employees.'' In addition, a title will be added identifying 10 CFR section 1010.101 *et seq.* as ''Subpart A—Conduct of Employees.'' These proposed revisions are being made because DOE proposes to amend the Conduct of Employees regulations at 10 CFR Part 1010 to establish procedures under which a former employee of the executive branch may obtain approval to make communications to DOE solely for the purpose of furnishing scientific or technological information during the period the former employee is subject to post-employment restrictions set forth in 18 U.S.C. 207(a), (c), and (d). DOE also proposes a definition of the term ''scientific or technological information,'' used in 18 U.S.C. 207(j)(5), to provide former employees with guidance on the types of communications that would qualify for the exemption from otherwise applicable post-employment restrictions.

Pursuant to 18 U.S.C. 207(j)(5), former employees of the executive branch of the United States may make communications with an executive branch agency ''solely for the purpose of furnishing scientific or technological information,'' notwithstanding the post-employment restrictions at 18 U.S.C. 207(a), (c), and (d). Section 207(j)(5) provides that such communications must be made under procedures acceptable to the department to which the communication is directed, or the head of such department must consult with the Director of the Office of Government Ethics (OGE) and certify in the **Federal Register** that the former employee meets certain requirements to make such communications. The purpose of this proposed rule is to (1) establish the procedures acceptable to DOE for former executive branch employees making scientific or technological communications; and (2) provide, in a definition of the term ''scientific or technological information,'' the criteria for the types of communications of scientific or technological information that former executive branch employees may make to DOE pursuant to 18 U.S.C. 207(j)(5).

The proposed rule defines scientific and technological information as that which is of a scientific or technological character, such as technical or engineering information relating to the natural sciences. This proposed definition does not extend to information associated solely with a nontechnical discipline such as law, economics, or political science.

II. Discussion of Proposed Rule

Proposed section 10 CFR 1010.202, defines the statutory term ''scientific or technological information,'' providing criteria for program officials and the Designated Agency Ethics Official (DAEO) to use when evaluating requests from former employees for approval to communicate such information to DOE offices and officials. The program office official and DAEO shall consider the former executive branch employee's qualifications, the information to be conveyed, the former executive branch employee's Federal position, the extent of the former executive branch employee's participation in the same particular matter, and whether DOE's interest would be served by allowing such communications. Section 1010.202 also proposes to define the term ''authorized communication'' as the transmission of scientific or technological information that has been approved by DOE under the procedures that would be established by this rulemaking.

Proposed section 10 CFR 1010.203, sets forth the procedures under which a former employee of the executive branch may obtain approval for communicating scientific or technological information to DOE offices or officials. A former employee of the executive branch must contact the program office to which he or she wishes to make such communications. The Director of the program office, in consultation with the DAEO, shall advise the former executive branch employee in writing whether he or she may make such communications.

The proposed regulation does not apply to testimony as an expert in an adversarial proceeding in which the United States is a party or has an interest. Restrictions on testimony, and exceptions thereof, are prescribed in 18 U.S.C. 207(j)(6).

III. Regulatory Review

A. Executive Order 12866

This proposed rule has been determined not to 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 DOE's National Environmental Policy Act regulations at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings interpreting or amending an existing rule that do not change the environmental effect thereof. 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 the General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule will only affect individuals who were formerly employed by the executive branch of the Federal government if they want to communicate with DOE on scientific or technological matters. On the basis of the foregoing, DOE certifies that this proposed rule 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

No new record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, are imposed by this proposed rule.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law No. 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 on the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). 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. 2 U.S.C. 1534.

This proposed rule would apply only to former executive branch employees who want to communicate with DOE on scientific or technological matters. It 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, this proposed rule would not impose a Federal mandate on State, local, or tribal governments or on the private sector.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law No. 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 unnecessary 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 Federal 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 rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 44 U.S.C. 3516 note (2001), 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 this proposed rule in accordance with 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 Policy 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. This 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.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved the issuance of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 1010

Conduct standards, Conflicts of interest, Ethical conduct, Government employees.

Issued in Washington, DC, on November 20, 2008.

David R. Hill,

General Counsel.

For the reasons stated in the preamble, DOE proposes to amend chapter X of Title 10 of the Code of Federal Regulations as set forth below:

PART 1010—CONDUCT OF EMPLOYEES AND FORMER EMPLOYEES

1. The authority citation for part 1010 is revised to read as follows:

Authority: 5 U.S.C. 301, 303, 7301; 5 U.S.C. App. (Ethics in Government Act); 5 U.S.C. App. (Inspector General Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105; 18 U.S.C. 207, 208.

2. The heading to Part 1010 is revised as set forth above.

3. Sections 1010.101 through 1010.104 are designated as Subpart A and the heading is added to read as set forth below:

Subpart A—Conduct of Employees

* * * * *

§ 1010.101 [Amended]

4. Section 1010.101 is amended by removing the word ''part,'' and adding the word ''subpart'' in its place.

5. A new Subpart B is added to Part 1010 to read as follows:

Subpart B—Procedures for Exemption of Scientific and Technological Information Communications From Post-Employment Restrictions

Sec.

§ 1010.201 Purpose and scope.

(a) This subpart sets forth criteria for the types of communications on scientific or technological matters permitted under 18 U.S.C. 207(j)(5) by defining the term ''scientific or technological information.'' This subpart also establishes the procedures for receiving and approving requests from former employees of the executive branch to make such communications to DOE.

(b) This subpart applies to any former employee of the executive branch subject to the post-employment conflict of interest restrictions in 18 U.S.C. 207(a), (c), and (d), who wishes to communicate with DOE under the exemption in 18 U.S.C. 207(j)(5) for the purpose of furnishing scientific or technological information to DOE offices or officials.

(c) This subpart does not apply to a former DOE employee's testimony as an expert in an adversarial proceeding in which the United States is a party or has a direct and substantial interest.

§ 1010.202 Definitions.

For purposes of this subpart:

(a) *Agency designee* refers to an individual serving in a position in DOE requiring appointment by the President of the United States with the advice and consent of the Senate.

(b) *Authorized communication* means any transmission of scientific or technological information to any DOE office or official that is approved by DOE under § 1010.203 of this subpart.

(c) *DOE* refers to the U.S. Department of Energy.

(d) *Scientific or technological information* includes:

(1) Information of a scientific or technological nature, including, but not limited to, technical or engineering information relating to the natural sciences;

(2) Information in meritorious or convincing scientific or technological proposals;

(3) Information that informs Federal officials of the significance of other scientific or technological alternatives that could impact the validity, usefulness, or ability to measure the completeness of the data supplied on those alternatives; or

(4) Information regarding the feasibility, risk, cost, or speed of implementation of a DOE project or program when necessary to appreciate fairly the practical significance of the information.

§ 1010.203 Procedures for review and approval of requests.

(a) Any former employee of the executive branch subject to the constraints of the post-employment restrictions of 18 U.S.C. 207(a), (c), and (d) who wishes to communicate scientific or technological information to DOE must contact the DOE office with which the former employee wishes to communicate and request authorization to make such communication. This request must address, in detail, information regarding each of the factors set forth in paragraphs (c)(1) through (c)(6) and (c)(8) of this section.

(b) In consultation with the Designated Agency Ethics Official (DAEO), the agency designee must advise the former employee in writing whether the proposed communication is an authorized communication. This authority cannot be delegated.

(c) In deciding whether a proposed communication is an authorized communication, the agency designee receiving the request and the DAEO must consider the following factors:

(1) Whether the former employee has relevant scientific or technical qualifications;

(2) Whether the former employee has qualifications that are otherwise unavailable;

(3) The nature of the scientific or technological information to be conveyed;

(4) The former employee's position prior to termination;

(5) The extent of the former employee's involvement in the matter at issue during his or her employment, including:

(i) The former employee's involvement in the same particular matter involving specific parties;

(ii) The time elapsed since the former employee's participation in such matter; and

(iii) The offices within the Federal department or agency involved in the matter both during the former employee's period of employment in the executive branch and at the time the request is being made;

(6) The existence of pending or anticipated matters before the Federal government from which the former employee or his or her current employer may financially benefit, including contract modifications, grant applications, and proposals; and

(7) Whether DOE's interests would be served by allowing the proposed communication; and

(8) Any other information relevant to deciding if there is an intent to influence a decision or action of DOE.

[FR Doc. E8–28267 Filed 11–28–08; 8:45 am]

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