amount decreases for the larger merged entity due to the threshold and percent discount in factor 4 (discussed in alternative 2). To remedy this, we could change that factor as discussed in alternative 2. Or, we could require that the bond posted by the merged entity equal the combination of the amount that would have been required of each individual entity involved in the merger or acquisition.

Other Alternatives

We also invite the submission of suggestions on other alternatives to replace or supplement these proposed changes in the bond formulas because reasonable bonds alone that are posted by market agencies, packers and dealers may not ensure that the financial interests of livestock sellers and consignors are protected. We expect that any revision to the formulas for calculating bond amounts will increase the cost to market agencies, dealers, and packers to maintain the determined reasonable bond coverage.

Executive Order 12866 and Regulatory Flexibility Act

This advance notice of proposed rulemaking 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.

E-Government Act Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Terry D. Van Doren,

Administrator, Grain Inspection, Packers and Stockyard Administration.

[FR Doc. E8–30515 Filed 12–22–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF ENERGY

10 CFR Part 452

RIN 1904–AB73

Production Incentives for Cellulosic Biofuels; Reverse Auction Procedures and Standards

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

ACTION: Notice of proposed rulemaking (NOPR) and opportunity for comment.

SUMMARY: The Department of Energy (DOE) today publishes a proposed rule to establish the procedures and standards for reverse auctions of production incentives for cellulosic biofuels pursuant to section 942 of the Energy Policy Act of 2005 (EPAct 2005).

DATES: Public comment on this proposed rule will be accepted until January 22, 2009.

ADDRESSES: You may submit comments, identified by RIN 1904–AB73, by any of the following methods:

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

2. *E-mail* to *EPAct942@go.doe.gov.* Include RIN 1904–AB73 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 James Spaeth, U.S. Department of Energy, 1617 Cole Blvd., Golden, CO 80401.

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 Act regulations at 10 CFR 1004.11.

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 by contacting Mr. James Spaeth.

FOR FURTHER INFORMATION CONTACT: Mr. James Spaeth, U.S. Department of Energy, 1617 Cole Blvd., Golden, CO 80401; (303) 275–4771; *jim.spaeth@go.doe.gov;* or Mr. Edward Myers, Office of the General Counsel, U.S. Department of Energy, Mailstop GC–72, Room 6B–256, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–3397 or *edward.myers@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Proposed Rule
III. Regulatory Review
IV. Approval by the Office of the Secretary

I. Background

Section 942 of the Energy Policy Act of 2005, Public Law No. 109–58 (August 8, 2005), requires the Secretary of Energy (Secretary), in consultation with the Secretary of Agriculture, the Secretary of Defense, and the Administrator of the Environmental Protection Agency, to establish an incentive program for the production of cellulosic biofuels and to implement that program by means of a ''reverse auction.'' Section 942(a) states that the purposes of the program are to: ''(1) Accelerate deployment and commercialization of biofuels; (2) deliver the first 1 billion gallons of annual cellulosic biofuel production by 2015; (3) ensure biofuels produced after 2015 are cost competitive with gasoline and diesel; and (4) ensure that small feedstock producers and rural small businesses are full participants in the development of the cellulosic biofuels industry.'' In order to achieve these purposes, the Secretary is to award production incentives on a per gallon basis to eligible entities by means of a reverse auction. Under section 942, the first reverse auction is required annually until the earlier of the first year that annual production of cellulosic biofuels in the United States reaches 1 billion gallons or 10 years after enactment of EPAct 2005, *i.e.*, August 8, 2015.

However, pursuant to section 202 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140) (EISA), the Administrator of the Environmental Protection Agency is required to issue regulations that implement certain Renewable Fuel Standards, including regulations to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least 1 billion gallons of cellulosic biofuel by calendar year 2013. Consequently, if the Renewable Fuel Standard for cellulosic biofuel under EISA is achieved, the last reverse auction under section 942 of EPAct 2005 would occur in 2013.

II. Discussion of Proposed Rule

A. Overview

The proposed rule would establish procedures for the reverse auction and standards for making production incentive awards. The eligibility standards include both pre-auction requirements which must be met prior to an entity's participation in a reverse auction under section 942 and several post-auction standards which must be met as a condition of receiving an award. The post-auction standards are especially necessary if the Nation is to achieve the long-term goals of section 942, including delivery of the first one billion gallons of annual cellulosic biofuel production by 2015, and

establishment of a biofuels industry after 2015 that is cost competitive with gasoline and diesel. The post-auction standards are thus intended to ensure that successful bidders make real and meaningful progress toward the production of cellulosic biofuels in commercially significant quantities. DOE believes that as successive auctions yield more and more production of cellulosic biofuels, the Nation will move closer to achieving section 942's long-term national goal of a commercially viable production capability after 2015. In addition, by setting forth clear pre-auction and post-auction standards, DOE believes that only the most serious entities will seek to participate in each reverse auction.

More particularly, section 452.2 of the proposed rule defines key terms used in the proposed regulations. Section 452.3 describes the proposed rule's pre-auction eligibility standards, reverse auction procedures, and post-auction standards that must be met as a condition of receiving production incentive awards. Section 452.4 sets forth proposed terms of and limitations on the incentive production awards that will be issued under the program.

B. Definitions

Section 942 of EPAct 2005 defines ''*cellulosic biofuels*'' as ''any fuel that is produced from cellulosic feedstocks.'' 42 U.S.C. 16251(b)(1). Because the incentives authorized by section 942 are based on a gallon measure, DOE proposes in section 452.2 of the regulations to refine the statutory definition of ''cellulosic biofuel'' by requiring the production of a liquid fuel. Additionally, the proposed rule would define ''cellulosic feedstock'' as any lignocellulosic feedstock as so defined by EPAct, section 932(a)(2). This serves to make the proposed rule consistent with and complementary to the Department's existing Bioenergy Program under section 932 of EPAct and supports the Renewable Fuels Standard for biofuels originally in EPAct 2005, section 1501, which was enhanced by the Energy Independence and Security Act of 2007.

As explained above, the goals of section 942 include the delivery of the first one billion gallons of annual cellulosic biofuel production by 2015 and establishment of a biofuels industry after 2015 that is cost competitive with gasoline and diesel. In addition, section 942(c)(4)(C) requires that, as a condition of receiving an award, successful bidders must enter into an agreement with the Secretary to begin production of cellulosic biofuels not later than three years after the date of the reverse auction in which they participated. Taking the aforementioned goals together with the contractual requirement of section 942(c)(4)(C), DOE proposes to require successful bidders to commit to production of a commercially significant quantity within three years of the reverse auction in which they submitted their successful bid. This requirement is necessary if the Nation is to be able to achieve delivery of the first one billion gallons of annual cellulosic biofuel production by 2015 and the establishment of a commercially viable cellulosic biofuels production capability after 2015. Accordingly, ''Commercially Significant Quantity'' is defined in the proposed rule as 10 million or greater gallons of cellulosic biofuels produced in one year. This volume is an estimate of the volume necessary to operate a commercial scale refinery at approximately 60 percent of nameplate capacity; it is a level adequate to make such a facility commercially viable and is based on the size (15 to 20 million gallons per year) of commercial scale corn ethanol biorefineries when they were first commercialized. See, Funding Opportunity Announcement (FOA) DE–PS36–06GO96016, ''Commercial Demonstration of an Integrated Biorefinery System for Production of Liquid Transportation Biofuels, Biobased Chemicals, Substitutes for Petroleum-based Feedstocks and Products, and Biomass-based Heat/Power.''

Two other proposed definitions similarly reflect DOE's intent to assure that the goals of section 942 are achieved. First, ''*eligible biofuels producer*'' is defined as a business association, including but not limited to a sole proprietorship, partnership, joint venture, corporation, or other business entity that owns and operates, or plans to own and operate, an eligible cellulosic biofuels production facility and that meets all other eligibility requirements that are conditions on the receipt of production incentives under this part. These eligibility requirements are discussed in Section II.C.

Secondly, DOE proposes to define the term ''*eligible cellulosic biofuels production facility*'' as a facility that: (1) Is or will be located in the United States (including U.S. territories and possessions); (2) meets or will meet all applicable Federal and State permitting requirements; and (3) meets any financial criteria established by the Secretary.

DOE encourages interested persons to submit comments on the above definitions and to make recommendations regarding other terms that may warrant definition in the final rule.

C. Reverse Auction Procedures and Eligibility Requirements

Solicitations. Under the proposed rule, the reverse auction process commences with DOE's issuance of a solicitation. DOE proposes to issue the solicitation by publication in the **Federal Register** and by posting the solicitation on its Web site at *http://www.eere.energy.gov* no later than 60 days before the reverse auction. The solicitation would invite interested persons and businesses to file eligibility submissions, as described herein, and set forth the terms on which bids will be accepted.

Eligibility. As discussed above, the proposed rule includes both pre-auction and post-auction eligibility requirements intended to ensure that the goals of section 942 are met. The result is a three-step eligibility process. First, the proposed rule would require entities seeking to participate in a reverse auction to make a pre-auction eligibility submission that includes an implementation plan demonstrating at a minimum that they own and operate, or plan to own and operate, an eligible cellulosic biofuels production facility; identifies the site or proposed site for the facility; identifies one or more proposed sources of financing for the construction or expansion of the facility; and provides any other additional information specified in the applicable solicitation. The proposed rule would require the pre-auction eligibility submission, including the implementation plan, at a time to be specified in the solicitation prior to the reverse auction.

Second, the proposed rule would require that, within one year of a reverse auction, the successful bidder(s) submit a progress report. The progress report must demonstrate that the successful bidder has acquired the site where its proposed eligible cellulosic biofuels production facility will be located; it has obtained secure financing commitments for the facility's construction or expansion thereof; a licensed construction/design firm has entered into a written engineering, procurement, and construction (EPC) agreement for design and construction of the facility or facility expansion; and the EPC agreement provides for completion of the facility or facility expansion such that production operations at the facility are likely to be completed in order to commence production of commercially significant quantities within three years of the date of the reverse auction.

Third, as a condition of receiving the award, the proposed rule would require the successful bidder, within 90 days after the reverse auction, to enter into an agreement with the Secretary to begin production of commercially significant quantities of cellulosic biofuel in an eligible cellulosic biofuels production facility within three years of the date of the reverse auction in which it made a successful bid. The successful bidder must fulfill the terms of its agreement or else lose the award.

Upon meeting the above three eligibility requirements on a timely basis, including the timely commencement of production in commercially significant quantities, the successful bidder will begin to receive production incentives on a volumetric basis, as per the terms of its bid. DOE believes that these three eligibility requirements are necessary in order to make meaningful progress toward the goals of section 942 and to meet the requirements of a production agreement with the Secretary, entered into pursuant to section 942(c)(4)(C) of EPAct 2005.

Notification of Eligibility Status. The proposed rule provides that all parties who make pre-auction eligibility submissions will be notified by DOE of their eligibility status no later than 15 days before the relevant reverse auction. Similarly, all successful bidders will be duly notified of the acceptability of their progress reports and contract submissions in the second and third steps of eligibility determinations required under the proposed rule.

Bidding Procedures. The proposed rule provides that following DOE's review of pre-auction eligibility submissions and notifications of pre-auction eligibility status, DOE will conduct an electronic reverse auction through a limited duration single bid auction process open only to eligible biofuels producers. The proposed rule would require bids to be submitted electronically to a Web site specified in the solicitation. The ''open window'' period for bid submissions would consist of a single continuous, minimum four-hour period for each auction. Eligible biofuels producers would submit their electronic bids for production incentives, as specified in DOE's regulations and the relevant solicitation. Only electronic bids received from pre-auction eligible biofuels producers during the open window period would be accepted. The proposed rule would require bids to specify a desired level of production incentive on a per gallon basis and an estimated annual production amount in gallons.

Bid Evaluation and Incentive Awards Selection and Notification. The proposed rule provides that DOE will review the bids received during the open window period and, within 45 days following the close of the open window for submission of bids, announce on its Web site and by direct mail the names of the successful bidders and the terms of their bids. As required by section 942(c)(4)(A)(iii) of EPAct 2005, the proposed rule states that DOE will issue awards for the bid production amounts beginning with the bidder that submitted the bid for the lowest level of production incentive on a per gallon basis.

DOE encourages comments and recommendations regarding the advisability of using the above-described electronic single bidding process or, alternatively, whether the reverse auction would be improved by use of an open iterative process allowing eligible entities to submit multiple bids in real-time during the open window period of the live auction. In particular, DOE is interested in comments as to whether a transparent iterative process, where several rounds of bids are posted, would tend to increase economic efficiency by driving down the production incentives to a market-clearing level. DOE also invites comments regarding the optimum duration of the open window period for bidding.

Statutory Priorities. Section 942(e) of EPAct 2005 requires the Secretary to give award priority to projects that: ''(1) Demonstrate outstanding potential for local and regional economic development; (2) include agricultural producers or cooperatives of agricultural producers as equity partners in the ventures; and (3) have a strategic agreement in place to fairly reward feedstock suppliers.'' 42 U.S.C. 16251(e).

In order to implement this statutory priority scheme in a manner that also complies with the statutory requirement to issue awards beginning with the eligible entity that submits a bid for lowest level of production incentive, DOE proposes to use the priorities in section 942(e) as a tie-breaker device. Specifically, the proposed rule provides in section 452.5(c)(3) that in the event of a tie among the lowest bids, preference will be given to the lowest tied bidder based on DOE's evaluation of the extent to which of the tied bids best meets one or more of the three statutory priority standards. In the event more than one lowest tied bid is found to meet the priority standards to an equal extent, section 452.5(c)(4) of the proposed rule states that the award will be distributed equally on a per capita basis among such bidders.

For example, assume the available funds for section 942 incentive awards pursuant to congressional appropriations under a solicitation and reverse auction are $2,500,000; assume further that there are two pre-qualified lowest bidders, both of which are agricultural producers. Assume further that these two bidders submitted identical low bids of $.65 per gallon and the two bidders meet the statutory preference standards to the same extent; but one of these bidders (Bidder A) sought an incentive for 10,000,000 gallons of biofuels production, while the other (Bidder B) sought an incentive for 5,000,000 gallons of biofuels production. The total production incentive sought under these circumstances for Bidder A is $6,500,000 and the total production incentive sought by Bidder B is $3,250,000. Under these assumed facts, DOE intends to make half of the appropriated funds ($1,250,000) available for awards to each of the two lowest successful bidders. Bidder A would not receive a greater award than Bidder B even though its bid was based on double the production of Bidder B. This approach would distribute incentives on the widest scale among lowest successful bidders that qualify for statutory preferences.

DOE invites comments on its proposed method for determining the successful bid. DOE is particularly interested in knowing whether it would be advisable to apply the statutory priorities not as a tie breaker device but as a pre-qualification preference or evaluation point preference. With respect to the tie breaker approach proposed in this NOPR, DOE is interested in receiving comments from the public about the proposed prorating of awards among successful bids that meet the statutory priority standards. DOE invites public comment on whether it would be preferable for DOE to make a determination of which bidder among those who have tied best meets the statutory priority standards, thereby obviating the need to prorate awards. DOE is concerned that the auction process could be ''gamed,'' *i.e.*, there is a potential for undisclosed business or investment interests to ''front'' a bidder that qualifies for a statutory priority to the disadvantage of other bidders that do not qualify for a statutory priority. DOE encourages parties to comment on the likelihood of such abuses and how to best prevent them.

D. Incentive Award Terms and Limitations

1. *Amount of Incentive.* As required by section 942(c)(4)(B) of EPAct 2005 and subject to appropriations, the proposed rule states that an auction participant selected to receive an award shall receive the amount of the production incentive on the per gallon basis requested in the auction solicitation for each gallon produced and sold by the entity during the first six years of operation.

2. *Failure to Commence Production.* As discussed above, the proposed rule provides in section 452.4(d) that a successful bidder must enter into an agreement with DOE under which the successful bidder agrees to begin production of cellulosic biofuels not later than three years after the date of the reverse auction in which it submitted a successful bid. This is a statutory requirement contained in section 942(c)(4)(C) of EPAct 2005. Section 452.6(b) of the proposed rule provides that failure of a successful bidder to fulfill the terms of this agreement by actually commencing production of commercially significant quantities of cellulosic biofuels within three years after the date of the auction shall result in the immediate revocation of the award. DOE invites comments and recommendations concerning the appropriateness of this remedy.

3. *Limitations.* Section 942(d) of EPAct 2005 establishes five types of limitations on the cellulosic biofuels production incentives, including: (1) A per gallon amount determined by the Secretary may be awarded during the first four years of the program; (2) a declining per gallon cap on the incentives awarded over the remaining lifetime of the program, to be established by the Secretary, so that cellulosic biofuels produced after the first year of annual cellulosic biofuels production in the United States in excess of one billion gallons are cost competitive with gasoline and diesel; (3) not more than 25 percent of the funds committed within each reverse auction may be awarded to any one project; (4) not more than $100 million may be awarded in any one year; and (5) not more than $1 billion may be awarded over the lifetime of the program.

The proposed rule would implement the foregoing limitations at section 452.6(c). In particular, the proposed rule provides that the first of the above limitations shall be $1.00 per gallon during the first four years of the program. For these purposes, the program would be deemed to have commenced on the date that the first solicitation for a reverse auction is issued. DOE's intent is to create an incentive for early commencement of operations that yield commercially significant production volumes in the near term. Because the second limitation described above (the declining per gallon cap) will result in lower incentive awards in years after the first four years of the program, an earlier program commencement date should hasten the period during which the higher limitation ceiling will be available. However, DOE solicits comments and recommendations regarding its selection of the program commencement date.

4. *Transferability of Awards.* The proposed rule would permit awards to be transferred to successor entities that meet all eligibility requirements for the program, as set forth in the proposed rule, and enter into an agreement with the Secretary to commence production within three years of the date of the reverse auction. DOE encourages interested persons to submit comments and recommendations regarding these proposed transferability restrictions. In addition, DOE requests comments regarding any other transfer-related issues. For example, should awards (including the right to the awards and the underlying obligation to commence production within three years of the auction) be transferable at all? If the awards should be transferable, should the awards be transferable prior to the time that production commences? Should the awards be transferable to entities not engaged in the production of cellulosic biofuels, *i.e.*, should DOE permit the creation of a securitized interest and secondary market in production incentive awards, or should DOE (as proposed in this NOPR) only permit entities actually engaged in cellulosic ethanol production to receive the awards?

III. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act (NEPA) regulations at paragraph A6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings that are strictly procedural. DOE notes that the procedures proposed in this NOPR do not afford DOE discretion to determine whether or how a facility will be constructed or operated. DOE's prescribed role under section 942, that is, awarding production incentives to the lowest bidder in a reverse auction, is strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required for the proposed rule or for an award that DOE gives or proposes to give to a successful bidder. If DOE subsequently proposes to take any additional actions with respect to successful bidders, separate from the award of funds under section 942 of EPAct 2005, DOE will separately evaluate the need for NEPA review of those new proposed actions.

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 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 biofuels producers if they choose to participate in the reverse auction. Moreover, the proposed rule would provide an economic benefit without imposing any regulatory requirements on producers of cellulosic biofuels. 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. This 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

Proposed section 452.4(a) provides that entities that intend to participate in a reverse auction must file a pre-auction eligibility submission. The pre-auction eligibility submission must contain certain information, including an implementation plan, as described above. This information will be used by DOE to determine if an entity that files a pre-auction eligibility submission will be accepted to participate in the reverse auction.

In addition, proposed section 452.4(c) provides that a bidder must submit a progress report. The progress report must contain the additional information described above. DOE will use this information to evaluate the bidder's progress in the production of cellulosic biofuels. DOE has submitted this collection of information to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

DOE estimates that the annual reporting and recordkeeping burden for this collection of information will be 30 hours per year (10 bidders × 3 hours) at a total annual cost of $2250 (10 bidders × $225 per auction). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Interested parties are invited to submit comments to OMB addressed to: Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the DOE contact person at the address given in the **ADDRESSES** section of this notice. OMB is particularly interested in comments on (1) The necessity of the proposed information collection requirements, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be maintained; and (4) ways to minimize the burden of the requirements on respondents.

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 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 not impose a Federal mandate on State, local, or tribal governments or on the private sector. 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 wellbeing. 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 rule meets 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 proposed rule 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 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 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.

K. Consultation

Pursuant to section 942(c)(1) of EPAct 2005, DOE will consult with the Secretary of Agriculture, the Secretary of Defense, and the Administrator of the Environmental Protection Agency prior to issuing a final rule.

IV. Approval of the Office of the Secretary

The issuance of this proposed rule has been approved by the Office of the Secretary.

List of Subjects in 10 CFR Part 452

Fuel, Grant programs, Recordkeeping and reporting requirements, Renewable energy.

Issued in Washington, DC, on December 11, 2008.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend chapter II of title 10 of the Code of Federal Regulations by adding a new part 452 as set forth below:

PART 452—PRODUCTION INCENTIVES FOR CELLULOSIC BIOFUELS

Sec.

452.1 Purpose and scope.
452.2 Definitions.
452.3 Solicitations.
452.4 Eligibility requirements.
452.5 Bidding procedures.
452.6 Incentive award terms and limitations.

Authority: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 16251.

§ 452.1 Purpose and scope.

(a) This part sets forth the standards, policies, and procedures that the Department of Energy uses for receiving, evaluating, and awarding bids in reverse auctions of production incentive payments for cellulosic biofuels under section 942 of the Energy Policy Act of 2005 (42 U.S.C. 16251).

(b) Part 1024 of chapter X of title 10 of the Code of Federal Regulations shall not apply to actions taken under this part.

§ 452.2 Definitions.

Cellulosic biofuels means any liquid fuel produced from cellulosic feedstocks.

Cellulosic feedstock means any lignocellulosic feedstock as defined by EPAct 2005, section 932(a)(2).

Commercially significant quantity means 10 million gallons or more of cellulosic biofuels produced in one year.

DOE means the U.S. Department of Energy.

Eligible biofuels producer means a business association, including but not limited to a sole proprietorship, partnership, joint venture, corporation, or other business entity that owns and operates, or plans to own and operate, an eligible cellulosic biofuels production facility and that meets all other eligibility requirements that are conditions on the receipt of production incentives under this part.

Eligible cellulosic biofuels production facility means a facility—

(1) Located in the United States (including U.S. territories and possessions);

(2) Which meets all applicable Federal and State permitting requirements; and

(3) Meets any financial criteria established by the Secretary.

EPAct 2005 means the Energy Policy Act of 2005, Public Law 109–58 (August 8, 2005).

Open window means the period during each reverse auction, as specified in an associated solicitation, during which DOE accepts bids for production incentives under this part.

Secretary means the Secretary of Energy.

§ 452.3 Solicitations.

The reverse auction process commences with the issuance of a solicitation by DOE. DOE will publish a solicitation in the **Federal Register** and shall post the solicitation on its Web site at *http://www.eere.energy.gov* no later than 60 days before the bidding in a reverse auction under this part commences. The solicitation shall:

(a) Invite interested persons and businesses to submit pre-qualification statements;

(b) Set forth the terms on which bids will be accepted;

(c) Specify the open window for bidding; and

(d) Specify the date by which successful bidders will be required to file pre-auction eligibility submissions.

§ 452.4 Eligibility requirements.

(a) *Pre-auction eligibility submissions.* (1) Entities that intend to participate in a reverse auction, within the time period stated in the relevant solicitation, must file a pre-auction eligibility submission that provides all information requested in the applicable solicitation to which it is responding, including an implementation plan.

(2) Each pre-auction eligibility submission's implementation plan must, at a minimum:

(i) Demonstrate that the filing party owns and operates or plans to own and operate an eligible cellulosic biofuels production facility;

(ii) Identify the site or proposed site for the filing party's eligible cellulosic biofuels production facility; and

(iii) Identify one or more proposed sources of financing for the construction or expansion of the filing party's eligible cellulosic biofuels production facility.

(b) *Notification of pre-auction eligibility status.* DOE shall notify each entity that files a pre-auction eligibility submission of its acceptance or rejection no later than 15 days before the reverse auction for which the submission was made. A DOE decision constitutes final agency action and is conclusive.

(c) *Progress reports.* Within one year after the reverse auction in which a bidder successfully competed, the bidder must submit a progress report that includes all additional information required by the solicitation in which the bidder submitted a successful bid and which demonstrates that the bidder has:

(1) Acquired the site where its proposed eligible cellulosic biofuels production facility is or will be located;

(2) Obtained secure financing commitments for the plant or expansion thereof, as necessary to produce cellulosic biofuels; and

(3) Entered into a written engineering, procurement, and construction (EPC) contract for design and construction of the eligible cellulosic biofuels production facility; such EPC contract must provide for completion of construction of the eligible cellulosic biofuels production facility such that operations at the plant or plant expansion will commence within three years of the reverse auction in which the bidder successfully competed.

(d) *Production agreement.* Within 90 days after submission of its progress report under paragraph (c) of this section, the successful bidder must enter into an agreement with DOE which requires the bidder to begin production of commercially significant quantities of cellulosic biofuels, at the plant or plant expansion that was the subject of the relevant bid, not later than three years from the date of the acceptance of the successful bid.

(e) *Confirmation of continuing eligibility.* After receiving the progress report under paragraph (c) of this section and upon confirmation by DOE that the successful bidder has entered into a production agreement with DOE, as described in paragraph (d) of this section, DOE will confirm to the bidder that it continues to meet the eligibility requirements of this part.

(f) *Contractual condition on eligibility.* (1) As a condition of the receipt of an award under this part, a successful bidder in a reverse auction under this part must demonstrate that it has fulfilled the terms of its production agreement entered into with DOE pursuant to paragraph (d) of this section.

(2) As a condition of continuing to receive production incentive payments under this part, a bidder that has entered into a production agreement with DOE must annually submit to DOE, by a commercially reasonable date specified by DOE, verification of the bidder's production volumes for the prior calendar year. Within 90 days of the submission of such verification, DOE shall notify the successful bidder whether the bidder has fulfilled the terms of the production agreement and shall make payment of any production incentive awards then outstanding for the one year period covered by the verified data submission.

§ 452.5 Bidding procedures.

DOE shall conduct an electronic reverse auction through a limited duration single bid per producer auction process open only to pre-auction eligible cellulosic biofuels producers. The following procedures shall be used:

(a) DOE shall accept only electronic bids received from pre-auction eligible cellulosic biofuels producers during the open window established in the solicitation. The open window shall consist of a single continuous period of at least four hours for each auction.

(b) Bids must specify:

(1) A desired level of production incentive on a per gallon basis.

(2) An estimated annual production amount in gallons.

(3) All bids will be confidential until 45 days after the close of the window for submission of bids for the reverse auction.

(c) Bid evaluation and incentive awards selection.

(1) After DOE evaluates the bids received during the open window, it shall, within 45 days following the close of the open window for submission of bids for the reverse auction, announce on DOE's Web site and by direct mail the names of the successful bidders and the terms of their bids.

(2) DOE shall issue awards for the bid production amounts beginning with the bidder that submitted the bid for the lowest level of production incentive on a per gallon basis.

(3) In the event of a tie among the lowest bids, preference will be given to the lowest tied bidder based on DOE's evaluation of the extent to which the tied bids meet the following criteria:

(i) Demonstrates outstanding potential for local and regional economic development;

(ii) Includes agricultural producers or cooperatives of agricultural producers as equity partners in the ventures; and

(iii) Has a strategic agreement in place to fairly reward feedstock suppliers.

(4) In the event more than one lowest tied bid equally meets the standards in paragraph (c)(3) of this section, the award will be distributed equally on a per capita basis among those lowest tied bidders meeting the standards.

§ 452.6 Incentive award terms and limitations.

(a) *Amount of incentive.* Subject to the availability of appropriated funds and the limitations in paragraph (c) of this section, an eligible cellulosic biofuels producer selected to receive an award shall receive the amount of the production incentive on the per gallon basis requested in the auction solicitation for each gallon produced and sold by the entity during the first six years of operation of its eligible cellulosic biofuels production facility.

(b) *Failure to commence production.* Failure by an eligible cellulosic biofuels producer that made a successful bid to commence production of cellulosic biofuels, at the eligible cellulosic biofuels production facility that was the subject of the successful bid, by the end of the third year after the close of submission of the open window of bids for the reverse auction in which it submitted a successful bid, shall result in immediate revocation of DOE's award to that producer.

(c) *Incentive award limitations.* The following limits shall apply to awards of cellulosic biofuels production incentives under this part:

(1) During the first four years after the commencement of the program, the incentive shall be limited to $1.00 per gallon. For purposes of this limitation, the program shall be deemed to have commenced on the date that the first solicitation for a reverse auction is issued;

(2) A per gallon cap over the remaining lifetime of the program of $.95 per gallon provided that—

(i) This cap shall be lowered by $.05 each year commencing the first year after annual cellulosic biofuels production in the United States exceeds one billion gallons;

(ii) Not more than 25 percent of the funds committed within each reverse auction shall be awarded to any single project;

(iii) Not more than $100 million in production incentives shall be awarded in any one calendar year; and

(iv) Not more than $1 billion in production incentives shall be awarded over the lifetime of the program.

(d) *Participation in subsequent auctions.* A successful bidder in a reverse auction under this part may participate in subsequent reverse auctions if the incentives sought will assist the addition of plant production capacity for the eligible cellulosic biofuels production facility associated with its previously successful bid.

(e) *Transferability of awards.* A production incentive award under this part may be transferred to a successor entity that meets all eligibility requirements of this part, including execution of an agreement with DOE to commence production of cellulosic

biofuels in commercially significant quantities not later than three years of the date that bidding closes on the reverse auction in which the predecessor entity submitted a successful bid.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1327; Directorate Identifier 2008–NM–161–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An A320 aircraft experienced an event where it was not possible to open the reinforced cockpit door, even after power had been removed from the aircraft. Investigation has identified that the cockpit door latch/striker assembly may have overheated, causing permanent internal damage prior to being electrically isolated by the internal thermal fuse. This condition, in case of a rapid decompression in the cockpit, would prevent the necessary unlocking/opening of the door, which may lead to failure of the airplane structure.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 22, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1327; Directorate Identifier 2008–NM–161–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0151, dated August 5, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An A320 aircraft experienced an event where it was not possible to open the reinforced cockpit door, even after power had been removed from the aircraft. Investigation has identified that the cockpit door latch/striker assembly may have overheated, causing permanent internal damage prior to being electrically isolated by the internal thermal fuse. This condition, in case of a rapid decompression in the cockpit, would prevent the necessary unlocking/opening of the door, which may lead to failure of the airplane structure.

To prevent this, an improved strike package/door bolting system, including a Polymer Positive Temperature Coefficient (PPTC) element (overheat protection) was introduced by Airbus Modification 35219 in production and modification 35218 (Service Bulletin A320–25–1444) in-service. The PPTC is a resettable thermistor and is installed on the frame of the electrically-operated cockpit door latch/striker assembly.

The in-service implementation of this modification was originally managed by an Airbus campaign but the rate of installation by operators has not met the expected timescales, making mandatory action necessary to address this.

For the reasons described above, this AD requires the installation of improved cockpit door latch/striker assemblies.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–25–1444, Revision 02, dated August 1, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.