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#### SUPPLEMENTARY INFORMATION:

### I. Introduction

On May 13, 1994, DOE issued a Notice of Proposed Rulemaking for the Renewable Energy Production Incentive program. (59 FR 24982). The goal of the incentive program is to advance the commercialization and use of renewable energy electric generation systems in the United States.

The stated purposes of title XII of the Energy Policy Act of 1992, of which section 1212 is part, are promotion of (1) increases in the production and utilization of energy from renewable energy sources; (2) further advances of renewable energy technologies; and (3) exports of United States renewable energy technologies.

The implementation of section 1212 draws upon relevant attributes of sections 1914 and 1916 of the Energy Policy Act of 1992. Section 1914 amended the Internal Revenue Code to provide a tax credit of 1.5 cents per kilowatt-hour, adjusted for inflation, for electricity generated from wind or from biomass derived from organic matter grown exclusively for use in generating electricity. 26 U.S.C. § 45. Section 1916 amended the Internal Revenue Code to make permanent the energy investment tax credit for non-utility investors in solar and geothermal property. 26 U.S.C. § 48(a)(2). Sections 1914 and 1916 were designed to assist in making certain emerging renewable energy technologies cost competitive. The program authorized by section 1212 provides State instrumentalities and nonprofit electric cooperatives incentives for the production of electricity using certain renewable resources in a manner that complements the incentives offered to taxable entities under sections 1914 and 1916 of the Energy Policy Act.

In response to the Notice of Proposed Rulemaking, DOE received written input from 52 commenters and heard testimony from seven organizational representatives at a public hearing held on June 16, 1994 in Washington, D.C. After considering the comments received on the proposed rule, a number of changes have been made to the final rule contained herein.

With the issuance of this final rule, DOE amends title 10, Chapter II of the code of Federal Regulations to establish a renewable energy production incentive program pursuant to section 1212 of the Energy Policy Act of 1992. 42 U.S.C. § 13317.

### II. Discussion of Comments

#### Section 451.1 Purpose and Scope

DOE proposed that renewable energy production incentive payments be made only for the generation of electric forms of energy. Three commenters suggested that such payments be extended to the production of non-electric forms of energy. Section 1212 of the Energy Policy Act specifies that payments are to be made only for "electric energy generated and sold," and thus provides no authority to expand incentive payments to include non-electric forms of energy.

#### Section 451.2 Definitions

DOE proposed defining closed-loop biomass as plant matter, other than standing timber, grown for the sole purpose of being used to generate electricity. Several comments were received on this proposed definition. Some commenters wanted to modify the definition to include dedicated tree farms planted prior to October 1, 1993, while others wanted to include secondary uses of plant crops. DOE has responded to these comments in part by designating as closed-loop biomass all harvests, after the first harvest, of fast growing trees planted before October 1, 1993 if such harvests occur during the qualifying period. DOE made additional changes in the definition to make it consistent with the definition of closed-loop biomass contained in section 1914 of the Energy Policy Act. The suggested secondary use of plant matter is not considered closed-loop biomass since such use would be inconsistent with the section 1914 statutory definition.

In response to several comments requesting clarification as to what portion of electric energy generated is eligible for incentive payments, DOE added the term and definition for "net electric energy generated" in the final rule. DOE is adding this definition to draw a distinction between total electricity generated and the actual amount of electricity sold after deducting the electric energy used internally by the facility to operate the pumps, motors, controls, lighting, heating and cooling, and other systems needed to keep the facility operational. Such parasitic energy does not qualify for incentive payments. The addition of the term "net electric energy generated" is intended to clarify this point.

DOE proposed defining "nonprofit electrical cooperatives" as a cooperative association that is treated as tax exempt under section 501(c)(12) of the Internal Revenue Code and is organized under the laws of any State for the purpose of providing electric service to its members

and other customers. DOE received several comments from cooperatives indicating that some cooperatives, while not organized to earn profit, are not treated as tax-exempt under section 501(c)(12). These cooperatives do incur tax liability from time to time, but within narrow limits that would not enable the organizations to benefit from incentives through tax credits. In consideration of these comments and absent legislative history to the contrary, DOE has changed the definition of nonprofit electrical cooperative to include those operated on a not-for-profit basis. To eliminate the possibility of double coverage, such entities are required to certify as part of the application under section 451.8 that they will not claim tax credits for electricity produced during the same fiscal year for which incentive payments are requested.

DOE proposed defining "renewable energy facility" in sufficiently broad terms to include the designated technologies while retaining consistency with the language in section 1212 of the Energy Policy Act. A key part of the definition referenced "a system or integrated set of components." Three commenters requested that the definition be modified to clarify the minimum facility that constitutes a renewable energy facility. In response to this request, DOE has revised the definition in the final rule to clarify that a single module or unit, such as, a wind turbine together with its tower and supporting pad, or an aggregation of such units falls within the definition of a "renewable energy facility."

Several commenters sought to expand the definition of "renewable energy facility" to include facilities that burn municipal solid waste. DOE is precluded from including municipal solid waste in the final rule because the language of the statute specifically excludes "municipal solid waste which is burned" to create heat. 42 U.S.C. § 13317(b)(1). Five commenters suggested that methane from sewage treatment and anaerobic digestion facilities and hydrogen derived from biomass sources should be clearly recognized as qualified renewable energy sources when used to generate electricity. DOE concurs that these sources are biomass energy sources.

Renewable energy facilities may include: (1) Solar photovoltaic systems, which convert solar light to direct current electricity; (2) solar thermal systems, which use a fluid heated by the sun to directly or indirectly drive an electric generator; (3) wind conversion systems, which capture wind energy to