As in the calculation of the FY 1988 and FY 1989 fees, the proposed FY 1990 fee for the Cihcago Board of Trade includes the fees for the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

VI. Regulatory Flexibility Act

The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on February 7, 1990, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-3347 Filed 2-12-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 82N-0274]

Federal Performance Standard for Diagnostic X-Ray Systems and Their Major Components; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the proposed rule that amended the Federal performance standard for diagnostic X-ray systems and their major components (the performance standard) (October 17, 1989; 54 FR 42674; corrected January 16, 1990; 55 FR 1472).

DATES: FDA is reopening the comment period until March 15, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Samuel Fleisher, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 17, 1989 (54 FR 42674), corrected January 16, 1990 (55 FR 1472), FDA proposed technical amendments to the Federal performance standard for diagnostic X-ray systems and their major components. The X-Ray Imaging Products Section of the National Electrical Manufacturers Association (NEMA) requested a 30-day extension to the comment period. This request was based on the fact that the convention of the Radiological Society of North America and several religious and national holidays occurred during the comment period, consequently reducing the time available for review of the proposal. The proposal gave interested persons an opportunity to submit written comments by January 16, 1990.

In addition, the Technical and Government Relations Committee of NEMA's X-ray section met from January 23 to 25, 1990, after the comment period had ended to review FDA's proposed changes to the X-ray performance standard and to develop NEMA's comments on the proposed performance standard.

FDA proposes to reopen the comment period to assure that any amendments finally adopted do clarify and simplify the performance standard, reduce significantly the regulatory burden on affected manufacturers without compromising the public health, and generally improve the effectiveness of FDA's regulation of diagnostic X-ray equipment. The agency believes that NEMA's comments will help realize these goals.

Interested persons may, on or before March 15, 1990, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-3339 Filed 2-12-90; 8:45 am]

BILLING CODE 41600-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB42

Revision of Coal Product Valuation Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its coal product valuation regulations to remove the exclusion from royalty value for amounts representing production-related taxes and fees. If adopted, Federal coal lessees no longer would be permitted to deduct or exclude the costs of Federal Black Lung excise taxes, abandoned mine lands (AML) fees, and State and local severance taxes from the value for royalty purposes.

The MMS proposes the removal of the exclusions to mitigate their negative fiscal impacts on State and federal treasuries, and because, after further review of the assumptions supporting their adoption, MMS now believes that these components of the price of coal cannot be sufficiently differentiated from its other constituent elements to reverse the historic practice of valuation on gross proceeds.

DATES: Written comments must be received on or before April 16, 1990.

ADDRESSES: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Herbert B. Wincentsen and Rodney J. Noah of the Royalty Valuation and Standards Division of the Royalty Management Program, MMS, Lakewood, Colorado; Kenneth R. Vogel of the Office of Policy and Planning, MMS; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Background

On January 13, 1989 (54 FR 1492), MMS issued comprehensive coal product value regulations establishing the value for royalty purposes of coal production from all Federal and Indian

coal leases. These regulations, effective March 1, 1989, established procedures for valuing coal under cents-per-ton leases (see 30 CFR 206.256) and ad valorem leases (see 30 CFR 206.257). MMS also adopted regulations providing for certain washing allowances (30 CFR 206.258 and 206.259) and transportation allowances (30 CFR 206.261 and 206.262). The regulations also recognized that royalty valuation, in some instances, may be determined by the specific terms of a lease which would govern whenever there was a conflict with the specific terms of the regulations. (30 CFR 206.250(b)).

Regulations establishing a methodology for determining the value of production for ad valorem leases are necessary because the applicable provision of the Mineral Leasing Act (MLA) requires a royalty payment "of *not less than 12½ per centum of the* value of coal as defined by regulation * * *." Lower percentages of value may apply to leases for coal produced by underground mining methods. (30 U.S.C. 207(a)).

After the Federal Coal Leasing Amendment Act amended the MLA to require ad valorem royalty payments, the Department of the Interior adopted regulations providing that for coal production sold pursuant to an arm's-length contract, the value for royalty purposes would be the "gross value" of the coal. (30 CFR 203.200(f) and (g) (1987). This construction was consistent with the decisions of the Interior Board of Land Appeals (IBLA) which had construed the term "gross value" to include reimbursements to the seller by the purchaser for production-related taxes. *Knife River Coal Company*, 29 IBLA 26 (1977) (severance taxes), and *Knife River Coal Company*, 43 IBLA 104 (1979) (AML fees). The Knife River cases followed a line of IBLA cases applicable to oil and gas leases construing the term gross proceeds to comprise all the consideration accruing to the seller from the sale of production, including reimbursements. *Wheless Drilling Company*, 13 IBLA 21 (1973).

The coal product value regulations issued in January 1989 were the culmination of an extensive regulatory process including multiple proposed rules, hearings, and meetings with industry and affected States and Indian tribes. The rules also were the subject of considerable study and review by the Secretary's Royalty Management Advisory Committee. (See 54 FR 1492.) One of the most controversial issues that was addressed during the rulemaking process was whether reimbursements for severance taxes, AML fees, and Black Lung excise taxes should be included as part of the value of coal production and, therefore, subject to royalty. Industry commenters generally supported an exclusion from value for these production-related taxes and fees. Most western coal producing States and Indian lessors supported the inclusion of these amounts in the value of production. The preamble to the final rule explains in detail the positions of interested parties. (See 54 FR 1511–1513.) See also the discussion in section II of this preamble, *infra*.

In the final rule, MMS generally continued the historical practice of basing the value for coal sold pursuant to an arm's-length contract on the "gross proceeds" accruing to the lessee from the sale. 30 CFR 206.257(b)(1). The same approach was taken in the oil and gas product value regulations adopted in 1988. (53 FR 1184, January 15, 1988; 53 FR 1230, January 15, 1988.)) See 30 CFR 206.102(b)(1)(i), 206.152(b)(1)(i) and 206.153(b)(1)(i) (1988).

In the final oil and gas regulations, MMS defined the term gross proceeds consistently with historical practice, as including the total consideration accruing to the lessee from the sale of production, including severance taxes and other reimbursements. (30 CFR 206.101 and 206.151). In the final coal rules, MMS similarly defined the term gross proceeds as including all consideration accruing to the lessee, including reimbursements. (30 CFR 206.251). However, MMS concluded at the time it issued the final rule that the portions of the coal sales price corresponding to the severance tax, AML fee, and Black Lung tax that are part of gross proceeds are not part of the value of coal for royalty purposes. Thus, 30 CFR 206.257(b)(5) provides that the value of coal for royalty purposes does not include amounts of severance taxes, AML fees, and Black Lung taxes. This exclusion was to apply only to Federal leases—Indian leases were expressly exempted.

MMS adopted the exclusive of production-related taxes and fees reasoning that these taxes and fees do not add to the value of coal even though taxes and fees increase its cost. In addition, MMS offered several justifications for excluding severance taxes from the royalty value of coal. First, coal was regarded as having its own separate and distinct royalty valuation history as opposed to other leasable minerals, including oil and natural gas. Second, the coal market was determined to have sufficiently different charactistics to allow the Secretary to use different standards when valuing coal than when valuing oil or gas. In particular, MMS concluded that "the perception today by both coal producers and coal purchasers" is that "[production] taxes are not part of the market value of coal." (See 54 FR 1512). Third, the exclusion of these fees and taxes was thought to potentially increase production of Federal coal by decreasing its sales price. It was hoped that this decrease in sales price would promote three secondary effects: (1) Decreasing dependence on imported foreign oil, (2) decreasing the extent of the fiscal effects from the decrease in value due to the exclusion of taxes, and (3) expanding the market for Federal coal.

Shortly after the final coal product value rules were published in the **Federal Register** on January 13, 1989, Secretary Lujan was confirmed as Secretary of the Interior. Among the first issues the new Secretary considered was whether, as requested by some western States, Indians and the Congress, to reconsider the exclusion of production-related taxes, and either to suspend or rescind the rules before their March 1 effective date. The Secretary decided that the rules should go into effect as scheduled, but committed to fully and completely review the issue over the ensuing months. On April 21, 1989, the Department published notice in the **Federal Register** (54 FR 16105) of a public meeting on May 4, 1989, to take further comments on the question of the effect of the exclusions. The Secretary also directed MMS to review and study the fiscal impacts of the exclusions on the States and Indians, and to determine whether the rule change had the predicted effect of stimulating Federal coal production.

As noted above, the exclusions in 30 CFR 206.257(b)(5) (1989) were to apply only to Federal leases. MMS stated in the preamble to the final rule that "[t]hese specific exclusions do not apply to Indian leases." (See 54 FR 1511). Shortly after the rules became effective, two of the largest Indian coal lessees took the position that their lease terms tied royalty valuation to the value definition for Federal coal. Therefore, they maintained that MMS, by regulation, could not deprive them of the exclusion because of the primacy of the lease terms. MMS's Royalty Management Program disputed the two lessees' interpretation of their royalty obligation and the matter is now on appeal before the MMS Director pursuant to 30 CFR part 290.

On August 29, 1989, Governor Garrey L. Carruthers of New Mexico formally petitioned the Secretary to "[s]uspend

§ 206.257(b)(5) of the Coal Product Valuation Rule." In addition, the Governor urged that the Department "reinstate the historic formula for determining coal royalties." Also, at the July 18, 1989, meeting of the Western Governors' Association, the Governors resolved that:

1. The Department of [the] Interior should adopt regulations for coal product valuation that are based on gross proceeds which reflect the actual costs of doing business. The gross proceeds approach to valuation is a logical and reasonable concept upon which to determine coal value and it is consonant with past government valuation procedures. *The western governors conclude that regulations adopted by the Department of the Interior on January 13, 1989 do not meet this objective.*

2. *Western governors recommend that the regulations currently under evaluation by the Secretary be rescinded immediately and the historic formula for determining royalties be reinstated. Western governors further recommend that the Secretary subsequently restart the process for drafting new regulations.* (emphasis in original.)

MMS has now completed its review of the impact of the exclusions and is able to respond to the petitions of the western governors. Copies of the review are available from Dennis Whitcomb at the address found in the **ADDRESSES** section. The Department considers the communications from Governor Carruthers and the Western Governors' Association to be petitions for amendment or repeal of rules under the Administrative Procedure Act, 5 U.S.C. 553(e), and is now proposing that 30 CFR part 206 be amended to remove 206.257(b)(5). This proposal also would remove any basis for the exclusion claimed by certain Indian coal lessees discussed above.

MMS is seeking comments from interested parties on the production and fiscal impact of the current regulations as well as any new arguments forming a reasoned basis for retaining or eliminating the exclusion of one or any combination of fees and taxes.

II. Proposed Rule

On January 13, 1989, MMS published as final rulemaking the Revision of Coal Product Valuation Regulations and Related Topics. This rulemaking was intended to amend and clarify the regulations on the valuation of coal for royalty purposes. The rules took effect on March 1, 1989.

Those regulations effected a major change in valuation precepts by permitting companies operating on Federal coal leases to exclude the costs of Federal Black Lung excise taxes, AML fees, and severance taxes before calculating royalty due. The rulemaking generated considerable controversy regarding these exclusions, and this controversy continued after the rule was adopted. Representatives of the coal mining and electric utility industries argued that it was inequitable to levy a royalty on Government-mandated production fees. They argued that while the fees increase the price consumers must pay, they do not increase the coal's value. A majority of comments from the western coal producing States opposed the exclusion of these taxes and fees. They argued that these exclusions would result in decreased Federal and State revenues and that there was not sufficient reason to exclude these taxes and fees from value. Other public and industry commenters argued for the exclusion of fees and taxes in order to promote the competitiveness of Federal coal. Comments from Indian tribal representatives opposed the application of the exclusions to coal produced from Indian lands because it would reduce Indian revenues. They added that these taxes and fees are mining costs and, therefore, should not be excluded from royalty value. The Indians also opposed awarding the exclusions to Federal coal alone arguing that this would make Indian coal less competitive. (See 54 FR 1511–1513).

After reanalyzing the comments, MMS concluded that it made four basic assumptions in the January 13, 1989, rulemaking which influenced the decision to exclude production taxes and fees from value for Federal leases: (1) The taxes and fees were considered not to be part of value, (2) the market for coal was judged to be different than the market for oil and gas, (3) the valuation rules were believed to be revenue neutral for Indian lessors, and (4) coal production was postulated to increase as a result of the rule.

However, upon further review of the assumptions supporting the decision to exclude production taxes and fees from value, MMS now believes that these components of the price of coal cannot be sufficiently differentiated from its other constituent elements to reverse the historical position which the Department has maintained that value should be defined as no less than gross proceeds. A discussion of the issues involved and the decision of MMS to propose an amendment to the previously adopted coal product value regulations is presented below.

1. Value is No Less than Gross Proceeds

The January 13, 1989, rulemaking, as did all royalty product value rulemakings before it, used the concept of market value as being at least the minimum basis for collecting royalties. Any concept of value other than market valuation should have a strong justification for its use. See 54 FR 1493 for justification for the use of market value. Those who argued that the "value" of coal is less than the total amount paid for it based their argument on two postulates: First, that taxes and fees do not add to the value of the coal, only to its cost; and second, that it is not fair for MMS, in its role as royalty manager of the real property of the Federal Government and Indian tribes, to allow royalty value to be impacted by the taxes enacted by various Governments in their sovereign roles as regulators or tax collectors. It is important to remember that when the Government imposes taxes, it does so with an entirely different set of powers than it exercises when it collects rents or royalties.

The mere fact that the Government imposing the tax also enjoys rents and royalties as the lessor of the mineral lands does not undermine the Government's authority to impose the tax. The royalty payments from the mineral leases are paid to the Tribe in its role as partner in petitioners' commercial venture. The severance tax, in contrast, is petitioners' contribution "to the general cost of providing governmental services." *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 138 (1981).

The value definition argument was expressed in the January 13, 1989, rulemaking as "the perception today by both coal producers and coal purchasers of the market for coal * * * [is that production] taxes are not part of the market value of the coal." (See 54 FR 1512). Coal is typically sold in arrangements whereby the purchaser, in addition to a base price, agrees to reimburse the producer for the costs associated with severence and other production taxes (and royalties). The argument proceeds on the premise that the value must be the base price, and that the reimbursements are payments in addition to "value." According to the Western Fuels Association:

The value of a product does not increase because a tax or fee is added to it, only its cost increases. As a matter of fact, the inclusion of these items could well cause its value to decline. (54 FR 1512.)

If value is defined as less than what a willing buyer pays to the seller, as a gross sum, there are many possibilities for exclusions. For example, a parallel argument would be: The value of coal does not include the cost incurred in complying with governmentally imposed health, safety and environmental standards; the coal produces no more heat, thus these costs are not part of value. See 54 FR 1494 for an explanation for the rejection of Btu-based valuation.

If exclusions may be based on the fact that coal is priced as a base price plus various reimbursements, the system will have been converted from ad valorem royalty to profit sharing. (If the Federal Government issued a coal profit sharing lease, the profit share rate would probably be greater than 12½ percent—for example, Outer Continental Shelf Net Profit Share leases are required to have a share of "no less than 30 percent" compared with ad valorem leases which must have "a fixed royalty rate of not less than 12½ per centum.") (30 CFR 260.11).

Payment of these production taxes and fees are generally the legal responsibility of the operator. They are costs of production as are labor, rent (including royalty), equipment, and insurance. For example, the Abandoned Mine Land Reclamation fee is imposed on operators and is not owed by any royalty owner or purchaser of coal. In fact, if the operator contracted with a royalty owner or purchaser of coal to pay its share, and the royalty owner or purchaser of coal failed to pay on time, the operator would still be liable for the fee, with interest. (30 U.S.C. 1232(e)). Thus the operator of the lease, and not the Federal Government, is responsible for the payment of the fee.

The Black Lung excise tax is also imposed on the producer of the coal. The producer is "the person in whom is vested ownership of the coal under State law immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties." (26 CFR 48.4121-1(a)(1)). The Internal Revenue Service regulations give the following example:

A, a limited partnership, is the owner of land on which a coal mine is located. A leases the land to XYZ Company and XYZ Company extracts the coal from the mine and sells it. Under state law, XYZ is the owner of the coal immediately after the coal is severed from the ground. XYZ is the producer and must pay the excise tax. This is true even though the lease agreement required XYZ to pay a royalty to A.

See 26 CFR 48.4121-1(a)(2). This example clearly places the obligation to pay the tax on the operator, not the lessor.

The system that States and tribes use to collect taxes on the production of minerals in their various jurisdictions is complex. The treatment of mining operators and royalty owners may vary depending upon when the tax is applied. If the tax is on gross proceeds, the operator will usually pay the tax even if the proceeds are the result of a reimbursement payment by a purchaser. Such a tax is thus best thought of as a cost of production. Although some States may apply the tax after production, clarity of the regulatory scheme suggests that Federal royalty valuation policy should not defer to the form which the tax takes in the several States. MMS thus believes that it is preferable to treat all severance taxes as costs of production, even though some may be levied after production. No State imposes a sverance tax without production.

The definition of severance tax (30 CFR 206.251) also has become a cause for some confusion, and this is an additional reason MMS believes that it is preferable to include all production tax payments in value. Several comments were received after the promulgation of the rule concerning the definition of severance tax. Commenters argued that the definition of severance tax went further than commenters were led to believe was being considered during the rulemaking process.

The other argument given for defining value to exclude these taxes and fees was well expressed by a comment submitted by Utah Power & Light Company: "The states and Federal Government can manipulate its [sic] royalty revenue by increasing or decreasing taxes and fees, proving they do not contribute to the value of coal." (See 54 FR 1512). This argument can be divided into two parts. First, the argument suggests that any time a governmental action influences the price of coal, the change cannot be considered part of value. That argument goes too far because it could logically include every Government regulation from minimum wage to the Clean Air Act requirement of using scrubbers, to health and safety regulations. The second part of the argument presumes that the incidence of these particular fees and taxes is such that they are entirely passed on to purchasers of coal. Assuming for discussion that this is the case (as it appears to be at present), the only definitive conclusion that can be drawn is that coal demand is highly inelastic—thus changes in price have little effect on demand. See also part 4., infra.

2. Coal Value Is Determined in the Market Like Oil and Gas

Coal, gas, and oil are all marketed differently. Coal is not a homogeneous commodity. For instance, the Edison Electric Institute commented that: "Coal is not a commodity like oil. The market for Western coal is user specific and custom-produced according to quantity and quality." (See 54 FR 1513). However, the mere fact that coal is not fungible does not present a reason for the exclusion of production fees and taxes from value for royalty.

In the long run, the demand for coal, like the demand for oil and gas, is determined by its total price and the total price of its substitutes. Coal demand will thus increase, in gross and at specific mines, to the extent its price falls relative to its substitutes, whether they are other coals or other fuels. It is total price (including taxes, fees, and royalties) that determines the quantity demanded; excluding portions of that total price from coal, but not from oil and gas, would provide a relative subsidy to coal.

3. Fiscal Effects

In directing MMS to review the exclusions, one area the Secretary was interested in was the production and fiscal impacts of the rules. MMS's finding regarding the revenue impact was similar to that anticipated during the prior rulemaking. During the 6-month period of the MMS study, royalty revenues were estimated to have been $16.6 million less than they would have been, 50 percent of which is a direct revenue reduction for the six principal Federal coal-producing States of Colorado, Montana, North Dakota, New Mexico, Utah, and Wyoming. See 30 U.S.C. 191. Thus, the fiscal impact on the State treasuries is considerable. Despite the decrease in Federal royalty collections, the negative impact to the Federal Treasury may be partially offset by increased corporate income taxes resulting from lower business deductions. MMS estimated that approximately one-quarter of the gross reduction in royalty revenues (or approximately $4 million over the 6-month study period) could be recovered by increases in the Federal Corporate Income Tax.

The production-related taxes and fees exclusions in 30 CFR 206.257(b)(5) unexpectedly have had at least a temporary adverse impact on Indian royalty revenues, as explained in section I of this preamble, supra. From March 1989 through August 1989, these exclusions have resulted in estimated reductions of royalty revenues of approximately $2 million for the Navajo Nation and the Hopi Tribe. Despite the expressed intent of the rules to exempt Indian coal from the provision excluding Black Lung excise taxes, AML fees, and severance taxes from coal value, some lessees of Indian coal contend that their lease terms specifically require their coal to be valued on the same basis as Federal coal is valued. They, therefore, argue that the same tax exclusions

extended to Federal leases should be allowed for their leases. These lessees have reduced the royalties paid to the Navajo and Hopi Tribes accordingly. The lessees' obligation to make these payments is currently in the administrative appeals process. See section I of this preamble, supra. MMS believes that the provisions of 206.257(b)(5) do not apply to these leases. However, the potential litigation has caused some uncertainty regarding whether MMS's interpretation will prevail in all instances.

4. Production Did Not Increase Significantly Due to the Rule

MMS found that total production of coal in western States has been increasing during the 1980's. While production of coal in the West, both on Federal and non-Federal lands continued to increase in 1989, it did so consistent with that trend. MMS thus believes that any change in production over the first 8 months of this rule cannot be clearly attributed to the exclusion of taxes and fees from value for royalty purposes. MMS also believes that expected changes in the Clean Air Act, and general economic growth are more likely to be more dominant factors in the future. MMS recognizes that a longer review period may be preferable, but any study of the medium term future is expected to find that these other factors would intervene, which would most likely complicate any analysis of effects from royalty valuation policy.

MMS has benefited from an extensive study of the Colorado market prepared by the Colorado Department of Natural Resources. That study concluded that the royalty valuation rules decreased the price of Colorado coal by $0.25 per ton which, along with the State's actions in reducing its severance tax and in instituting a tax credit (which reduced the price by $1.25 per ton) helped increase the production of Colorado coal by 11 percent in the first three quarters of 1989 and by 9 percent in the first three quarters of 1988 from the nadir of recent production in 1987. While locally encouraging, MMS believes that there is little evidence that the royalty rule played any significant part in this increase. Local incentives appear to be the principle cause of this increase.

MMS's study discovered that most utility regulators believed that all the benefits of the royalty reduction would be passed along to consumers. Assuming that the incidence of coal royalty is on the consumer of electricity, the MMS analysis also concluded that, although savings to electricity consumers resulting from the exclusions may be substantial in aggregate, the effect on individual rate payers is likely to be quite small (on the order of $0.20 per month per commercial and residential ratepayer). As the savings for both commercial and residential consumers of electricity is expected to be so small as a proportion of their total electricity expenditures, any variation in coal production due to increased demand for electricity stemming from the reduced price is likely to be negligible.

Conclusion

After having considered the production and fiscal impacts, MMS has decided to propose rescinding these exclusions because: (a) Past departmental valuation practice appears to be more consistent with defining value to comprise, as a minimum, all elements of gross proceeds paid for produced coal, including production fees and taxes; (b) adverse fiscal effects are apparent with respect to the Federal and especially certain State treasuries, due to the relative loss in royalty revenues, and there may be an unexpected adverse fiscal impact on Indian revenue collections; (c) the study of the impact of the new rules, while of limited scope and duration, did not provide sufficient evidence of production increase; and (d) the proposed change would make coal valuation more consistent with royalty valuation for other leasable minerals. MMS also is proposing to remove the definition of "severance tax" in 30 CFR 206.251.

III. Request for Comments

The public is invited to participate in this proposed rulemaking by submitting data, views, or arguments with respect to this Notice. MMS seeks additional information or evidence regarding the impact of the exclusions on coal production. All comments must be received by 4:30 p.m. of the day specified in the **DATES** section at the appropriate address indicated in the **ADDRESSES** section of this Notice.

IV. Procedural Matters

Executive Order 12291

The Department has hereby determined that this document is not a major rule and does not require analysis under Executive Order 12291. This proposed rulemaking is to modify the Department's definition of the value of coal for royalty purposes under the coal product valuation regulations that were issued on January 13, 1989.

Executive Order 12630

Because this rule will not affect the use of value of private property, the Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Regulatory Flexibility Act

Because this rule simplifies existing regulations, administrative requirements regarding royalty reporting would be reduced for small business entities as a result of implementation of this rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on any small business entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*).

Paperwork Reduction Act of 1980

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0074.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Minerals royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 26, 1990.

David C. O'Neal,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as follows:

TITLE 30—MINERALS RESOURCES

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1131 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§ 206.25 [Amended]

2. Section 206.251 of subpart E is amended to remove the definition of severance tax.

§ 206.257 [Amended]

3. Section 206.257 of subpart E is amended to remove paragraph (b)(5) and to redesignate (b)(6) as paragraph (b)(5); paragraphs (b)(1), (c)(1), (c)(3), and (g) are revised to read as follows:

§ 206.257 Valuation standards for ad valorem leases.

* * * * *

(b)(1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(2), (b)(3), and (b)(5) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

* * * * *

(c)(1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

* * * * *

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value determination shall be consistent with the provisions contained in paragraph (b)(5) of this section.

* * * * *

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for the disposition of produced coal less applicable provisions of paragraph (b)(5) of this section and less applicable allowances determined pursuant to §§ 206.258 through 206.262, and § 206.265 of this subpart.

* * * * *

[FR Doc. 90-3310 Filed 2-12-90; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-90-01]

Special Local Regulations: Friendship Festival '90 Air Show, Niagara River and Buffalo Harbor, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the Friendship Festival '90 Air Show. This event will be held over the Niagara River and Buffalo Harbor on 30 June 1990 from 3 p.m. (e.d.s.t.) until 4:30 p.m. (e.d.s.t.) and on 1 July 1990 from 1 p.m. (e.d.s.t.) until 5 p.m. (e.d.s.t.). The regulations are needed to provide for the safety of life and property on navigable waters during the event.

DATES: Comments must be received on or before March 30, 1990.

ADDRESSES: Comments should be mailed to Commander (osr), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Office of Search and Rescue, room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199 (216) 522-4420.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09-90-01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period well be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Office of Search and Rescue and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Friendship Festival '90 Air Show will be conducted over the Niagara River and Buffalo Harbor on 30 June 1990 and on 1 July 1990. This event will have approximately 30, domestic and foreign, private and military aircraft performing low flying aircraft demonstrations and high performance aircraft aerobatics, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).