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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 204

[CIS No. 2502–11, DHS Docket No. USCIS–2011–0002]

RIN 1615–AB93

Requiring Residents Who Live Outside the United States To File Petitions According to Form Instructions

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule with a request for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations to establish the location where a Petition for Alien Relative, Form I–130, or a Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360, may be filed, accepted, processed and approved through form instructions. DHS is promulgating this rule to reduce DHS costs by reducing filings of a Petition for Alien Relative at non-U.S. Citizenship and Immigration Services (USCIS) international locations, such as United States consulates and embassies, and to increase USCIS's flexibility in administering this program. DHS is removing references to offices, form numbers, approval authorities, and internal procedures from the regulation.

DATES: *Effective date:* This rule is effective on August 15, 2011,

Comment period: Written comments must be submitted on or before July 18, 2011.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2011–0002 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Sunday Aigbe, Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2011–0002 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Sunday Aigbe, Chief Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Adam Klein, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 1100, Washington, DC 20529–2020. Contact Telephone Number (202) 272–1474.

SUPPLEMENTARY INFORMATION:

I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this final rule. To provide the most assistance to USCIS comments should refer to a specific portion of the final rule, explain the reason for any recommended change, and include data, information, or authority that support that recommended change.

Instructions: All submissions must include the agency name and DHS Docket No. USCIS–2011–0002 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

II. Background

DHS is removing regulatory restrictions on where a Petition for Alien Relative, Form I–130, and a Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360, on behalf of a widow or widower may be filed, as well as any prescription of the location or jurisdiction of the U.S. Citizenship and Immigration Services (USCIS) or the U.S. Department of State (DOS) with regard to the acceptance, processing, and approval of those petitions. A relative petition is used for a citizen or lawful permanent resident (LPR) of the United States to establish the relationship to certain alien relatives who wish to immigrate to the United States. A Petition for Amerasian, Widow(er), or Special Immigrant is used by an Amerasian, widow(er), or special immigrant to classify an alien as such where the alien wishes to immigrate to the United States. After approval of either petition, the eligible family member or alien may apply for an immigrant visa or for adjustment of status to that of an LPR once a visa number becomes available. *See* Immigration and Nationality Act, as amended (INA), section 203, 245(a), 8 U.S.C. 1153 and 1255(a); 22 CFR 42.41; 8 CFR 245.1(a). No changes are made to regulations pertaining to the eligibility of alien relatives to immigrate to the United States.

III. Reason for This Change

DHS regulations currently provide that certain petitioners residing in countries where USCIS does not have an international office may file a relative petition or petition by a widow or widower at a U.S. consulate abroad and that these petitions may be accepted and approved by a consular officer. *See* 8 CFR 204.1(e). DHS is amending the regulations to require that all petitioners who reside outside the United States file a relative petition or petition by a widow or widower according to the form instructions. *See* new 8 CFR 204.1(b). USCIS will amend the form instructions for relative petitions concurrently with this rulemaking to provide the option of either mailing the petition to the USCIS Chicago Lockbox, or filing at the USCIS international office if the petitioner resides in a country where USCIS has an office. USCIS will not be amending form instructions relative to a petition by a widow or widowers at this time. USCIS may change these form instructions in the future as the USCIS transformation progresses or as necessary to shift filings among USCIS offices for processing efficiency.

This rule represents another step DHS is taking to remove unnecessary internal USCIS procedures from regulations and to transition toward an electronic environment and away from the filing in a paper-based environment. *See Removing References to Filing Locations and Obsolete References to Legacy Immigration and Naturalization Service; Adding a Provision To Facilitate the Expansion of the Use of Approved Electronic Equivalents of Paper Forms,* 74 FR 26933 (June 5, 2009). Further, USCIS is modernizing its processes and systems to accommodate and encourage greater use of electronic data submission, including e-filing and electronic interaction. Regulations that prescribe filing locations and adjudicative jurisdictions undermine this transformation process, and this rule will help alleviate that problem.

DHS will achieve cost-savings by changing the location of filing Petitions for Alien Relatives. The current practice of requiring or permitting petitioners who live outside the United States to file a relative petition at DOS consular offices is inefficient and requires reimbursement. USCIS has reached an agreement, as required by law, with the DOS Consular Service for the provision of lockbox and receipting services and must reimburse DOS for the costs of those services. *See* 31 U.S.C. 1535. USCIS is able to receive these petitions at a lower cost than DOS charges USCIS.

USCIS cannot realize these cost savings until the regulations eliminate the option of filing with DOS consular offices by petitioners who live outside the United States. *See* 8 CFR 204.1(e). This final rule removes those filing provisions. This change will reduce inefficiencies, improve the ability of USCIS to manage its workload, and reduce the burden on DOS. After this rule takes effect, petitioners residing outside of the United States will file their petitions as directed by the form instructions. USCIS will alter its form instructions to provide for the filing of Petition for Alien Relative with the in-country USCIS office or by mail to a lockbox in the United States if there is no in-country USCIS office. Filing locations and procedures will remain available on USCIS forms and the USCIS Web site. Customer service will remain available where USCIS has an international presence and through email. Internal USCIS procedures will govern who accepts, adjudicates, and approves petitions.

DHS is revising 8 CFR 204.1 to remove paragraphs (c), (d), and (e), and revising paragraph (b) to cross reference 8 CFR 103.2. New 8 CFR 204.1(b). DHS is removing current paragraphs (c), (d), and (e), because they are redundant with 8 CFR 103.2 and contain unnecessary internal procedures. DHS is making those revisions to standardize what is considered proper filing among all benefit types, and increase flexibility by removing form numbers, form titles, USCIS and DHS job titles, specific duties assigned to personnel, and internal operational procedures. DHS is systematically removing references to form numbers and form titles in all USCIS regulations. Mandating a specific form number reduces USCIS's flexibility to modify its business processes to change filing procedures.

By removing 8 CFR 204.1(e) DHS is also removing the requirement in that section that a self-petitioning spouse or child of an abusive United States citizen or lawful permanent resident file the petition with a USCIS office in the United States. Nevertheless, DHS is making no substantive changes in this rule that affect potential filers of either alien relative or widow(er) petitions. USCIS may change the Petition for Amerasian, Widow(er) or Special Immigrant in the future after complying with the applicable public notice requirements and obtaining Office of Management and Budget (OMB) approval.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) requires DHS to provide public notice and seek public comment on regulations with limited exceptions, including "* * * rules of agency organization, procedure or practice." 5 U.S.C. 553(b)(A). Under this rule, USCIS will no longer accept hand delivery of petitions at a United States consulate by DOS officers. International postal or delivery costs may slightly increase filing expenses for a relative petition filed by some individuals residing outside the United States. These minor changes, however, do not substantially affect a substantive right. *See, e.g., James V. Hurson Associates, Inc.* v. *Glickman,* 229 F.3d 277 (DC Cir. 2000) ("[A]n otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties."); *see also JEM Broad. Co.* v. *FCC,* 22 F.3d 320, 326 (DC Cir. 1994). Nonetheless, DHS believes that public input may be valuable and invites the public to comment on this change.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that DHS conduct a regulatory flexibility analysis when it publishes any general notice of proposed rulemaking. 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice and comment rulemaking. DHS has determined that this rule is exempt from the notice-and-comment requirements in 5 U.S.C. 553(a), and, therefore, a regulatory flexibility analysis is not required. This procedural rule will impact only individuals, not small entities as defined by the Regulatory Flexibility Act.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect of $100 million or more on the economy; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866 and Executive Order 13563

DHS does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, as supplemented by Executive Order 13563. Accordingly, this rule has not been submitted to the OMB for review. DHS has considered the benefits and costs associated with the changes made in this rule and has determined that the benefits justify the potential costs.

DHS is taking this action to increase operational efficiency and to control USCIS costs for processing relative petitions. In fiscal year (FY) 2010, a total of 697,162 relative petitions were processed by USCIS, 8,135 of them by USCIS international offices. In that same year, DOS accepted and processed 9,497 relative petitions in countries where

USCIS has no overseas office and 6,576 in countries where USCIS is located.[1] In FY 2010, DOS began charging USCIS for services rendered in accepting or processing relative petitions. As a fee-funded agency, USCIS is statutorily authorized to collect fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners. *See* INA section 286(m), 8 U.S.C. 1356(m). The current fee of $420 for a relative petition does not cover the DOS charges. Therefore, DHS will adjust its internal processes to avoid the DOS charge, thereby maintaining the integrity of the current fee schedule for relative petitions.

Instructions for filing relative petitions will be amended concurrently with this final rule. Instructions for filing relative petitions will provide the option of either mailing the petition to the USCIS Chicago Lockbox, or filing at the USCIS international office if the petitioner resides in a country where USCIS has an office. Depending upon the unique circumstances of the United States citizen or lawful permanent resident petitioner, this rule could result in a cost savings or additional burden to the petitioner. Travel costs and mailing costs vary widely among individual petitioners. Thus, DHS cannot precisely estimate the costs or savings impacts of the rule. For example, when a petitioner resides in a country with no USCIS presence, the rule could provide a cost savings if mailing the petition is less expensive than the cost of traveling to the nearest DOS office, or vice versa. DHS believes that the benefits of streamlining USCIS operations in processing alien relative petitions to avoid DOS charges justifies the potential cost impact on petitioners residing in international locations.

F. Executive Order 13132

This rule will not have substantial direct effects 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. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

G. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), DHS submits to OMB for review and approval any reporting or recordkeeping requirements inherent in a regulatory action. 44 U.S.C. 3506. The information collection burden for the Petition for Alien Relative has been approved by OMB and assigned OMB control number 1615–0012. This rule does not impose any new reporting or recordkeeping requirements under the PRA. However, USCIS is making minor changes to the Petition for Alien Relative (Form I–130) instructions to instruct petitioners about where to file. Accordingly, USCIS will submit a Correction Worksheet, Form OMB 83–C, and amended instructions to OMB for review and approval in accordance with the PRA.

List of Subjects in 8 CFR Part 204

Administrative practice and procedures, Immigration, Reporting and recordkeeping requirements.

Accordingly, DHS is amending part 204 of chapter I of title 8 of the Code of Federal Regulations as follows:

PART 204—IMMIGRANT PETITIONS

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255; 1641; 8 CFR part 2.

Subpart A—Immigrant Visa Petitions

■ 2. Section 204.1 is amended by revising paragraph (b) and removing and reserving paragraphs (c), (d), and (e).

The revision reads as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(b) *Proper filing.* A petition for alien relative and a petition for Amerasian, widow(er), or special immigrant must be filed on the form prescribed by USCIS in accordance with the form instructions, and will be considered properly filed when the petition is filed in accordance with 8 CFR 103.2. The filing date of a petition is the date it is properly filed and received by USCIS. That date will constitute the priority date.

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2011–11997 Filed 5–16–11; 8:45 am]

BILLING CODE 9111–97–P

[1] It is not always clear to what extent DOS processes each alien relative petition from examining the volume data. In some cases, DOS is able to fully adjudicate and process the petition, while more complex adjudicative cases are forwarded to USCIS for processing and decision. Thus, DHS is hesitant to draw statistical comparisons between DOS and DHS processing data, especially in cases where there is a USCIS international office.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1264; Airspace Docket No. 10–AWP–23]

Amendment of Class D and Class E Airspace; Livermore, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends existing Class E airspace at Livermore, CA, to accommodate aircraft using new Instrument Landing System (ILS) Localizer (LOC) standard instrument approach procedures at Livermore Municipal Airport, and also corrects the airspace designation. This action also corrects a typographical error in the airspace description for Class D airspace. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On February 14, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Livermore, CA (76 FR 8322). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in paragraph 5000 and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010,

and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E extending upward from 700 feet above the surface, at Livermore Municipal Airport, Livermore, CA, to accommodate IFR aircraft executing new ILS LOC standard instrument approach procedures at the airport, and adds the airport name and geographic coordinates to the airspace designation. Also, this action corrects a typographic error in the regulatory text of the Class D airspace area by correcting the word 'iport' to 'Airport'. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Livermore Municipal Airport, Livermore, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D Livermore, CA [Amended]

Livermore Municipal Airport, CA
(Lat. 37°41′36″ N., long. 121°49′13″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4-mile radius of Livermore Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Livermore, CA [Amended]

Livermore Municipal Airport, CA
(Lat. 37°41′36″ N., long. 121°49′13″ W.)

That airspace extending upward from 700 feet above the surface within 8.1 miles north and 4 miles south of the Livermore Municipal Airport 091° bearing extending 23 miles east of Livermore Municipal Airport, and within 3.5 miles north and 4 miles south of the Livermore Municipal Airport 271° bearing extending 2.6 miles west of the airport.

Issued in Seattle, Washington, on May 5, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–11695 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0023; Airspace Docket No. 11–ANM–2]

Amendment of Class D and Class E Airspace; Idaho Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends existing Class D and Class E airspace at Idaho Falls, ID, by changing the name of the airport to Idaho Falls Regional Airport, and adjusting the geographic coordinates of the airport. This action also adds additional Class E airspace necessary to accommodate aircraft using new Area Navigation (RNAV) Required Navigation Performance (RNP) standard instrument approach procedures at Idaho Falls Regional Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On February 17, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Idaho Falls, ID (76 FR 9266). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in paragraph 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order. With the exception of editorial changes, this rule is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D and Class E airspace by changing the airport name from Fanning Field to Idaho Falls Regional Airport, and adjusts the geographic coordinates of the airport to be in concert with the FAA's Aeronautical Products Office. Also, existing Class E airspace extending upward from 700 feet above the surface, at Idaho Falls Regional Airport is modified to accommodate aircraft using new RNAV (RNP) standard instrument approach procedures. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Idaho Falls Regional Airport, Idaho Falls, ID.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM ID D Idaho Falls, ID [Amended]

Idaho Falls Regional Airport, ID
(Lat. 43°30′52″ N., long. 112°04′13″ W.)

That airspace extending upward from the surface to and including 7,200 feet MSL within a 5.4-mile radius of Idaho Falls Regional Airport excluding that airspace below 5,300 feet MSL within a 1-mile radius of lat. 43°28′16″ N., long. 111°59′27″ W.; and excluding that airspace 1 mile either side of the 127° bearing from lat. 43°28′16″ N., long. 111°59′27″ W., to the 5.4-mile radius of Idaho Falls Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM ID E2 Idaho Falls, ID [Amended]

Idaho Falls Regional Airport, ID
(Lat. 43°30′52″ N., long. 112°04′13″ W.)

Within a 5.4-mile radius of Idaho Falls Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace designated as an Extension to a Class D surface area.

* * * * *

ANM ID E4 Idaho Falls, ID [Amended]

Idaho Falls Regional Airport, ID
(Lat. 43°30′52″ N., long. 112°04′13″ W.)
Idaho Falls VOR/DME
(Lat. 43°31′08″ N., long. 112°03′50″ W.)

That airspace extending upward from the surface within 3.1 miles each side of the Idaho Falls VOR/DME 223° radial extending from the 5.4-mile radius of Idaho Falls Regional Airport to 9.2 miles southwest of the VOR/DME, and within 3.5 miles each side of the Idaho Falls VOR/DME 030° radial extending from the 5.4-mile radius of the airport to 7 miles northeast of the VOR/DME.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID E5 Idaho Falls, ID [Modified]

Idaho Falls Regional Airport, ID
(Lat. 43°30′52″ N., long. 112°04′13″ W.)
Pocatello VORTAC
(Lat. 42°52′13″ N., long. 112°39′08″ W.)
Burley VOR/DME
(Lat. 42°34′49″ N., long. 113°51′57″ W.)
Idaho Falls VOR/DME
(Lat. 43°31′08″ N., long. 112°03′50″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Idaho Falls Regional Airport, and within 10.2 miles northwest and 4.3 miles southeast of the Idaho Falls VOR/DME 036° and 216° radials extending from 27.2 miles northeast to 16.1 miles southwest of the VOR/DME, and within 7.9 miles southeast and 5.3 miles northwest of the 029° radial of the Pocatello VORTAC extending from 20.1 to 40.9 miles northeast of the VORTAC; that airspace extending from 1,200 feet above the surface bounded by a line beginning at the intersection of long. 112°30′03″ W., and the south edge of V–298, extending east along V–298 to the intersection of the south edge of V–298 and long. 112°02′00″ W., north along long. 112°02′00″ W. to lat. 44°20′00″ N., east along lat. 44°20′00″ N. to long. 110°37′00″ W., south along long. 110°37′00″ W. to the intersection of long. 110°37′00″ W. and the northwest edge of V–465, southwest on V–465 to the intersection of V–465 and long. 112°00′00″ W., south along long. 112°00′00″ W., to the north edge of V–4, west on V–4 to the 24.4 mile radius of the Burley VOR/DME, thence counterclockwise via the 24.4-mile radius to the south edge of V–269, thence east along the south edge of V–269 to the 25.3-mile radius of the Pocatello VORTAC, thence clockwise via the 25.3-mile radius to lat. 43°05′46″ N., long. 113°08′15″ W.; to lat. 43°20′30″ N., long. 112°45′33″ W.; to lat. 43°32′00″ N., long. 112°35′03″ W.; to lat. 43°50′20″ N., long. 112°30′03″ W., thence to the point of beginning.

Issued in Seattle, Washington, on May 2, 2011.

Christine Mellon,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–11371 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0016; Airspace Docket No. 11–ANM–1]

Modification of Class E Airspace; Poplar, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Poplar Municipal Airport, Poplar, MT. The airport was moved 1.5 Nautical Miles (NM) to the northeast. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Poplar Municipal Airport, Poplar, MT. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. This also corrects the airport name from Poplar Airport.

DATES: Effective date, 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On February 16, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Poplar, MT (76 FR 8921). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. The FAA received one comment suggesting omitting language in the legal description relating to Federal airways and the Wolf Point, MT, Class E airspace area. The FAA found merit in this comment, and will make the change to the legal description. With the exception of editorial changes and the changes described above, this rule is the same as that proposed in the NPRM.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Poplar Municipal Airport, Poplar, MT. The airport was moved 1.5 nautical miles to the northeast, and controlled airspace extending upward from 700 feet above the surface is necessary to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at Poplar Municipal Airport. This enhances the safety and management of IFR operations at the airport. This action also notes the change in the airport name from Poplar Airport to Poplar Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Poplar Municipal Airport, Poplar, MT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Poplar, MT [Modified]

Poplar Municipal Airport, MT
(Lat. 48°08′04″ N., long. 105°09′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Poplar Municipal Airport, and within 4 miles each side of the 105° bearing extending from the airport to 10.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface bounded by a line from lat. 47°53′25″ N., long. 105°52′50″ W.; to lat. 48°18′00″ N., long. 105°52′50″ W.; to lat. 48°18′00″ N., long. 104°30′00″ W.; to lat. 47°53′25″ N., long. 104°30′00″ W.; thence to point of beginning.

Issued in Seattle, Washington, on May 10, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–12001 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 800

[Docket No. FDA–2011–D–0258]

Compliance Policy Guide: Surgeons' Gloves and Patient Examination Gloves; Defects—Criteria for Direct Reference Seizure

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide Sec. 335.700, Surgeons' Gloves and Patient Examination Gloves; Defects—Criteria for Direct Reference Seizure (the CPG). The CPG, which was originally issued in 1991, provides guidance to FDA staff on the submission of seizure recommendations for medical gloves that exceed the defect levels in FDA regulations. The CPG has been revised to remove an appendix that became obsolete when the regulations were amended, and to make other minor changes for clarity and consistency with the amended regulation.

DATES: Submit either electronic or written comments on the CPG at any time.

ADDRESSES: Submit written requests for single copies of the CPG to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the CPG.

Submit electronic comments on the CPG to *http://www.regulations.gov.* Submit written comments on the CPG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David R. Kalins, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6612.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled "Compliance Policy Guide Sec. 335.700, Surgeons' Gloves and Patient Examination Gloves; Defects—Criteria for Direct Reference Seizure." The CPG provides guidance to FDA staff on the submission of seizure recommendations for medical gloves that exceed the defect levels in 21 CFR 800.20. The CPG was originally issued on May 31, 1991, and was previously revised in July 2005. It is currently being revised to remove an appendix that became obsolete when an amendment to 21 CFR 800.20 became effective December 19, 2008. The amended rule includes changes intended to improve the barrier quality of medical gloves marketed in the United States by reducing the acceptable quality levels (AQLs) for leaks and visual defects observed during FDA testing of medical gloves. The CPG was revised for consistency with the AQLs in the amended regulation. The text of the CPG also includes a number of minor edits made for clarity. This document supersedes Compliance Policy Guide Sec. 335.700, Surgeons' Gloves and Patient Examination Gloves; Defects—Criteria for Direct Reference Seizure dated July 2005.

FDA is issuing the CPG as Level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The CPG represents FDA's current thinking on the criteria for direct reference seizure of defective medical gloves. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding the CPG. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the CPG at either *http://www.fda.gov/ora/compliance_ref/cpg/default.htm* or at *http://www.regulations.gov.*

Dated: May 5, 2011.

Dara A. Corrigan,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 2011–12037 Filed 5–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0316]

Drawbridge Operation Regulation; Sturgeon Bay Ship Canal, Sturgeon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: Commander, Ninth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Michigan Street and Maple-Oregon Street Bridges across the Sturgeon Bay Ship Canal, at miles 4.3 and 4.17, respectively, both in Sturgeon Bay, Wisconsin. This deviation will test a change to the drawbridge operation schedules during the peak tourist and navigation seasons to provide for the efficient movement of vehicular traffic and the safety of navigation on the waterway. This deviation will allow scheduled openings for recreational vessels and openings on signal for commercial vessels.

DATES: This deviation is effective from noon on May 27, 2011 through noon on September 16, 2011. Comments and related material must be received by the Coast Guard by September 16, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0316 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist; telephone 216–902–6085, facsimile 216–902–6088, or e-mail *lee.d.soule@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All

comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0316), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0316," click "Search," and then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0316" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before September 1, 2011 by using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The Sturgeon Bay Ship Canal is approximately 8.6 miles long and provides a navigable connection between Lake Michigan and Green Bay. The area experiences a significant increase in vehicular and vessel traffic during the peak tourist and navigation season, between approximately Memorial Day and Labor Day each year.

There are a total of three highway drawbridges across the waterway. The Michigan Street Bridge provides unlimited vertical clearance in the open position and 14 feet in the closed position. Maple-Oregon Bridge provides unlimited vertical clearance in the open position and 25 feet in the closed position. Bay View Bridge also provides unlimited vertical clearance in the open position and 42 feet in the closed position. Both Michigan Street and Maple-Oregon Bridges serve the downtown Sturgeon Bay area and are located approximately 750-feet apart on the canal.

A final rule, CGD9–05–080, was published in the October 24, 2005 edition of the **Federal Register** (70 FR 61380) to allow:

(1) The draw of the Michigan Street Bridge to open for recreational vessels on the hour 24 hours a day from March 15 through December 31 and on signal if at least 12 hours notice is given from January 1 through March 14 The final rule also included a requirement to open at any time if 20 or more vessels gathered or vessels are seeking shelter from severe weather; and

(2) The draw of the Bayview (SR42/57) Bridge, mile 3.3 Sturgeon Bay to open on signal from March 15 through November 30; and on signal if at least 12 hours notice is given from December 31 through March 14.

A temporary final rule, USCG–2009–0385, was published in the June 5, 2009 edition of the **Federal Register** (74 FR 26954), effective from June 5, 2009 to November 15, 2010 that essentially shifted the March 15 through December 31 one bridge opening per hour at Michigan Street Bridge to the Maple-Oregon Bridge while the rehabilitation of Michigan Street was completed and the bridge was kept in the open-to-navigation position.

Both drawbridges are now operational for vehicular and vessel traffic and the one opening per hour schedule for Michigan Street Bridge is reinstated while Maple-Oregon Bridge opens at any time for vessels. With both Michigan Street and Maple-Oregon Bridges operational the one opening per hour schedule for Michigan Street is considered restrictive for vessels, and could potentially create an unsafe condition for vessel traffic that may be between the two closely located drawbridges while waiting for bridge openings. The Wisconsin Department of Transportation (WDOT) requested scheduled drawbridge openings for both Michigan Street and Maple-Oregon Bridges so vehicular traffic congestion would not develop on downtown Sturgeon Bay streets due to unscheduled bridge openings. Commander, Ninth Coast Guard District, evaluated that request, as well as the need to provide efficient and safe bridge openings for vessels, and along with WDOT and local stakeholders developed this temporary test drawbridge schedule for the 2011 peak tourist and navigation season. Throughout the temporary drawbridge schedule WDOT will post signs at both drawbridges and collect vehicular traffic and bridge opening data. Public comments will also be accepted throughout the test period.

Temporary Drawbridge Schedule

From noon on May 27, 2011 through noon on September 16, 2011, 24-hours per day and 7-days per week, the Michigan Street Bridge at mile 4.3 over the Sturgeon Bay Ship Canal will open on the hour and half-hour for recreational vessels, if needed. The Maple-Oregon Bridge at mile 4.17 will open fifteen-minutes before the hour and fifteen minutes after the hour for recreational vessels, if needed. Both

bridges will open on signal for all commercial vessels, federal, state, and local government vessels used for public safety, vessels in distress, or seeking shelter from severe weather. If at any time more than 10 vessels accumulate at either bridge the bridge will open and allow all vessel traffic to clear the bridge. Vessels that may pass under the bridges without an opening may do so at anytime. In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 22, 2011.

Scot M. Striffler,

Bridge Program Manager, Ninth Coast Guard District.

[FR Doc. 2011–12011 Filed 5–16–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0972]

Drawbridge Operation Regulations; Bayou Liberty, Mile 2.0, St. Tammany Parish, Slidell, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the S433 Bridge over Bayou Liberty, mile 2.0, St. Tammany Parish, Slidell, LA. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. It will allow the bridge to remain unmanned during most of the day by requiring a one-hour notice for an opening of the draw from 7 a.m. to 7 p.m., and a two-hour notice from 7 p.m. to 7 a.m. seven days a week. The Coast Guard may publish a Supplemental Notice of Proposed Rulemaking to make this deviation permanent.

DATES: This deviation is effective from June 1, 2011 through September 9, 2011.

Comments and related material must be received by the Coast Guard on or before July 15, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0972 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Jim Wetherington; Bridge Administration Branch, Eighth Coast Guard District, telephone 504–671–2128, e-mail *james.r.wetherington@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0972), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0972," click "Search," and then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0972" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time

and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Jim Wetherington at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

The subject bridge is the S443 Swing Bridge across the Bayou Liberty at mile 2.0, in St. Tammany Parish. The vertical clearance is 7.59 feet (2.31m) above the 2% flowline, elevation 2.5 feet (0.76m) NAVD 1988.

Presently, under 33 CFR 117.469, the draw of the S433 Bridge, mile 2.0, at Slidell, shall open on signal, except that between 7 p.m. and 7 a.m., the draw shall open on signal if at least two hours notice is given.

The owner requests a test to allow the public to experience and then comment on the proposed schedule. The current regulation has been in effect since 2008; however, the bridge for which the regulation was in place (a pontoon bridge) no longer exists. With the completion of the new bridge (a swing bridge) in April 2010, it was shown that there was an average of less than one opening per month which is a marked decrease from an average of 70 per month the previous year. Currently, most traffic, land and marine, is local with land traffic outpacing marine traffic, and most marine traffic is recreational. Vessels will be able to pass under the bridge during the deviation and therefore no alternate routes are recommended at this time.

This deviation is effective from June 1, 2011 through September 9, 2011.

Vessel counts were collected and analyzed by the owner and reflect a marked reduction in the number of required openings since the completion of the new bridge and removal of the old one. The expected impact on navigation during the test period will be minimal based on the increase in vertical clearance and the recorded decrease in number of requested openings. The test deviation will allow the bridge to remain unmanned during most of the day by requiring a one-hour notice for an opening of the draw Monday through Friday from 7 a.m. to 7 p.m. and a two-hour notice from 7 p.m. to 7 a.m. seven days a week.

Coordination with mariners will be through Public Notice and Local Notice to Mariners upon date of publication in the **Federal Register**.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 21, 2011.

David M. Frank,

Bridge Administrator.

[FR Doc. 2011–12003 Filed 5–16–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1015]

RIN 1625–AA00

Safety Zones; Fireworks Display Kanawha River, WV

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule with request for comments.

SUMMARY: The Coast Guard is establishing three permanent safety zones in the Ohio Valley Captain of the Port Zone on specified waters of the Kanawha River in Charleston and St. Albans, West Virginia. These safety zones are necessary to protect persons and vessels from the potential safety hazards associated with annual firework displays. When these safety zones are activated, and thus subject to enforcement, this rule would limit the movement of vessels within the established fireworks display areas. Entry into, transit through, mooring, or anchoring within the zones during time of enforcement is prohibited unless authorized by the Captain of the Port, Ohio Valley or designated representative.

DATES: This rule is effective May 17, 2011. Comments must be submitted by June 16, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1015 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1015 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1015 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Marceli Rogoza, Marine Safety Unit Huntington Coast Guard; telephone 304–733–0198 extension 2137, e-mail *Marceli.A.Rogoza@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1015), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will

then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–1015" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–1015" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Regulatory Information

The Coast Guard is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because standard notice procedures are impracticable. Immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register** because a delayed effective date would be impracticable as immediate action is necessary to ensure the safety of the public during the scheduled fireworks events.

Basis and Purpose

The U.S. Coast Guard is establishing three permanent safety zones to ensure public safety during annual fireworks displays occurring on the specified waters of the Kanawha River, West Virginia. These safety zones are necessary to protect the public from the hazards associated with fireworks displays. These fireworks displays are scheduled to occur annually during the first week of June. The Captain of the Port Ohio Valley or designated representative will give notice of enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public.

Discussion of Rule

The Captain of the Port Ohio Valley is establishing three safety zones for the specified waters of the Kanawha River. The first, for the West Virginia Special Olympics Fireworks Display, is located between mile 57.9 and 58.9 in Charleston, West Virginia and is effective annually on the first Friday in June. The second safety zone, for the West Virginia Symphony Sunday Fireworks, is located between mile 59.5 and 60.5 in Charleston, West Virginia and is effective annually on the first Sunday in June. The third safety zone for the St. Albans Fireworks Display is located in St. Albans, West Virginia between mile 46.0 and 47.0 of the Kanawha River and is effective the last Saturday in June.

The term "participating vessel" includes all vessels registered with the fireworks event officials to work in the event. With the exception of participating vessels and those mariners operating participating vessels, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative. The Captain of the Port Ohio Valley may be contacted on VHF–FM Channels 13 or 16, or by telephone at 800–253–7465. The Captain of the Port Ohio Valley will inform the public through broadcast notice to mariners of the enforcement periods for the safety zones.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zones. The basis of this finding is that the safety zone will only be in effect for a limited time period on one day each year and notifications to the marine community will be made through broadcast notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following

entities, some of which may be small entities: The owners or operators of vessels intending to transit the specified waters of the Kanawha River during the first week in June each year. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for limited time period on one day each year during the fireworks displays.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Marceli Rogoza. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves regulations establishing safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.822 to read as follows:

§ 165.822 Safety Zone; Fireworks Display, Kanawha River, WV.

(a) *Safety Zones.* The following areas are designated safety zones: all waters between the specified mile markers on the Kanawha River, described as follows in the Table to § 165.822(a):

TABLE TO § 165.822(a)

Event name	Event location	Scheduled date
West Virginia Special Olympics Fireworks Display	Between mile 57.9 and 58.9, Charlestown, WV	First Friday in June.
West Virginia Symphony Sunday Fireworks Display	Between mile 59.5 and 60.5, Charlestown, WV	First Sunday in June.
St. Albans Fireworks Display	Between mile 46.0 and 47.0, St. Albans, WV	Last Saturday in June.

(b) *Enforcement.* The Captain of the Port Ohio Valley or designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zones.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Ohio Valley or designated representative.

(2) Persons or vessels requiring entry into or passage through this zone must request permission from the Captain of the Port Ohio Valley, or a designated representative. They may be contacted on VHF–FM Channels 13 or 16, or by telephone at (800) 253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated on-scene U.S. Coast Guard patrol personnel.

(4) On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: March 15, 2011.

L.W. Hewett,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2011–12007 Filed 5–16–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0324]

Security Zone; Portland Rose Festival on Willamette River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Portland Rose Festival Security Zone in 33 CFR 165.1312 from 11 a.m. on June 8, 2011 until 11 a.m. on June 13, 2011. This action is necessary to ensure the security of maritime traffic, including the public vessels present, on the Willamette River during the Portland Rose festival. During the enforcement period, no person or vessel may enter or remain in the security zone without permission of the Captain of the Port, Columbia River, Oregon.

DATES: The regulations in 33 CFR 165.1312 will be enforced from 11 a.m. on June 8, 2011, through 11 a.m. on June 13, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Coast Guard MSU Portland; telephone 503–240–9327, e-mail *Jaime.a.Sayers@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the Portland Rose Festival security zone on the Willamette River from 11 a.m. on June 8, 2011, through 11 a.m. on June 13, 2011. The security zone includes all waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges.

Under the provisions of 33 CFR 165.1312 and 33 CFR 165 Subpart D, no person or vessel may enter or remain in the security zone without permission of the Captain of the Port, Columbia River. Persons or vessels wishing to enter the security zone may request permission to do so from the Captain of the Port's on-scene designated representative via VHF Channel 16 or 13. The Coast Guard may be assisted by other Federal, State, or local enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1312 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via the Local Notice to Mariners.

Dated: April 28, 2011.

D.E. Kaup,

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2011–12010 Filed 5–16–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1134]

RIN 1625–AA87

Security Zone; Vessels Carrying Hazardous Cargo, Sector Columbia River Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a 500 yard security zone around vessels carrying hazardous cargo, as determined by the Captain of the Port (COTP) Columbia River, when such vessels are located in the Sector Columbia River COTP Zone as defined in 33 CFR 3.65–15 and the COTP Columbia River determines that a security zone is necessary and enforcement of that security zone is practicable. The security zones will help ensure the security of the vessels themselves as well as the maritime public due to the hazardous nature of the cargo on board.

DATES: This rule is effective June 16, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–1134 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1134 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9327, e-mail *Jaime.a.Sayers@uscg.mil.* If you have questions on viewing the docket, call

Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 8, 2010, we published a notice of proposed rulemaking (NPRM) entitled Security Zone; Vessel Carrying Hazardous Cargo, Sector Columbia River Captain of the Port Zone in the **Federal Register** (75 FR 76328). No comments were received on the proposed rule and there was no request to hold a public meeting.

Basis and Purpose

Vessels carrying hazardous cargo occasionally operate in the Sector Columbia River COTP Zone. Examples of hazardous cargoes include, but are not limited to, liquefied petroleum gas, ammonium nitrate and associated mixtures, anhydrous ammonia, and chlorine. The security zones that will be created by this rule will help ensure the security of the vessels themselves as well as the maritime public in general by prohibiting all persons or vessels from coming within 500 yards of such vessels while located in Sector Columbia River COTP Zone. In the past, the COTP Columbia River has issued temporary security zones to cover certain vessels carrying hazardous cargo.

Background

Vessels carrying hazardous cargo enter the Captain of the Port Columbia River area of responsibility approximately every three to four months. These cargos pose a potential threat to the environment and to nearby communities if an incident were to occur while it is transiting the Columbia and Willamette Rivers. This potential threat is reduced by the vessel being escorted through highly populated areas of the river and by ensuring a security zone is around the vessel during the entire transit to reduce the numbers of vessels coming in close proximity to the vessel. This process takes approximately two weeks to complete but the Coast Guard is notified 96-hours in advance of the arrival of this vessel. The vessel will only be in port long enough to discharge the product which is approximately 18 to 26 hours. No other alternatives were considered for these security zones.

Discussion of Comments and Changes

There were no comments made on the notice of proposed rulemaking and therefore no changes have been made to the rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that the security zones created by this rule will only be in effect during the limited periods of time when vessels carrying hazardous cargo, as determined by the COTP Columbia River, are located in the Sector Columbia River COTP Zone. In addition, maritime traffic will be able to transit around the security zones or, if necessary, may be allowed to transit through the security zones with permission from the COTP Columbia River.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate in an area covered by a security zone created by this rule. The security zones created by this rule will not have a significant economic impact on a substantial number of small entities, however, because they will only be in effect during the limited periods of time when vessels carrying hazardous cargo, as determined by the COTP Columbia River, are located in the Sector Columbia River COTP Zone. In addition, maritime traffic will be able to transit around the security zones or, if necessary, may be allowed to transit through the security zones with permission from the COTP Columbia River.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. There were no comments submitted on this notice.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. There were no comments submitted on this notice.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. There were no comments submitted on this rule.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. There were no comments submitted on this rule.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children. There were no comments submitted on this rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. There were no comments submitted on this plan.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. There were no comments submitted on this rule.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. There were no comments submitted on this rule.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a security zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1335 to read as follows:

§ 165.1335 Security Zone; Vessels Carrying Hazardous Cargo, Sector Columbia River Captain of the Port Zone.

(a) *Location.* The following area is a security zone: All waters within 500 yards, in all directions, of any vessel carrying hazardous cargo, as determined by the Captain of the Port (COTP) Columbia River, while such a vessel is located in the Sector Columbia River COTP Zone as defined in 33 CFR 3.65–15 and the COTP Columbia River determines that a security zone is necessary and enforcement of the security zone is practicable.

(b) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, Subpart D, no person or vessel may enter or remain in a security zone created by this section without the permission of the COTP Columbia River or his/her designated representative. Designated representatives are Coast Guard personnel authorized by the COTP Columbia River to grant persons or vessels permission to enter or remain in a security zone created by this section. Subpart D of 33 CFR part 165 contains additional provisions applicable to a security zone created by this section.

(2) To request permission to enter a security zone created by this section, contact Coast Guard Sector Columbia River at telephone number 503–861–6212 or via VHF channel 16 (156.8 MHz) or VHF channel 22 (157.1 MHz).

(c) *Notification.* When a security zone is created by this section, one or more Coast Guard vessels will be present to enforce the security zone and the COTP Columbia River will issue a local broadcast notice to mariners.

Dated: May 2, 2011.

D.E. Kaup,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2011–11799 Filed 5–16–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2002–0051; EPA–HQ–OAR–2007–0877; FRL–9306–7]

RIN 2060–AQ93

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial in part and grant in part of petitions to reconsider.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is denying in part and granting in part the petitions to reconsider the final revised National Emission Standards for Hazardous Air Pollutants emitted by the Portland Cement Industry and the New Source Performance Standards for Portland Cement Plants issued under sections 112(d) and 111(b) of the Clean Air Act, respectively. The EPA is also denying all requests that the EPA issue an administrative stay of the National Emission Standards for Hazardous Air Pollutants and the New Source Performance Standards.

DATES: This action is effective May 17, 2011.

ADDRESSES: The EPA's docket for this action is Docket ID No. EPA–HQ–OAR–2002–0051. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information where disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, Office of Air Quality Planning and Standards; Sector Policies and Programs Division, Minerals and Manufacturing Group (D243–02); Environmental Protection Agency; Research Triangle Park, NC 27111; telephone number: (919) 541–5605; fax number: (919) 541–5450; e mail address: *barnett.keith@epa.gov*.

SUPPLEMENTARY INFORMATION: On August 6, 2010, the EPA signed a final rule establishing and amending various air emission limits applicable to the Portland cement industry. See 75 FR 54970 (Sept. 9, 2010). The rule establishes National Emission Standards for Hazardous Air Pollutants (NESHAP) for emissions of mercury, total hydrocarbons (THC), and particulate matter (PM) from new and existing cement kilns located at major and area sources, and for emissions of hydrochloric acid (HCl) from new and existing kilns located at major sources. The rule also establishes New Source Performance Standards (NSPS) for emissions of PM, nitrogen oxides, and sulfur dioxide at cement kilns that commence construction, modification, or reconstruction after June 16, 2008.

Various entities representing both the regulated industry and the environmental community have petitioned the EPA for reconsideration of various standards in these rules, in particular the NESHAP. A number of industry petitioners also requested that the EPA issue an administrative stay of the NESHAP and NSPS. For the reasons stated below, the EPA is denying reconsideration on certain issues raised in the petitions and is granting reconsideration on a number of other issues. The EPA is also denying all requests that it issue an administrative stay.

I. Standard for Reconsideration

Section 307(d)(7)(B) of the Clean Air Act (CAA) states that: "Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed pending such reconsideration, however, by the Administrator or the court for a period not to exceed three months."

As to the first procedural criterion for reconsideration, a petitioner must show why the issue could not have been presented during the comment period, either because it was impracticable to raise the issue during that time or because the grounds for the issue arose after the period for public comment (but within 60 days of publication of the final action).

In the EPA's view, an objection is of central relevance to the outcome of the rule only if it provides substantial support for the argument that the promulgated regulation should be revised. *See, e.g.,* the EPA's Denial of the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202 of the Clean Air Act, 75 FR 49556, 49561 (Aug. 13, 2010). This interpretation is appropriate in light of the criteria adopted by Congress in this and other provisions in section 307(d). Section 307(d)(4)(B)(i) provides that "[a]ll documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability." This provision draws a distinction between comments and other information submitted during the comment period, and other documents which become available after publication of the proposed rule. The former are docketed irrespective of their relevance or merit, while the latter must be docketed only if a higher hurdle of central relevance to the rulemaking is met.

For more extended discussions of the standard for reconsideration under section 307(d)(7)(B), please see 75 FR 49556, 49560–49563 (August 13, 2010) and 76 FR 4780, 4786–4788 (January 26, 2011).

II. The Petitions for Reconsideration

A. Petition of the Portland Cement Association (PCA)

1. PCA maintains that after the close of the comment period on the proposed cement NESHAP, the EPA proposed inter-related rules regulating

Commercial and Industrial Solid Waste Incinerators (CISWI) and proposing a definition of solid waste for non-hazardous secondary materials. Petition p. 2. PCA alleges that these proposed rules "eviscerate the statistical underpinning for the NESHAP rule." Petition p. 2. PCA states that under the proposed rule defining non-hazardous secondary materials that are solid wastes ("solid waste definition rule"), many cement kilns would have been considered to be incinerators (*i.e.*, units that combust "solid waste," as that term is defined by the Administrator under RCRA, see section 129(g)(6)), rather than cement kilns. PCA further states that under the proposed waste definition rule, virtually all of the cement kilns comprising the pool of best performers for each of the cement NESHAP floors would be incinerators since they burn secondary materials that would have been defined as solid waste under the proposed solid waste definition rule. Although acknowledging that the EPA had discussed in the proposed cement NESHAP how it intended to classify cement kilns that burn secondary materials (Petition p. 8), PCA maintains that it had no notice of the potential impact of the CISWI rule and solid waste definition rule until the EPA proposed a definition of solid waste, and, in particular, that PCA was unaware of the potential practical implications of the issue until the EPA proposed a solid waste definition. Petition pp. 10, 12. Petitioners maintain that the EPA cannot permissibly classify the same kilns as affected sources under both rules, and requests that the EPA stay the Portland cement NESHAP administratively pending reconsideration of the issue.

2. PCA next maintains that the EPA adopted standards for open clinker cooler piles in the NESHAP without giving proper notice of what those standards might be. Petition p. 11.

3. PCA further requests reconsideration of the standards for startup and shutdown operations. PCA argues that the final standards deviated from those proposed, because the EPA had proposed that the same standards that apply during normal operation also apply during startup and shutdown operations, whereas the final rule adopts standards for startup and shutdown that differ from those applicable during normal operation. Petition p. 14. PCA maintains that it had no notice of the data on which such standards were based, because the standards are not based on emissions data. *Id.* p. 15. The petition further states that the standards for startup and shutdown were adopted in disregard of the requirements of section 112(d)(3) of the CAA, again largely because the standards are not based on emissions data. *Id.*

4. In the final rule, the EPA adopted a provision establishing an affirmative defense to civil penalties for exceedances of emission standards which result from malfunction events. PCA requests that the EPA reconsider this affirmative defense provision, which it characterizes as overly cumbersome, and issued without notice and adequate opportunity for public comment. *Id.* at 16.

5. PCA also requests that the EPA reconsider the standards for PM, including the new source standard for PM in the NSPS. *Id.* PCA alleges that the EPA "reduce[d] the PM limits * * * dramatically" between proposal and final rule, and that the change was based on information hand-picked by the EPA which information was not known to petitioners. *Id.* In a follow-up letter of December 14, 2010, PCA expanded on its petition to state that the key change between proposal and final rule, made without proper notice, was to express the PM standard as a 30-day average and to use a statistical methodology (Upper Prediction Limit, or UPL) in calculating that limit. December 14 Letter p. 3.

6. PCA also requested that the EPA reconsider a number of issues of a more technical nature (many of which pertain to the standards for open clinker piles). Petition Exhibit 1.

B. Petition of Eagle Materials

Eagle Materials challenges application of the NESHAP's monitoring requirements to sources equipped with monovents (vents on the top of a control device rather than a single stack). Although acknowledging that this issue was presented during the public comment period, Eagle Materials maintains that the EPA's disposition of the issue was based on technical assumptions which are unfounded and unanticipated by Eagle and other commenters. Eagle Materials also maintains that the EPA adopted standards for clinker storage piles without providing adequate notice of what those standards might be.

C. Petitions of Sierra Club, Downwinders at Risk, Friends of Hudson, Huron Environmental Activist League, Desert Citizens Against Pollution, Montanans Against Toxic Burning, and the Natural Resources Defense Council

A number of environmental groups filed petitions requesting that the EPA reconsider the provision establishing an affirmative defense to civil penalties for emission exceedances demonstrated to have occurred as a result of a malfunction event (as defined). The petitions maintain that the EPA adopted this provision without adequate notice and opportunity for public comment.

III. Decision on Issues Raised in the Petitions

A. Issues on Which the EPA Is Denying Reconsideration

1. Relationship Between Portland Cement NESHAP, Solid Waste Definition and CISWI Rule

PCA maintains that "EPA proposed the CISWI/'solid waste' definition rules after the comment period closed on the NESHAP rule, foreclosing any real opportunity for PCA to assess and comment on the impacts of the NESHAP. Indeed, it was not until EPA proposed the subsequent CISWI/'solid waste' rules that * * * PCA had notice with any real specificity of the number of cement facilities that may end up being regulated as CISWI facilities." Petition p. 8. The EPA is denying rehearing on this issue because the petitioners have failed to demonstrate that it was impracticable to raise their objection during the public comment period. In addition, the fact that some cement kilns may have a later change of regulatory classification after the NESHAP is promulgated is not an issue of central relevance to the outcome of the NESHAP rule, as required by the statutory standard for reconsideration. Finally, as discussed below, even if the impacts of the solid waste rule had been assessed, it would not have made a significant difference in the final Portland Cement NESHAP.

a. *Was it impractical to raise the objection within the comment period?*

Section 307(d)(7)(B) requires the EPA to grant reconsideration of an issue "[i]f the person raising the objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment". PCA could have objected during the comment period on the proposed Portland Cement NESHAP to EPA's classification of all Portland cement kilns burning secondary materials [1] as cement kilns. In the

[1] A "secondary material" is a material that can potentially be classified as a solid waste under the Resource Conservation and Recovery Act when recycled. 50 FR 616 n. 4 (Jan. 4, 1985). Under the newly adopted regulatory definition of solid waste, secondary materials encompass "any material that is not the primary product of a manufacturing or

Continued

proposed Portland Cement NESHAP, the EPA proposed to classify all cement kilns, including those burning secondary materials, as cement kilns for the NESHAP rulemaking, and explained why it was doing so. The EPA discussed the interplay between the cement kiln NESHAP and the forthcoming rules for incinerators which burn solid waste, noting that "some Portland cement kilns combust secondary materials as alternative fuels". 74 FR at 21138. The EPA then stated that because there was no regulatory definition of solid waste that would distinguish which of these alternative fuels burned by cement kilns were wastes and which were not, the EPA would therefore classify all of the units as cement kilns. *Id.* The EPA reasoned that unless and until the Agency adopts a definition of solid waste classifying the alternative fuels, cement kilns burning secondary materials as fuels or otherwise using secondary materials are lawfully classified as cement kilns and rules for cement kilns therefore would apply to them. *Id.* The EPA also articulated the principle of which PCA states it lacked notice: The NESHAP would be based on the performance of all devices which were cement kilns at the time of the Portland Cement NESHAP rulemaking. *Id.* The EPA further found that combustion of secondary materials as alternative fuels by cement kilns "did not have any appreciable effect on the amount of hazardous air pollutants (HAP) emitted by any source." *Id.* The record for the proposed rule included an inventory of every material burned by a large group of cement kilns over a 30-day period, including all of those comprising the pool of best performers for mercury.[2]

Neither PCA nor any other commenter objected to any aspect of the issue of the interplay between the cement kiln NESHAP and the CISWI/waste definition rules during the comment period.[3] PCA has consequently failed to satisfy the requirement of section 307(d)(7)(B) that it was impractical to raise the issue during the public comment period or that the grounds for their objection arose after the close of the comment period.

Petitioners maintain that "it was impossible for PCA to provide informed comments on the interplay between the CISWI/'solid waste' definition rules and the NESHAP rule" until the Agency proposed those rules on April 29, 2010, after the close of the comment period in the NESHAP. Petition p. 10. Acknowledging that the EPA had already raised the issue in the proposed cement NESHAP, petitioners maintain that "[a] generic comment is not adequate to put stakeholders on fair notice that the CISWI/'solid waste' definition rules could fundamentally change the scope of the NESHAP source category." *Id.*[4] But the EPA's discussion at proposal was not generic. It was a considered discussion stating the approach to classification the EPA intended to adopt (and did adopt) in the final rule, citing moreover to the EPA's Advance Notice of Proposed Rulemaking (74 FR 42, January 2, 2009) which had discussed the universe of secondary materials burned by units including cement kilns, and the considerations the Agency might use in ultimately classifying these materials by rule as waste or non-wastes. The administrative record likewise contained item-by-item accounting—cited to by the EPA when presenting the issue of kiln classification for public comment—of every secondary material burned by a large group of cement kilns over an extended period.

PCA appears to be stating that although the EPA had raised the issue of kiln classification at proposal, the practical implications of the EPA's approach were not clear until the EPA proposed a solid waste definition and CISWI standards. But the EPA stated that it would classify all cement kilns as cement kilns during the NESHAP rulemaking unless a final definition of solid waste changed their regulatory status prior to the completion of the section 112 Portland Cement NESHAP. That issue was unaltered by the EPA issuing a proposed solid waste definition and proposed CISWI standards. Just like the proposed cement NESHAP, the final cement NESHAP was based on the performance of units classified as cement kilns at the time of the cement NESHAP rulemaking. This included all cement kilns burning alternative fuels. PCA's objection is no different before the proposed solid waste definition and CISWI rules than after that proposal. The same issue is presented now as was presented at proposal: Whether devices which are classified as cement kilns in the absence of a regulatory waste definition are properly so classified if they were burning secondary materials that might ultimately be classified as solid wastes. Moreover, the type of secondary materials the cement kilns were burning was well-documented in the NESHAP administrative record (and known to PCA in any case).[5] PCA's decision not to comment on the issue because of perceived lack of practical effect was their choice, not the result of lack of notice. For this reason, PCA's statement that it could not gauge the impact of the NESHAP until the proposed waste definition/CISWI rule appeared (Petition p. 10) misses the point. Those impacts were going to be the same because the EPA had made clear that it would continue to classify cement kilns as cement kilns so long as that remained their legal status. This status remained the same throughout the rulemaking.

b. *Are petitioners' objections of central relevance to the outcome of the rule?*

Section 307(b)(7)(B) also requires that for reconsideration to be required, objections must be "of central relevance to the outcome of the rule." The EPA does not believe that is the case here, for reasons both legal and practical.

The EPA believes that it validly based the NESHAP on the performance of devices which were cement kilns at the time of the rulemaking. See section 112(d)(3)(A) which states that maximum achievable control technology (MACT) floors for existing sources are to reflect performance of sources for which the EPA has emissions information, indicating that standards are to reflect sources' legal status and performance at the time of the rulemaking.[6] Later rules

commercial process, and can include post-consumer material, off-specification commercial chemical products or manufacturing chemical intermediates, post-industrial material, and scrap." 40 CFR 241.2.

[2] See docket item EPA–HQ–OAR–2002–0051–2043.

[3] Two commenters (# 2816 and 2846) noted EPA's approach. One of these commenters approvingly summarized EPA's position to classify all cement kilns as cement kilns, based on their status at the time of the NESHAP. The other commenter simply summarized EPA's position. Neither of these comments is an objection putting EPA on notice that a commenter disagreed with EPA's approach or otherwise raising "with reasonable specificity" (section 307(d)(7)(B)) any issue that EPA's approach was objectionable for legal or policy reasons.

[4] Nonetheless, had the final solid waste definition been in place at the time of the final Portland Cement NESHAP rulemaking, there would have been only modest change in the scope of the NESHAP source category and the final standards would have been largely unaltered. See Table 1 below.

[5] Fuels Use in Portland Cement Kilns, April 25, 2011.

[6] There is no valid argument that cement kilns burning alternative fuels were already commercial and solid waste incinerators at the time of the NESHAP rulemaking. First, all of these kilns certified that they were cement kilns in compliance with the 1999 MACT standards for the Portland Cement category (pursuant to 40 CFR sections 63.1353(b)(5) and 63.9(h)). Second, the status of these alternative fuels as solid wastes or not solid wastes could not be determined in the absence of a regulatory definition addressing the status of those fuels. 74 FR at 21138. Although there is a statutory definition of solid waste in the Resource Conservation and Recovery Act (at section 1004 (27)), that definition does not apply directly to section 129, but must be implemented by means of an EPA-promulgated regulation. See CAA section

that prospectively establish the classification of certain of the alternative fuels that these kilns burned does not alter these kilns' status—cement kilns—at the time of the cement NESHAP rulemaking. This is all that matters. The solid waste definition rule adopted a half year after the signature of the Portland Cement NESHAP rule is not relevant to the cement kilns' classification at the time of the NESHAP rulemaking.

PCA argues, however, that the situation here is controlled by the DC Circuit's opinion in *NRDC* v. *EPA,* 489 F. 3d 1250 (DC Cir. 2007) ("*Boiler MACT*"). Petition p. 8. We disagree. In that case, the EPA had adopted a definition of "solid waste incineration unit" which classified "commercial or industrial waste" to include only solid waste combusted in units which do not recover energy. 489 F. 3d at 1258. The EPA issued MACT standards predicated upon no boilers being incinerators due to their energy recovery purpose and design. The court held that the definition was impermissible in that it classified units burning solid waste as boilers rather than as commercial and industrial solid waste incineration units and noted that "[t]he effect of these definitions is to substantially reduce the number of commercial or industrial waste combustors subject to section 129's standards". *Id.* The court continued:

> [Since the Court is requiring] EPA to revise the CISWI Definitions Rule * * *, the Boilers Rule will need to be revised as well because the universe of boilers subject to its standards will be far smaller and more homogenous after all CISWI units * * * are removed from its coverage. Given the likelihood (if not certainty) that the Boilers Rule will change substantially as a result of our vacatur of the challenged "solid waste" definition, we believe the Boilers Rule should be vacated in its entirety and remanded for EPA to repromulgate after revising the CISWI Definitions Rule. 489 F. 3d at 1261.

The NESHAP rule at issue in *Boiler MACT* was thus promulgated when there was a definition of commercial and industrial wastes (as incorporated in the definition of solid waste incinerator, 489 F. 3d at 1261), which classified all units as either boilers or incinerators, albeit improperly. Here, in contrast, there was no regulatory definition of solid waste that determined (or otherwise addressed) the status of the alternative fuels burned by cement kilns. Thus, cement kilns burning alternative fuels or other secondary materials were not classified as incinerators during the cement NESHAP rulemaking, but as cement kilns. The cement NESHAP therefore was and is based exclusively on the performance of cement kilns, as properly classified at the time of the rulemaking.[7] PCA states that the EPA cannot promulgate a NESHAP rule based on calculations that include CISWI units, but the EPA has not done that. Petition p. 10. All of the cement kilns were cement kilns during the NESHAP rulemaking.

Moreover, although the EPA recognizes that there is case authority that agencies are compelled to reopen rules when the rules' fundamental factual basis (or other essential premise) is altered by later events,[8] the EPA does not believe that the factual basis of the NESHAP has changed. The units on which the standard was based were cement kilns at the time of the NESHAP rulemaking, and, consistent with section 112(d)(3), the EPA based the NESHAP on that classification.

PCA also states that the EPA committed to reconsider the cement NESHAP once the CISWI/"solid waste" definition rules were finalized. Petition p. 11. This is incorrect. The EPA never committed to reopening a promulgated rule for the cement source category or any other. In the preamble to the proposed cement NESHAP, the EPA stated: "EPA is basing all determinations as to source classification on the emissions information now available, as required by section 112(d)(3), and will necessarily continue to do so until the solid waste definition discussed above is promulgated." 74 FR at 21138; see also 75 FR at 54972 which contains similar language. This statement means no more than it says: if the EPA had promulgated a final definition of solid waste that changed the classification of these kilns during the rulemaking, then the EPA would have based that NESHAP on that new classification. That did not occur during the Portland Cement NESHAP rulemaking. The quoted language cannot fairly be read to say that the EPA would revise standards for source categories properly classified at the time of the NESHAP based on a post-promulgation definition of solid waste whether that category be Portland cement kilns, lime kilns, or any other source category which once burned secondary materials later defined as solid waste.

The implications of PCA's position are that all NESHAPs have to be reopened and amended if units in the source category were burning secondary material that were classified post-promulgation as solid wastes by a later rule. Potential examples are lime kilns, chemical recovery units, as well as cement kilns (including the 1999 dioxin standard for cement kilns, which was not reopened as part of the 2010 rulemaking amending the NESHAP). The EPA does not accept this position. All of the NESHAPs are properly based on the units' classification at the time of the rulemaking.[9] PCA's position is disruptive to the rulemaking process and would potentially lead to frequent and substantial uncertainty for the regulated community and other stakeholders

The EPA similarly disagrees with the premise that the Agency cannot develop standards for any source category which burns materials which might ultimately be classified as solid waste until developing and finalizing a solid waste definition rule. This conflicts with the EPA's obligations under the statute, consent decrees, and settlement agreements (including the settlement agreement requiring the EPA to issue the NESHAP for Portland cement by August 2010) to complete NESHAPs for source categories listed pursuant to section 112(c)(1) by dates certain. The EPA's obligation in fact is to issue NESHAPs based on the emissions information before it at the time of the rulemaking (see section 112(d)(3)(A)), which is what it did here. NESHAPs are thus necessarily based on the snapshot-in-time assessment of performance within a source category, which necessarily includes the status of sources in that category at that moment

129(g)(6) ("the ter[m] 'solid waste' * * * shall have the meanin[g] established by the Administrator pursuant to the Solid Waste Disposal Act".) Equally important, the status of alternative fuels cannot be determined from the statutory definition alone (as illustrated by the different regulatory classifications of different alternative fuels in the recently-adopted definition of non-hazardous secondary materials, and the significant changes between proposal and final rule that EPA made in classifying alternative fuels).

[7] As noted earlier, all cement kilns certified to EPA that they were cement kilns in compliance with the applicable section 112(d) standards for cement kilns up to and through the time of the amendments to the Portland Cement NESHAP.

[8] See *Geller* v. *FCC,* 610 F. 2d 973, 979–80 (DC Cir. 1979) (rules justified as needed to encourage passage of Federal copyright legislation, without any further justification that the rules were in the public interest, may have lacked any nexus with the public interest after passage of the copyright legislation and the Federal Communications Commission could therefore be compelled to reexamine the rule); *RSR* v. *EPA,* 102 F. 3d 1266, 1270 (DC Cir. 1997) (noting that in *Geller* the sole basis for the challenged rule had "long since evaporated" and that agency was compelled to reexamine the rule in light of the "abnormal circumstances" of the case).

[9] For the same reason, EPA cannot be deemed to have constructively reopened the NESHAP when it issued the solid waste definition and CISWI rules. Nothing in the later rules changes the kilns' status as cement kilns at the time of the cement NESHAP rulemaking.

in time. To do otherwise makes the process unworkable.

Moreover, although not necessary to the decision to deny reconsideration, the EPA has evaluated the practical implications of the solid waste definition and CISWI standards that it recently adopted. If the newly-adopted solid waste definition had been applicable at the time cement kilns conducted the performance testing used as the basis for the MACT standards and at the time of promulgation of the final Portland Cement NESHAP, 23 cement kilns (by the EPA's estimate) out of 146 would have been classified as incinerators. If these units were removed from the pool of cement kilns, the floors—with one exception—would have remained either identical or essentially identical and, since the EPA adopted the floors as the standards, the standards would likewise have remained identical or essentially identical. The one floor that would change appreciably is the floor for THC, which would become significantly more stringent because the revised data base would reflect cement kilns experiencing less variability in THC emissions.[10] Given the minimal change in the standards, with the exception of the more stringent THC standard, kilns' compliance strategy would be unaltered.

TABLE 1—COMPARISON OF FLOORS WITH AND WITHOUT KILNS THAT COULD HAVE BEEN CISWI KILNS HAD THE DEFINITION OF SOLID WASTE APPLIED[11]

Pollutant	Existing source floor—2010 Final Rule	Existing source floor—CISWI kilns removed from inventory	New source floor—2010 Final Rule	New source floor—CISWI kilns removed from inventory
Mercury	55 lb/MM tons clinker	58 lb/MM tons clinker	21 lb/MM tons clinker	24 lb/MM tons clinker.
Total Hydrocarbons	24 ppmvd	15 ppmvd	24 ppmvd	11 ppmvd.
PM	0.04	0.05	0.01	0.01.
HCl	3 ppmvd	3 ppmvd	3 ppmvd	3 ppmvd.

In this analysis, the EPA finds that none of the cement kilns would have been potentially CISWI due to the use of secondary material ingredients (though some kilns would potentially have been CISWI due to secondary fuels burned). This is because none of these secondary ingredient materials identified by PCA as being used in cement kilns is considered to be combusted. A typical dictionary definition of "combustion" is "an act or instance of burning" or "a chemical process (as an oxidation) accompanied by the evolution of light and heat."[12] Cement kilns typically process ingredients in the cold regions of the kiln, where ingredients are gradually heated until they reach the temperature where clinker formation takes place. This is not a chemical process marked by the evolution of light and heat, and so is not combustion. Rather, it is analogous to cooking as opposed to burning.[13] Cement kiln dust is also used as an ingredient and is sometimes processed in the hot end of the cement kiln. Due to its inorganic, essentially inert composition, this material is not combusted.[14] Non-hazardous secondary materials used as an ingredient (as opposed to being combusted) in combustion units are not solid wastes under newly promulgated definitional rules (to be codified at 40 CFR section 241.3 (b)(3)), assuming the legitimacy criteria in section 241.3 (d) are satisfied.

The EPA's analysis also reflects the results of Information Collection Requests (pursuant to section 114 of the CAA) regarding cement kilns' use of tires as alternative fuels. Based on these ICR responses, the EPA finds that most of the responding cement kilns obtained tires from established tire programs as defined in newly promulgated part 241, and have reasonably established that the tires were not discarded and were handled as valuable commodities from the point of removal through arrival at the cement kiln and therefore would not have been solid wastes. The EPA does not interpret the certification required by section 60.2175(w) of the newly-adopted CISWI rule as requiring ultimate users to know the source of all tires obtained from an established tire collection program. This is a practical impossibility. In certifying, users also should not assume that tires from established programs which participate in occasional cleanup days were discarded. Rather, it is sufficient that the ultimate user verify that it is obtaining tires from an established tire collection program, which program can provide the user with reasonable assurance that it manages tires carefully from point of collection to point of burning and which does not receive tires which have been abandoned in landfills or otherwise.

There are further practical considerations, which likewise indicate the relative lack of practical effect of the solid waste definition and CISWI standards on the NESHAP. First, cement kilns can choose whether to continue burning solid waste and being classified as incinerators, or not burn waste and remain classified as cement kilns. Second, burning alternative fuels (whether classified as solid wastes or not) does not appreciably affect cement kilns' HAP emissions. 74 FR at 21138; Comments of PCA, Docket EPA–HQ–RCRA–2008–0329 (Aug. 3, 2010) (p. 27) (same). Thus, the measured performance of cement kilns that forms the basis of the standards in the NESHAP remains technically sound since that performance would remain the same whether or not kilns burn "solid waste" alternative fuels.

Finally, PCA points out that until there is a solid waste regulatory definition and a CISWI rule, its members lack the information to make a rational choice as to which source category to be subject to—whether or not to continue burning secondary materials and whether to invest

[10] Nor would EPA alter any of its determinations not to adopt more stringent beyond-the-floor standards.

[11] In this analysis, nine of the eleven floor kilns for the final cement NESHAP remain cement kilns. One of the two floor kilns for THC would be a CISWI, although removing this kiln from the cement kiln data base would result in a significantly more stringent THC standard under the NESHAP because this kiln had more associated variability in its performance than the other kilns ranked closest to it. For PM, two of six kilns remain classified as cement kilns. For HCl, two of three floor kilns remain cement kilns, but there are a whole group of cement kilns that performed identically to the floor kiln for HCl that was, for purposes of our analysis, reclassified as a CISWI so there would be no effect on the standard. 75 FR at 54894 (standard based on analytic method detection limit times a variability factor rather than on the measured values because those values were so close to the analytic method minimum detection limit). See the memorandum Revised Floors Without Kilns That Would Have Been CISWI Kilns Had the Solid Waste Definition Applied, dated April 25, 2011.

[12] Webster's Ninth New Colleg1ate Dictionary. Merriam-Webster Inc. 1990.

[13] See Combustion in a Cement Kiln and Cement Kilns' Use of Tires as Fuel dated April 25, 2011.

[14] Id.

immediately in the pollution control equipment and operational practices necessary for most kilns to comply with the Portland Cement NESHAP. Petition p. 18. The EPA has now adopted both a regulatory solid waste definition for non-hazardous secondary materials and CISWI standards, which should provide the basis for kilns to make these decisions within the necessary investment timeframe.

Conclusion

The EPA proposed to classify cement kilns burning secondary materials as cement kilns in the proposed rule, explained why it would do so, and finalized the NESHAP rule using the approach proposed. No objections to that approach were raised to the EPA during the rulemaking. We further reject the position that a solid waste definition adopted any time after promulgation of a NESHAP compels reexamination of the NESHAP because it alters the NESHAP's fundamental premises. The EPA appropriately develops NESHAPs, including the Portland Cement NESHAP, based on the information available to it at the time of the rulemaking and it is undisputed that the units in question here were cement kilns at the time of the final cement NESHAP. The EPA thus concludes that reconsideration here is neither required nor appropriate under section 307(d)(7)(B).

2. Standards During Periods of Startup and Shutdown

PCA maintains that the NESHAP's limits that apply during periods of startup and shutdown do not meet the requirements of CAA section 112(d)(2) because the standards rest on engineering estimates of performance rather than on performance data, and that the EPA failed to provide adequate notice and opportunity for comment. Petition pp. 14–16. With respect to the startup and shutdown standards, PCA has not demonstrated that it was unable to raise its objections during the public comment period. Indeed, it did so. The EPA proposed that the same standards apply during startup and shutdown conditions as during normal operating conditions, and solicited any data which might show that some other standard would be more appropriate. 74 FR at 21162. PCA commented at length on these proposed standards. PCA Comments, pp. 7–8, 11–13. In response to PCA's own comment that the proposed startup and shutdown standards should not be normalized to units of production (PCA Comment of Sept. 4, 2009 at 7–8, EPA–HQ–OAR–2002–0051–2922.1), the EPA modified the proposed standards so that they are expressed as stack concentrations. 75 FR at 54991.

PCA's main contention is that the EPA based the standards for startup and shutdown on its engineering judgment, so that commenters have had no opportunity to comment on emissions data supporting those conclusions. Petition p. 15. PCA is correct that the standards reflect the EPA's engineering judgment, but the EPA may permissibly rely on engineering judgment in developing floor standards in a NESHAP. *Sierra Club* v. *EPA,* 167 F.3d 658, 665 (DC Cir. 1999); *National Lime,* 233 F.3d at 632; *Mossville Environmental Action Now* v. *EPA,* 370 F.3d 1232, 1241–42 (DC Cir. 2004); *see also* CAA section 112(d)(3)(A). Furthermore, neither PCA nor any other commenter provided emissions data for startup and shutdown operations, despite the EPA's request. 74 FR at 21162.

Under these circumstances, the EPA believes that the petitioner both had the opportunity to raise its objections during the public comment period and did so. Reconsideration is therefore neither required nor appropriate.

The EPA, however, is granting reconsideration of one issue related to standards during startup and shutdown. This is the standard for HCl during startup and shutdown for kilns equipped with wet scrubbers but which do not use a continuous emissions monitor (CEM) to measure compliance. See issue B.4 below.

3. Standards for Particulate Matter

PCA states that in the final rule "EPA dramatically deviated from the range of possible limits that it had proposed for particulate matter * * * by almost 90 per cent" for new facilities and by nearly 50 percent for existing facilities. Petition p. 16. PCA further maintains that this change resulted from "cherry picked" data, with the expanded dataset "arbitrarily and capriciously biased towards top performers," those with new baghouses. *Id.* PCA further states that it was unable to comment on these data because the EPA did not make the data available until after promulgation of the final rule, and that the limits may not be achievable for sources that use wet scrubbers for acid gas control due to loadings of re-entrained particulate. *Id.* at 17. PCA raises the same issues with respect to the PM limit in the NSPS, which is identical to the new source standard under the NESHAP. *Id.*

This part of PCA's petition is largely mistaken, and does not present any grounds requiring the EPA to reconsider the PM standard in either the NESHAP or the NSPS. Indeed, PCA's public comments suggested a different PM limit than proposed based largely on the additional performance data for which they now claim lack of notice. PCA Comments at p. 86 and App. 1 to those comments. See docket items EPA–HQ–OAR–2002–0051–2922.1 and 2922.2, September 4, 2009. Much of this information had already been submitted to the EPA by PCA and individual PCA members in the parallel NSPS rulemaking as well. See National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry Response to Comments Received on Proposed Rule (Aug. 6, 2010) ("RTC") p. 155. See docket item EPA–HQ–OAR–2002–0051–3464. PCA thus not only had an opportunity to comment on the data used by the EPA for the final standard, but did so.

Nor did the EPA "cherry pick" among those data. See RTC at pp. 155, and 153–55 demonstrating the opposite: PCA had used the data selectively in constructing the alternative standard suggested in its comments, but the EPA's analysis used all of the additional data from the pool of best performing sources for PM.

PCA is also mistaken in its claim that it lacked opportunity to present its objection that the PM standard is based on unrepresentative performance because it was based on performance of plants with newly-installed baghouses. Indeed, it raised this issue in its public comments. PCA Comments at 86; see also RTC at pp. 155–56 indicating that baghouse performance can improve over time but is characterized by operating variability both when a baghouse is new and throughout its operating life. Commenters likewise raised the issue of baghouse performance decreasing due to re-entrained particulate resulting from use of wet scrubbers for acid gas control, and the EPA responded by citing data showing that PM levels from a cement kiln baghouse decreased after the kiln installed a wet scrubber to control its acid gas emissions. RTC at p. 158. Since there was ample notice and opportunity for comment on these issues (and, as just indicated, actual comment), the EPA is not required to reconsider them.

In its December 14, 2010, letter, PCA takes a different tack, stating that the PM standard in the final NESHAP and NSPS is expressed as a 30-day rolling average rather than as a 1-day average (as at proposal), and that the EPA used a statistical equation, the Upper Prediction Limit at the 99th percentile (UPL 99) to construct that limit. December 14 letter pp. 3–4. The letter

asserts that PCA lacked notice of either issue.

PCA is correct that the final standard is expressed as a 30-day standard (met by averaging 30 daily observations per month). 75 FR at 54988.[15] The EPA stated at proposal that it was considering adopting a PM standard whereby compliance would be measured with a CEM, and that CEM-based standards would be expressed as 30-day numbers. The EPA further had presented the statistical means of converting individual measurements into 30-day averages by means of the UPL 99 equation. 74 FR at 21157, 21158, 21141–42. PCA's comments criticized use of the UPL 99 equation both generally, and for a PM standard specifically (PCA Comments pp. 5, 86), and documented their view that the UPL equation underestimated variability for PM generally and underestimated the projected 99th percentile of the distribution of PM values (PCA Comments at App. 2 p. ES–7 and App. 2 p. 5–5). See also the EPA's responses at 75 FR at 59474–76; Development of the MACT Floors for the final Portland Cement NESHAP (the EPA, August 6, 2010, docket item EPA–HQ–OAR–2002–0051–4550) at pp. 2–4, 9–10, 17, explaining why the UPL 99 equation is a reasonable statistical tool for assessing variability, including variability over a 30-day measuring period.[16] PCA and member companies likewise submitted detailed comments questioning the reliability and suitability of PM CEMs and urged the EPA not to require their use in measuring the standard. RTC at pp. 163–67. The EPA consequently does not accept the contention that commenters lacked notice of these issues and that reconsideration is either required or appropriate.

The EPA, however, is granting reconsideration of two standards related to PM, the NSPS for PM as applied to modified sources, and the alternative PM compliance alternative for sources that commingle certain internal exhaust gas streams. See issues B. 6 and B. 9 below.

4. Monovents

Petitioner Eagle Materials claims that it lacked notice of the EPA's basis for requiring use of CEMs for all cement kilns, including those having monovent exhaust configurations (vents on the top of a control device rather than a single stack). This issue was presented at proposal, and the company submitted comments on the issue, as the petitioner acknowledges. Petition at pp. 3, 5–9. The petitioner disagrees with the EPA's response (which indicated that a source could install a separate stack for measurement purposes or seek an alternative monitoring regime on a site-specific basis pursuant to the authority at 40 CFR section 63.7 (f), RTC at pp. 75, 120, 145–46, 172–73), but this does not demonstrate that there was a lack of opportunity to comment on the issue. The EPA is consequently not granting this petition.

Although we are denying the request for reconsideration of the monitoring provisions for facilities with monovents, we note further that these types of monitoring issues tend to be very site specific, and there will likely be individual cases where the national rule will be impractical. The provisions of section 63.7(f) of the General Provisions exist for this purpose and we believe that issues related to monitoring facilities with monovents are best handled on a case-by-case basis under that rule. These provisions have been used in similar situations to authorize cost-effective, environmentally appropriate alternative monitoring and, to our knowledge, have not in and of themselves required the construction of a single stack.

5. Emissions From Crushers

Crushers are machines designed to reduce large rocks from a quarry into gravel-sized feed. See section 63.1341 (definition of "crusher"). Crushers are typically located at the limestone quarry. In 2002, the EPA and the PCA entered into a settlement agreement regarding the 1999 NESHAP for the industry and, as part of that agreement, agreed to clarify that crushers are not part of the Portland cement source category. The EPA did so but used convoluted language[17] which created unnecessary confusion about collateral issues such as the regulatory status of other types of equipment such as storage bins. In the 2005 rule proposing to amend the NESHAP, the EPA proposed to eliminate the confusing language and simply state that crushers are not part of the Portland cement source category, and indicated in the preamble to the 2006 final rule that it intended to finalize this language. See 70 FR at 72341–42 (Dec. 2, 2005) and 71 FR at 76532 (Dec. 20, 2006). The EPA neglected to include the necessary rule language, and proposed to add it in this rulemaking. 74 FR at 21163. The final rule states that "[c]rushers are not covered by this subpart regardless of their location." Section 63.1340 (c); see also RTC at p. 212 (explaining these actions and citing to earlier regulatory history).

PCA asks that the EPA reconsider its decision and restore the amended regulatory text quoted below. Petition Exhibit 1. The EPA has provided numerous opportunities to comment on this issue so reconsideration is clearly not compelled under section 307 (d)(7)(B). Nor is reconsideration appropriate. The former regulatory text created confusion about collateral issues and failed to indicate clearly its ostensible subject—that crushers are not regulated under the Portland Cement NESHAP. The EPA has amended the rule to make this clear. Doing so is consistent with the 2001 Settlement Agreement on this point, the object of which was to make clear that crushers

[15] PCA is not correct, however, that the standard became dramatically more stringent. If expressed as a not-to-exceed limit, as at proposal, the final existing source standard under the NESHAP would be approximately 0.07 lb/ton clinker, or only about 12 per cent more stringent than proposed. This slight increase in stringency results from corrections to the UPL equation used at proposal, corrections made in response to comments submitted by PCA. The additional performance data for PM actually made the standard less stringent (the net slight increase in stringency resulting, as noted from the revised UPL equation to the new data set). Development of the MACT Floors for the Final NESHAP for Portland cement (EPA, August 6, 2010, Docket # 4550) at p. 16.

[16] The argument that the UPL equation underestimates variability of PM control performance because it underestimated variability for performance of THC is misleading. The UPL equation measures potential variability based on the within-source variance and between-source variance of the data set to which it is applied. 74 FR at 21141. The EPA's initial data set for THC was comparatively sparse, and did not fully reflect the best-performing sources' within-source variation and between-source variation. The EPA was able to gather additional performance data between proposal and comment to expand those data (and to calculate variability directly from the data; see 75 FR at 54980 n. 22). However, the problem was not the UPL equation but the data set to which it was applied. It also should be noted that baghouses controlling PM (the control device for all of the best performing cement kilns) are relatively impervious to input loadings, performing relatively constantly regardless of incoming ash load. 70 FR at 59449 (Oct. 12, 2005); 72 FR at 54879 (Sept. 27, 2007). Baghouse variability thus can be assessed especially reliably by standard statistical means, such as the UPL equation. *Id.*

[17] Former section 63.1340(c) stated: "For Portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. Any equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage is not subject to this subpart. In addition, the primary and secondary crushers of the on-site nonmetallic mineral processing plant, regardless of whether they precede the raw material storage, are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill."

were not regulated under the NESHAP. In any case, nothing in that settlement agreement prevents the EPA from amending its regulations if it is appropriate to do so. The agreement in fact states that "[n]othing in this Agreement shall be construed to limit or modify the EPA's discretion to alter, amend, or revise, or to promulgate regulations that supersede, the regulations identified in section III of this Agreement."

B. Issues on Which the EPA Is Granting Reconsideration

1. Standards for Clinker Storage Piles

PCA and Eagle Materials both maintain that the EPA did not provide sufficient notice of the standards it might adopt for clinker storage piles. Although the EPA did give notice that it might adopt standards for these units (74 FR at 21163), the petitioners are correct that the Agency did not give sufficient notice of what those standards might be. The EPA is consequently granting the petition as to this issue. For the same reason, the EPA is granting the petition as to all of the miscellaneous issues pertaining to clinker storage piles (issues 1–4 in Exhibit 1 to PCA's Petition for Reconsideration).

2. Affirmative Defense to Civil Penalties for Exceedances Occurring During Malfunctions

Various petitioners representing environmental advocacy groups, as well as PCA, assert that the EPA adopted in the final rule an affirmative defense to civil penalties for exceedances of applicable emission standards during periods of malfunction. Section 63.1344. The petitioners are correct that there was not a proper opportunity to comment on this provision at proposal, and the EPA is therefore granting these petitions as to this issue.

3. Continuously Monitored Parameters for Alternative THC Standard

Section 63.1343(b)(1) provides two options for meeting a standard for organic HAP. One is to meet a THC standard of 24 parts per million by volume dry (ppmvd); the other is to meet a limit of 9 ppmvd of total organic HAP. If the source elects to meet the total organic HAP standard, a site specific THC limit is established based on the THC results during the performance test used to establish compliance with the total organic HAP limit. Section 63.1348(a)(4)(v).

PCA has noted that the site specific THC limit can unintentionally deprive kilns of operating flexibility where kilns have measured total organic HAP comfortably below the alternative standard. For example, if a kiln has measured total organic HAP of 3 ppmvd and site specific levels of THC of 15 ppmvd during the performance test, it would be de facto subject to a considerably more stringent THC standard than if it were subject to the main THC standard.

The EPA believes that the issue of unnecessarily constrained operating flexibility is worthy of reexamination and therefore is granting reconsideration of this issue.

4. HCl Limit of Zero During Startup for Sources That Do Not Have a CEM

The final cement NESHAP provides that existing and new kilns have a standard of zero for HCl when operating at startup and shutdown and when compliance is measured by means other than a CEM. Section 63.1343(b) Table 1 note 4. Kilns equipped with wet scrubbers may elect to comply with the HCl standard by means of performance tests rather than a CEM, so the practical effect of this provision is that wet-scrubber equipped kilns electing to comply by means of stack testing rather than continuous monitoring of HCl with a CEM would be subject to the emission limit of zero during startup and shutdown. See sections 63.1348(a)(6)(i) and 63.1349(b)(6)(i)(a). PCA indicates in its petition that the EPA is incorrect in finding that HCl is formed only from burning normal fuel (75 FR at 54992). PCA maintains that HCl can be formed by oxidizing chlorides in the raw materials present in the kiln regardless of the type of fuels used, and so can be present in emissions during startup and shutdown. PCA urges that the same limit (3 ppmvd) apply during startup as applies to all other kilns during all operating conditions. Petition Exhibit 1.

The EPA is granting reconsideration on this issue since PCA's petition may have technical merit.

5. Allowing Sources With Caustic Scrubbers To Comply With HCl Standard Using Performance Tests

As just noted, the final rule allows sources equipped with wet scrubbers (and tray towers) to comply with the HCl standard by means of performance tests rather than with continuous monitoring of HCl with a CEM. (Sources electing to comply by means of stack tests do establish continuously monitored parameters—liquid flow rate, pressure and pH (see section 63.1350(m)(5)–(7)). PCA indicates that this compliance option should not be limited to wet scrubber equipped units, but should also be available for units equipped with caustic scrubbers, in part because some sources will be equipped with dry scrubbers (due to water shortages) and should have the same operating flexibilities as wet scrubber-equipped kilns.

The EPA is granting reconsideration to consider the issue of whether dry scrubber-equipped kilns should have the option of complying by means of stack tests rather than continuous monitoring.

6. Alternative PM Limit

Some kilns combine kiln exhaust gas with exhaust gas from other unit operations, including the clinker cooler. See 75 FR at 54988. The final cement NESHAP seeks to accommodate these situations by providing for a site specific PM limit for commingled flows from the kiln and clinker cooler. Section 63.1343(b)(2). PCA points out, however, that other flows can be commingled as well. PCA Petition Exhibit 1 (referring to coal mill exhaust and exhaust from an alkali by-pass as instances of additional flows). Without an allowance for these additional flows, the site specific PM limit could be stricter than the EPA intended (since the PM concentration will be divided by a lower number in the implementing equation), and could penalize the environmentally beneficial practice of commingling these flows, a practice resulting in significant energy savings. 75 FR at 54988. The EPA therefore grants reconsideration on this issue.

7. Monitoring for Mercury and PM During Periods of Startup and Shutdown

The standards for the four main pollutants regulated by the NESHAP (mercury, THC/organic HAP, HCl, and PM) are all measured continuously. This is true of the standards applying during normal operation and those that apply during startup/shutdown. However, two of the standards—for mercury and for PM—are normalized to production units during normal operation and expressed on a concentration basis during startup/shutdown. See 75 FR at 54991–92.

PCA suggests in its petition that cement companies would like to utilize the same monitoring device for both standards, but that this could pose operational obstacles if sorbent traps are used as the continuous monitoring device. Petition Exhibit 1. This is because data from a sorbent trap cannot be readily disaggregated, meaning that a dedicated trap would be needed to monitor startup and shutdown and a different sorbent trap used for normal operation. (Data from a CEM can be disaggregated, so that it is possible to evaluate data from startup/shutdown

and normal operation from measurements taken by a single PM and mercury CEM.) PCA questions if this was the EPA's intent.

The EPA is granting the petition to consider the question of types of continuous monitoring allowed during startup and shutdown for mercury and PM.

8. Coal Mills (NESHAP and NSPS)

In the EPA's recent amendments to the Standards for Performance for Coal Mills, we exempted coal mills at cement manufacturing facilities whose only heat source was kiln exhaust. See 74 FR 51952, October 8, 2009. This change was made in response to comment from PCA. PCA argued that coal mills were similar to inline raw mills. In the case of inline raw mills, we consider the raw mill to be an integral part of the kiln. PCA requested the same treatment for coal mills, and the EPA agreed. However, in the amendments to the Portland Cement NESHAP and NSPS, the EPA did not address coal mills. This omission was due to the lack of information on emissions from coal mills. The EPA is granting reconsideration to reconsider the status of coal mills under the cement NESHAP.

9. PM Standard for Modified Sources Under the NSPS

The EPA adopted the level of the new source standard under the NESHAP as the NSPS for both new and modified kilns. 75 FR at 54996. As PCA notes in its petition, there need not be functional equivalence between the NESHAP and NSPS PM limits for modified kilns, and further comment on the issue is appropriate. Petition p. 17. PCA also notes that the NSPS for modified kilns could have associated costs which need to be accounted for pursuant to CAA section 111(a)(1). Since such kilns would not be subject to the section 112(d) new source standard, any costs for such modified kilns to control PM to the new source limit could not be attributed to the section 112(d) new source limit. In addition, PCA notes that existing Portland cement kilns cannot be assumed to find ways to avoid triggering the NSPS modification criteria when making physical or operational changes due to the stringency of the newly adopted standards for PM.

The EPA believes that PCA's arguments on this point have merit and warrant reconsideration of the NSPS standard for PM for modified kilns.

IV. Requests for an Administrative Stay

PCA also requests that the EPA issue an administrative stay of the rule pursuant to section 705 of the Administrative Procedure Act (APA), which authorizes an agency, when it finds that "justice so requires" to "postpone the effective date of action taken by it, pending judicial review. Petition p. 6. PCA also alludes to the authority in section 307(d)(7)(B) of the CAA under which the EPA may issue a stay for up to three months if it grants a petition to reconsider a final rule.

First, the effective date of the NESHAP and NSPS—November 8, 2010—has already passed and thus a stay under APA section 705 is not appropriate. See 76 FR 4780, 4800 (Jan. 26, 2011) ("[p]ostponing an effective date implies action before the effective date arrives").

Section 307(d)(7)(B) of the CAA authorizes the EPA to stay a rule's effectiveness for three months during reconsideration. Since the EPA is largely denying the petitions to reconsider and is not granting reconsideration as to challenges to the principal standards in the NESHAP or NSPS, an administrative stay is not appropriate under that authority.

In reaching these conclusions, the EPA evaluated not only the legal applicability of the statutory provisions cited in PCA's petition, but also the merits criteria for granting stays—the likelihood of success on the merits, possibility of irreparable harm to the petition, harm to other parties, and the ultimate public interest. As discussed above, the EPA believes that the NESHAP is validly based on the performance of cement kilns. The EPA's technical evaluation of kilns' performance is also sound because burning alternative fuels (whether or not those fuels are classified as solid waste) does not appreciably effect the amount of HAP cement kilns emit.

The EPA also does not believe that the industry is facing the prospect of irreparable harm. As explained above, the industry's legitimate concern of having to make critical investment decisions without knowing the final rules on waste classification and standards for solid waste incinerators has been rectified by the EPA's issuance of a final regulatory definition of non-hazardous secondary materials that are solid waste and CISWI standards. In addition, given the similarity of many of the emissions limits, the compliance strategy for either rule would be expected to be similar.

Moreover, the EPA does not believe that a stay of the rules' compliance date is in the public interest. The standards in the rule are projected to result in significant health benefits (thousands of serious health incidences avoided, including thousands fewer acute myocardial infarctions) and the rules' monetized benefits are projected to substantially exceed the rules' social costs. 75 FR at 55027 Table 13 and 55028 (social costs estimated at $926 to 950 million (2005$) and net monetized benefits are estimated at $6.5 billion to $18 billion (2005$ and a 7 percent discount rate). Cement kilns' mercury emissions are among the highest of any emitting source category, and contribute significantly to the national inventory of airborne mercury. 75 FR at 54979 (cement industry contributes 7.5 tons of mercury emissions per year to national inventory of 50 tons per year). We note that mercury is a potent and bioaccumulative neurotoxin that remains in the environment for an extended period of time. As a result, the additional mercury that would be emitted as the result of a stay of the rule would remain in the environment for many years. The NESHAP here for the first time adopts statutorily-compliant limits to control those emissions. The EPA does not believe it in the public interest to delay those controls.

V. Conclusion

For all of the reasons discussed above, the petitions to reconsider the final NESHAP and NSPS for Portland cement plants are denied in part and granted in part. The EPA likewise denies the petitions for an administrative stay.

Dated: May 11, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–12095 Filed 5–16–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR 191, 192, 193, and 195

[Docket No. PHMSA–2011–0121]

Pipeline Safety: National Pipeline Mapping System Data Submissions and Submission Dates for Gas Transmission and Gathering Systems and Liquefied Natural Gas Annual Reports

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Issuance of advisory bulletin.

SUMMARY: This document advises owners and operators of gas transmission and gathering systems and Liquefied Natural Gas (LNG) facilities that they have until August 15, 2011, to submit their Calendar Year 2010 Annual Reports. This document also provides guidance for Calendar Year 2010 National Pipeline Mapping System (NPMS) submissions.

FOR FURTHER INFORMATION CONTACT: Roger Little, 202–366–4569 or by e-mail at *Roger.Little@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule on November 26, 2010, under Docket No. PHMSA 2008–0291 [75 FR 72878], titled: "Pipeline Safety: Updates to Pipeline and Liquefied Natural Gas Reporting Requirements" (One Rule). This rulemaking revised the Pipeline Safety Regulations (49 CFR part 190–199) to improve the reliability and utility of data collections from operators of natural gas pipelines, hazardous liquid pipelines, and LNG facilities. As a result of the rulemaking, several annual and incident report forms were created while other forms were revised. Included among these forms, PHMSA created a new Annual Report for LNG facilities (LNG Annual Report; PHMSA F–7100.3–1) and revised the Annual Report for Natural or Other Gas Transmission and Gathering Systems (Gas Transmission and Gathering Annual Report; PHMSA F–7100.2–1). The One Rule revised § 191.17 to specify that these reports should be submitted no later than March 15 for the preceding year, except for Calendar Year 2010, where reports should be submitted by June 15, 2011. This delayed reporting date for Calendar Year 2010 was added to allow companies time to update their information for submission according to the revised form.

After the One Rule was published, PHMSA received a petition from the American Gas Association (AGA) on December 22, 2010, asking for reconsideration of the information collected on the LNG Annual Report form. PHMSA reviewed the petition and has revised the form based on AGA's recommendation. PHMSA is using this document to announce that we are extending the reporting date for the LNG Annual Report form to August 15, 2011, to allow further time to prepare the electronic system PHMSA will use to collect the information. Next year, the filing date will go back to the March 15 date specified in the regulation.

In addition, PHMSA determined that further clarifications were needed to Parts K and L on the revised Gas Transmission and Gathering Systems annual report, specifically to correct boundaries for Specified Minimum Yield Strength, and to clarify certain sections of Part L that were not applicable to the regulated community at present. Accordingly, PHMSA has blacked out those sections of the form to clarify the intent of the information collection. In addition, PHMSA is extending the Gas Transmission and Gathering Systems report filing deadline from the stated June 15, 2011, to August 15, 2011, for PHMSA to prepare the electronic system it will be using to collect the information. This will also align the filing date with the new LNG Annual Report. Next year, the filing date of the Gas Transmission and Gathering Systems report will go back to the March 15 date specified in the regulation. The forms are available at the following URL: *http://www.phmsa.dot.gov/pipeline/library/forms.*

PHMSA has also received a number of questions regarding NPMS submissions. The NPMS consists of geospatial data, attribute data, public contact information, and metadata pertaining to the interstate and intrastate hazardous liquid trunklines and hazardous liquid low-stress lines as well as gas transmission pipelines, LNG plants, and hazardous liquid breakout tanks regulated by PHMSA. Most operators submit their NPMS data to PHMSA at the same time they file their annual report. For example, gas transmission operators who file their annual report on the regular filing date of March 15 for the previous calendar year would also submit their NPMS data on March 15 for the previous calendar year, reflecting assets as of December 31, 2010. Although PHMSA is extending the filing date for annual report submissions, operators are encouraged to file their NPMS data at their regularly scheduled times.

For clarification purposes, PHMSA is providing the following table which explains the reporting dates for annual reporting:

	Normal submission date (49 CFR cite)	Calendar year 2010 submission (49 CFR cite)	Calendar year 2010 extended submission date
Gas Transmission and Gathering Systems Annual Report (PHMSA–F 7100.2–1).	March 15 (§ 191.15(a))	June 15, 2011 (§ 191.15(a))	Aug. 15, 2011.
LNG Annual Report (PHMSA–F 7100.3–1).	March 15 (§ 191.15(b))	June 15, 2011 (§ 191.15(b))	Aug. 15, 2011.
Hazardous Liquid Annual Report (PHMSA–F 7000–1.1).	June 15 (§ 195.49)	Aug. 15, 2011 (§ 195.49)	

Advisory Bulletin (ADB–11–03)

To: Owners and Operators of Gas Transmission and Gathering Pipeline Facilities, LNG Facilities, and Hazardous Liquid Pipeline Facilities.

Subject: Submission Dates and Minor Form Changes for Calendar Year 2010 Gas Transmission and Gathering Systems Annual Reports, LNG Annual Reports; and NPMS Data submissions.

Advisory: This document advises owners and operators of gas and LNG pipeline facilities that PHMSA is extending the reporting date for Calendar Year 2010 Gas Transmission and Gathering Systems Annual Reports (PHMSA F–7100.2–1) and LNG Annual Reports (PHMSA F–7100.3–1) to August 15, 2011. These forms were previously scheduled for submission on June 15, 2011. Any questions regarding these submissions may be directed to the Office of Pipeline Safety operator helpline at 202–366–8075.

In addition, operators subject to the NPMS statutory mandate are encouraged to file their annual data submissions based on their regularly scheduled dates. For example, hazardous liquid operators who normally submit their NPMS data on June 15 when they file their annual report are encouraged to file their 2010 NPMS data submission on June 15, reflecting assets as of December 31, 2010, even though the Hazardous Liquid Annual report is not required for submission until August 15, 2011. Any questions regarding NPMS submissions

can be directed to Amy Nelson at 202–493–0591.

Issued in Washington, DC, on May 10, 2011.

Alan K. Mayberry,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2011–11954 Filed 5–16–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110218142–1276–02]

RIN 0648–BA91

Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Framework Adjustment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements approved measures in Framework Adjustment 1 to the Northeast Skate Complex Fishery Management Plan (Skate FMP). Framework Adjustment 1 was developed by the New England Fishery Management Council (Council) to adjust the possession limits for the skate wing fishery in order to slow the rate of skate wing landings, so that the available Total Allowable Landings limit (TAL) is taken by the fishery over a longer duration in the fishing year (FY) than occurred in FY 2010, thus ensuring a steady market supply. The action would also allow vessels that process skate wings at sea to land skate carcasses for sale into the bait market, without counting the carcass landings against the TAL (skate wings are already converted to live weight for monitoring). Although recommended by the Council as part of Framework 1, this final rule announces that NMFS has disapproved a proposal to increase the incidental possession limit for skate wings that would apply after the skate wing possession limit trigger is reached. This final rule does not adjust the skate fishery specifications for FY 2011.

DATES: Effective May 17, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for Framework Adjustment 1 that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Framework 1, the EA, and the Initial Regulatory Flexibility Analysis (IRFA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In 2003, NMFS implemented the Skate FMP to manage a complex of seven skate species in the Northeast Region: Winter (*Leucoraja ocellata*); little (*L. erinacea*); thorny (*Amblyraja radiata*); barndoor (*Dipturus laevis*); smooth (*Malacoraja senta*); clearnose (*Raja eglanteria*); and rosette (*L. garmani*) (68 FR 49693, August 19, 2003). The FMP established biological reference points and overfishing definitions for each species based on abundance indices in the NMFS Northeast Fisheries Science Center bottom trawl survey.

Amendment 3 to the Skate FMP, which was implemented in July 2010, instituted an annual catch limit (ACL) and accountability measures (AMs) for the skate fishery (75 FR 34049, June 16, 2010). To ensure that the ACL is not exceeded, regulations implementing Amendment 3 established a possession limit of 5,000 lb (2,268 kg) of skate wings (11,350 lb (5,148 kg) whole weight) per trip for the skate wing fishery, and an AM that further reduces the wing fishery possession limit to an incidental level of 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight) when 80 percent of the TAL for the wing fishery is reached. In FY 2010, the combination of increased landings of skate wings and a delay in implementation of the 5,000-lb (2,268-kg) skate wing possession limit resulted in the fishery reaching the 80-percent TAL trigger in early September. Consequently, the skate wing fishery was limited to the incidental possession limit of 500 lb (227 kg) of skate wings per trip from September 3, 2010, through the end of FY 2010 on April 30, 2011.

Asserting that the imposition of the 500-lb (227-kg) skate wing possession limit so early in the FY caused disruptions in the supply of skate wings, economic hardship on fishing vessels and dealers, and threatened to undermine the market position of U.S. suppliers, members of the skate wing fishing industry requested that the Council consider options to mitigate the potential for this situation to be repeated in FY 2011. In November 2010, the Council initiated Framework 1 to change the skate wing possession limits in order to maximize the duration of the skate fishing season in FY 2011. In January 2011, the Council approved Framework 1 and recommended that NMFS implement new possession limits for the skate wing fishery. On April 4, 2011, NMFS published a proposed rule (76 FR 18505) identifying the proposed measures in Framework 1 and informing the public of its intention to disapprove one measure recommended by the Council. Comments on the proposed rule were accepted through April 19, 2011.

Approved Measures

NMFS has approved the following changes to the regulations governing the skate fishery as proposed by the Council in Framework 1:

1. The skate wing fishery possession limit is changed from 5,000 lb (2,268 kg) of skate wings per trip to 2,600 lb (1,179 kg) per trip from May 1 through August 31, and 4,100 lb (1,860 kg) per trip from September 1 through April 30;

2. The skate wing fishery incidental possession limit trigger is changed from 80 percent of the skate wing TAL to 85 percent of the skate wing TAL; and

3. The regulations governing the allowable forms of skates that may be possessed and landed is changed to allow the landing of skate carcasses separate from skate wings.

The rationale for the Council's proposed measures in Framework 1 was provided in the preamble to the proposed rule for this action and is not repeated here. Regarding the change to the allowable forms of skates that may be possessed and landed, skates may now be possessed or landed either as wings only, wings with associated carcasses possessed separately, in whole form, or any combination of the three, provided that the weight of skate carcasses does not exceed 1.27 times the weight of skate wings on board. This ratio, based upon established wing-to-whole weight conversion factor for skates, is intended to assure that the only carcasses possessed and landed correspond to skates that have had their wings removed and are retained by the vessel for sale. When any combination of wings, carcasses, and whole skates are possessed, the possession limit is based on the equivalent whole weight limit where wing weight is converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, a vessel possessing 100 lb

(45.4 kg) of skate wings would be considered to possess the equivalent of 227 lb (103.1 kg) of whole skates (100 lb × 2.27 = 227 lb (103.1 kg)). If that vessels possessed both wings and carcasses, it could have 100 lb (45.4 kg) of skate wings and 127 lb (57.6 kg) of carcasses (100 lb skate wings × 1.27 = 127 lb (57.6 kg)). Note that the sum of the two products must not exceed the applicable whole weight possession limit. This action is not intended to allow the landing of skate carcasses without the associated skate wings.

Disapproved Measure

NMFS has disapproved a measure proposed by the Council in Framework 1 to increase the skate wing fishery incidental possession limit (the limit that applies to all landings of skate wings once landings reach the appropriate TAL trigger percentage) from 500 lb (227 kg) of skate wings per trip to 1,250 lb (567 kg) per trip. NMFS has disapproved this measure because it is inconsistent with National Standard 2, which requires the use of the best available scientific information for ensuring compliance with the objectives of Amendment 3 to the Skate FMP (which established management measures designed to prevent the TAL from being exceeded) and of this framework action (which is designed to lengthen the duration of the directed skate wing fishing season). Therefore, the skate wing incidental possession limit remains at 500 lb (227 kg) of skate wings per trip. Disapproving the change in the incidental limit does not affect the other measures in this action. For a fuller explanation of the rationale for disapproving this proposed measure, see the Comments and Responses section below.

Comments and Responses

NMFS received seven comments on the proposed rule: One letter from the Council; three letters on behalf of commercial fishing associations; and three letters from individual commercial fishermen. This section summarizes the principle comments contained in the individual comment letters that pertained to Framework 1 and the proposed rule, and NMFS's response to those comments.

Comment 1: One letter expressed frustration that the skate TAL will not increase this year.

Response: Although recent survey data show promising increases in survey catch for some of the species in the skate complex, not all species are doing well. Skates are managed as a complex, and because the specifications (ABC, ACL, TAL) are set for the overall complex rather than for particular species, increases in survey catches for one or two species do not necessarily immediately translate into allowable increases in the specifications for the complex as a whole. The recent survey data are being considered by the Council as it begins the process to develop and recommend specifications for the 2012–2013 FYs.

Comment 2: Another letter raised concerns regarding the impacts Framework 1 may have on non-federally permitted fishermen fishing in Rhode Island state waters.

Response: This action makes no changes to the regulations governing fishermen without Federal permits fishing only in state waters. Any future changes to such regulations made by a state, such as Rhode Island, are beyond the purview of NMFS's control and this action.

Comment 3: The remaining five letters, including that of the Council, all expressed the same concern regarding NMFS's stated intent to disapprove the proposed change to the incidental possession limit and requested that we reconsider this decision. The commenters acknowledge that the higher incidental possession limit, in conjunction with the increased TAL trigger, could result in an overage of the TAL, but suggest that this should not be a concern because there may be an increase in the ABC later this year that results from current work being done by the Council's Plan Development Team (PDT) and Scientific and Statistical Committee (SSC).

Response: The changes implemented under Framework 1 must remain consistent with the current best available science, and any future actions to change the ABC based on new advice from the Council's SSC would be the appropriate vehicle to consider modifying the associated management measures, such as the possession limits, to be consistent with such a revised ABC. The Council's recommendation to change the trigger point at which the incidental possession limit is imposed is also an attempt to lengthen the duration of the directed skate wing fishery. However, based on the analysis prepared by the Council's Skate PDT and presented to the Council at its January 2011 meeting, the combination of a 1,250-lb (567-kg) incidental possession limit and an 85-percent trigger point would be expected to result in landings exceeding the skate wing TAL by more than 7 percent.

Amendment 3 to the Skate FMP established the TAL as the limit for skate landings, taking into account the needs of the skate wing and bait fisheries (i.e., allocating the overall skate TAL to the skate wing and bait fisheries according to specific percentages), discards of skates in all fisheries that encounter skates, and the biological status of the resource. The management measures implemented in Amendment 3 were designed to constrain overall skate landings to the TAL, and, in situations in which a TAL is exceeded, the Amendment 3 regulations require automatic adjustments to the TAL trigger threshold (on a point-for-point basis). If the wing TAL were to be exceeded by 7 percent, as the Council's analysis indicates is likely, then the Amendment 3 regulations would require the TAL trigger for the following FY to be reduced from 85 percent of the TAL to 78 percent of the TAL, forcing an even earlier transition to the incidental possession limit. This result would be inconsistent with the intent of Framework 1 (implementing measures to extend the length of the directed skate wing fishery) and the objectives of Amendment 3 (implementing measures to constrain landings to within the available TAL) to alter both the incidental skate wing possession limit and the TAL trigger point, as proposed by the Council; the measure to increase the TAL trigger from 80 percent to 85 percent would likely be undone due to a 7-percent overage that would require the trigger point to be reduced to 78 percent in the following FY. This would be counter-productive to the Council's stated intent of increasing the TAL trigger point in the first place, which is to lengthen the duration of the directed fishing season. Even under the current 500-lb (227-kg) incidental limit, catch continued to be high, and in FY 2010 the fishery likely exceeded the wing TAL by 6–7 percent. The Council's analysis suggests that the trigger point can be increased to 85 percent of the TAL if the incidental wing limit is maintained at the current 500-lb (227-kg) level, while still remaining within the TAL. Thus, NMFS has disapproved the proposed increase to the incidental skate wing possession limit because it would be inconsistent with National Standard 2 requiring the use of the best available scientific information for ensuring compliance with the objectives of Amendment 3 to the Skate FMP (which established management measures designed to prevent the TAL from being exceeded) and of this framework action (which is designed to lengthen the duration of the directed skate wing fishing season). Accordingly, the incidental skate wing possession

limit at § 648.322(b)(2) remains at 500 lb (227 kg).

Changes From the Proposed Rule

In § 648.322(b)(2), the proposed change to the incidental skate wing possession limit is not included in this final rule due to the disapproval of this proposed measure.

Classification

The Administrator, Northeast Region, NMFS, determined that Framework 1 is necessary for the conservation and management of the skate fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

Under the Administrative Procedure Act, an agency may waive the 30-day delay in the effectiveness of a final rule following publication where the rule relieves a restriction, is an interpretive rule or statement of policy, or for other good cause found by the agency. 5 U.S.C. § 553(d). Pursuant to this provision, NMFS finds good cause to waive the delay in effectiveness requirement because such delay is contrary to the public interest and unnecessary.

The purpose of this rule is to slow the rate of skate wing landings and thereby preserve and extend the skate wing harvest throughout the whole fishing year. Delaying this rule's effectiveness would risk shortening the skate wing harvest, and is therefore contrary to the public's interest in maintaining the harvest throughout the fishing year. Additionally, a delay in the rule's effectiveness is unnecessary because the rule imposes no new requirements on the regulated community, and instead expands the scope of acceptable fishing practices in the skate wing fishery. Thus, even if the rule is effective immediately, the regulated entities can continue their current practices and remain in compliance with the new regulations. Moreover, delaying the effectiveness of this rule may result in economic harm to vessels that must currently land their skates either in whole form, and process the fish into wings and carcasses for separate markets upon landing, or must discard the carcasses at sea, practices that increase waste and reduce the economic yield from the skate resource. Because the 30-day delay in effectiveness of this rule is contrary to the public interest and unnecessary, pursuant to 5 U.S.C. § 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of Framework 1. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, relevant analyses contained in the Framework and its EA and a summary of the analyses completed to support the action in this rule. A copy of the analyses done in the Framework and EA is available from the Council (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Seven comments were received on the proposed rule and the framework. For a summary of the comments, and NMFS's responses to them, see the Comments and Responses section above. No changes were made to the rule as a result of the comments.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The participants in the commercial skate fishery were defined using Northeast dealer reports to identify any vessel that reported having landed 1 lb (0.45 kg) or more of skates during calendar year 2010. These dealer reports identified 690 vessels that landed skates for the skate wing market in states from Maine to North Carolina out of 2,607 vessels that held a Federal skate permit. Of the 690 vessels that landed at least 1 lb (0.45 kg) of skates for the wing market, 592 vessels landed at least some amount of skates in wing form, and these vessels would be affected by the proposed change to allow vessels landing skate wings to also land the associated carcasses for sale as bait. All of these entities are considered small businesses by the Small Business Administration because they have annual receipts not totaling more than $4 million.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

The purpose of Framework 1 is to adjust the possession limits affecting the skate wing fishery in order to extend the duration of the fishing season during which the fishery could land skate wings at "directed" levels (*i.e.,* before the possession limits are reduced to incidental landings levels), while constraining the overall skate wing landings to remain within the TAL. To achieve these ends, the Council considered several alternatives for each of three principal management measures: (1) The primary possession limit affecting the directed skate wing fishery; (2) the trigger point (as a percentage of the TAL) at which the primary possession limit is reduced to a lower, incidental level of allowable landings; and (3) the possession limit that would be imposed once the possession limit trigger is reached.

In approving several measures proposed in Framework 1, NMFS had to weigh the potential short-term economic impacts to individual fishermen of a reduced skate wing possession limit during May–August, when demand and price are generally lower (average of $0.33/lb during 2009 and 2010), versus the longer-term benefits to the fishery as a whole of preserving more of the available TAL for the fall and winter months when demand and price are generally higher (average of $0.64/lb during 2009 and 2010) and allowing higher levels of landings during this time. Implementation of this final rule is expected, on balance, to maximize fishing opportunities for skates throughout the FY and improve the profitability of the fishery. The other alternatives considered by the Council in the development of Framework 1 did not provide the same level of opportunity to preserve the available TAL for the fall and winter months and to then take advantage of the higher demand and prices by increasing the possession limit at that time. Therefore, through the implementation of the change to the skate wing possession limit, NMFS intends to minimize the

economic impacts to affected small entities to the extent practicable and consistent with applicable law.

The change to the possession limit trigger point (from 80 percent of the TAL to 85 percent), is also expected to increase the duration of the directed fishing season, similarly improving the economic performance and profitability of the fishery. All other alternatives developed and considered by the Council for Framework 1 would have resulted in a shorter fishing season by imposing the more restrictive incidental possession limit at a lower trigger point. Therefore, through the implementation of the change to the possession limit trigger point, NMFS intends to minimize economic impact to affected small entities to the extent practicable and consistent with applicable law.

The Council also proposed a change to the skate wing possession limit that would be imposed once the trigger point was reached. On its face, this appeared that it would have further increased the profitability of the skate fishery, by allowing higher landings on each fishing trip for the remainder of the FY. However, as the Council's own analysis indicated, such a change—in combination with the other proposed changes to the possession limit and the trigger point—would likely have ensured the fishery exceeds skate wing TAL by approximately 7 percent. Because this result would require implementation of an AM that would have reversed the change to the possession limit trigger point, effectively shortening the fishing season in the following year, NMFS considers this proposed measure to be counter-productive and inconsistent with the Council's stated intent for Framework 1. Therefore, even though a higher incidental possession limit may have minimized short-term negative economic impacts to the affected fishing industry, NMFS has disapproved this measure to ensure that the TAL is not exceeded, and that such an AM is less likely to be required in future years.

In addition to the primary alternatives considered in this action, the Council considered a change in the regulations to allow skate carcasses to be landed rather than discarded at sea. This proposed measure is expected to have no effect on the overall mortality of skates caught, but could result in marginal increases in per trip fishing revenue for vessels that cut skate wings at sea and land the remaining carcasses for sale as lobster bait (estimates range from approximately $360 per trip at the 2,600-lb (1,179-kg) possession limit to approximately $570 per trip at the 4,100-lb (1,860-kg) possession limit). Because the only significant alternative considered in this case is the status quo, under which the landing of skate carcasses would continue to be prohibited, the Council's proposed action in this case maximizes the potential revenue available to the fishing industry.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, *i.e.,* permit holder letter, will be sent to all holders of permits for the skate fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office's Web site at *http://www.nero.noaa.gov.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 12, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.322, revise paragraph (b) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

* * * * *

(b) *Skate wing possession and landing limits.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is also a limited access multispecies vessel participating in an approved sector described under § 648.87, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits of skate wings (with appropriate whole weight equivalents) specified as follows:

(1) Up to 2,600 lb (1,179 kg) of skate wings (5,902 lb (2,677 kg) whole weight) per trip from May 1 through August 31, and 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip from September 1 through April 30, except for a vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), which is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip (or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27—for example, 100 lb (45.4 kg) of skate wings × 2.27 = 227 lb (103.1 kg) of whole skates).

(2) *In-season adjustment of skate wing possession limits.* When the Regional Administrator projects that 85 percent of the annual skate wing fishery TAL has been landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate wing trip limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27) for the remainder of the fishing year, unless such a reduction would be expected to prevent attainment of the annual TAL.

(3) *Incidental possession limit for vessels not under a DAS.* A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is a limited access multispecies vessel participating in an approved sector described under § 648.87 but not fishing on one of the DAS specified at §§ 648.53, 648.82, or 648.92, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27, per trip.

(4) *Allowable forms of skate landings.* Except for vessels fishing under a skate bait letter of authorization as specified at § 648.322(c), a vessel may possess and/or land skates as wings only (wings removed from the body of the skate and the remaining carcass discarded), wings with associated carcasses possessed

separately (wings removed from the body of the skate but the associated carcass retained on board the vessel), or in whole (intact) form, or any combination of the three, provided that the weight of the skate carcasses on board the vessel does not exceed 1.27 times the weight of skate wings on board. When any combination of skate wings, carcasses, and whole skates are possessed and/or landed, the applicable possession or landing limit shall be based on the whole weight limit, in which any wings are converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, if the vessel possesses 100 lb (45.4 kg) of skate wings, the whole weight equivalent would be 227 lb (103.0 kg) of whole skates (100 lb (45.4 kg) × 2.27), and the vessel could possess up to 127 lb (57.6 kg) of skate carcasses (100 lb (45.4 kg) of skate wings × 1.27). A vessel may not possess and/or land skate carcasses and only whole skates.

* * * * *

[FR Doc. 2011–12068 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 95
Tuesday, May 17, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1724 and 1726

RIN 0572–AC20

Electric Engineering, Architectural Services, Design Policies and Construction Standards

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend the contract threshold amounts that require borrowers to use certain prescribed agency contract forms and to amend the contract dollar amounts that require RUS review of contracts prior to the contract being effective. Also, RUS proposes to raise the threshold amounts requiring RUS borrowers to use certain required procurement methods for materials, equipment and contract services that otherwise would require RUS prior approval. The changes in the threshold amounts would reduce the number of contracts reviewed by the RUS.

DATES: Written comments must be received by RUS or be postmarked no later than July 18, 2011.

ADDRESSES: Submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower "Search Regulations and Federal Actions" box, select "Rural Utilities Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select RUS–10–Electric–0001 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

Postal Mail/Commercial Delivery: Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA—Rural Utilities Service, 1400 Independence Avenue, STOP 1522, Room 5162, Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS–10–Electric–0001.

Other Information: Additional information about Rural Development and its programs is available on the Internet at *http://www.rurdev.usda.gov/index.html*.

FOR FURTHER INFORMATION CONTACT: Lou Riggs, USDA—Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1569, Washington, DC 20250–1569. Telephone (202) 690–0551 or e-mail to *lou.riggs@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards in § 3 of the Executive Order. In addition, all state and local laws and regulations that conflict with this proposed rule will be preempted; no retroactive effect will be given to the proposed rule; and in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agency is not required by 5 U.S.C. 551 *et seq.,* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

This proposed rule contains no additional reporting or recordkeeping burdens under Office of Management and Budget (OMB) control numbers 0572–0107 and 0572–0118 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Executive Order 13132

This proposed rule will not have any substantial direct effect on 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. Under Executive Order 13132, this proposed rule does not have sufficient federalism implications requiring the preparation of a Federalism Assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on the Internet and the General Services Administration's (GSA) free CFDA Web site at *http://www.cfda.gov*. The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's online bookstore at *http://bookstore.gpo.gov*.

Executive Order 12372

This proposed rule is not subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR Part 3015.

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments for the private sector. Thus, this proposed rule is not subject to the requirements of §§ 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

This proposed rule has been examined under RUS environmental regulations at 7 CFR Part 1794. The Administrator has determined that this proposed rule is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

E-Government Act Compliance

RUS 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.

Background

The Rural Electrification Act of 1936 (7 U.S.C. 901–950bb (REAct)), as amended, establishes the authority for RUS to provide loans and loan guarantees to eligible entities for furnishing electric service to rural areas. The standard loan agreement between RUS and its electric borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services and architectural services for transactions above the established threshold dollar levels ("threshold levels").

Electric borrowers are also expected to obtain RUS approvals for procuring materials, equipment and contracting services for use in the electric systems where the contract amount exceeds specified threshold levels.

Threshold levels that apply to contracts entered into by borrowers were initially established to capture significant transactions that could adversely affect RUS loan security. The threshold levels were most recently revised in 1995. Cost increases and inflation over time have greatly increased the need for more approvals than is consistent with the earlier threshold levels. The result has been increased delay to the borrowers in receiving RUS approvals and increased workloads at RUS. Inflation is not the only relevant variable in the RUS proposal to modify the threshold levels. In this proposed rule RUS has also considered the level of sophistication in borrowers' operations, RUS staff constraints and competing priorities within RUS. The need to adjust the threshold levels is a result of these considerations.

In response to borrowers' requests and mindful of the directives in Executive Order 13563 of January 18, 2011, to determine if any regulations should be modified to make agencies' regulations less burdensome in achieving their objectives, RUS undertook an examination of certain thresholds used in determining when the use of prescribed forms and approvals would apply. RUS examined the number of contracts it reviewed over the last several years. RUS also reviewed the rate of inflation factors published in the Handy-Whitman Index of Public Utility Construction Costs in order to adjust for inflation occurring after the existing requirements were established.

As a result of this review, RUS determined that although it remains necessary and appropriate to continue these requirements as one means of oversight of its borrowers' financial and operational activities, the existing threshold levels should be raised. Raising these threshold levels will reduce the volume of contracts that borrowers will be required to submit for RUS approvals. Doing so will reduce the paperwork burdens on borrowers and the administrative burdens on RUS.

RUS is proposing to revise these threshold levels an average of 300 percent. RUS estimates that the revision will reduce the volume of contracts it receives pursuant to these requirements by 50 percent.

List of Subjects

7 CFR Part 1724

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

1. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart E—Electric System Design

2. Section 1724.54 is amended by revising paragraph (e)(2) and paragraph (g)(2) to read as follows:

§ 1724.54 Requirements for RUS approval of plans and specifications.

* * * * *

(e) * * *

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for all generating plant equipment or construction contracts which will cost $5,000,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for generating plant equipment and construction do not require RUS approval.

* * * * *

(g) * * *

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for communications and control facilities contracts which will cost $1,500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for communications and control facilities do not require RUS approval.

* * * * *

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

3. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

4. Section 1726.14 is amended by revising the definition of "minor modification or improvement" to read as follows:

§ 1726.14 Definitions.

* * * * *

Minor modification or improvement means a project the cost of which is $150,000 or less, exclusive of the cost of owner furnished materials.

* * * * *

Subpart B—Distribution Facilities

5. Section 1726.50 is amended by revising paragraph (a) to read as follows:

§ 1726.50 Distribution line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $1,000,000 or more.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order equal to $1,000,000 or

less for purchases of equipment, and for all materials.

* * * * *

6. Section 1726.51 is amended by revising paragraphs (a)(1), (b)(1) and (b)(2) to read as follows:

§ 1726.51 Distribution line construction.

(a) * * *

(1) The borrower may use RUS Form 790, Electric System Construction Contract—Non-Site Specific Construction, under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use RUS Form 790 for contracts, up to a cumulative total of $500,000 or one percent of net utility plant (NUP), whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

* * * * *

(b) * * *

(1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of $750,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) In addition to the cumulative total stipulated in paragraph (b)(1) of this section, a borrower may use Multiparty Unit Price Quotations to award contracts in amounts of up to a cumulative total of $1,000,000 or 1.5 percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

* * * * *

Subpart C—Substation and Transmission Facilities

7. Section 1726.76 is amended by revising paragraph (a) to read as follows:

§ 1726.76 Substation and transmission line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $1,000,000 or more.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $1,000,000 and for all materials.

* * * * *

8. Section 1726.77 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 1726.77 Substation and transmission line construction.

* * * * *

(b) * * *

(1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of $750,000 or one percent of NUP (not to exceed $5,000,000), whichever is greater, per calendar year of substation and transmission line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

* * * * *

(c) *Contract approval.* Individual contracts in the amount of $750,000 or more or one percent of NUP (not to exceed $1,500,000 for distribution borrowers or $4,500,000 for power supply borrowers), whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to RUS approval.

Subpart D—Generation Facilities

9. Section 1726.125 is amended by revising paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 1726.125 Generating plant facilities.

* * * * *

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for the purchase of generating plant equipment in the amount of $5,000,000 or more and for any generating plant equipment contract requiring RUS approval.

(2) The borrower shall use RUS Form 200, Construction Contract—Generating, for generating project construction contracts in the amount of $5,000,000 or more and for any generating project construction contract requiring RUS approval.

(3) The borrower may, in its discretion, use other contract forms or written purchase order forms for those contracts in amounts of $5,000,000 or less and that do not require RUS approval.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of less than $5,000,000 each.

(2) If the amount of the contract is $5,000,000 or more or if the contract requires RUS approval, the borrower must use formal or informal competitive bidding to award the contract.

* * * * *

Subpart E—Buildings

10. Section 1726.150 is amended by revising paragraph (b) to read as follows:

§ 1726.150 Headquarters buildings.

* * * * *

(b) *Procurement procedures.* A borrower may use Multiparty Lump Sum Quotations to award contracts in amounts of up to a cumulative total of $750,000 or one percent of NUP (not to exceed $5,000,000), whichever is greater, per calendar year of headquarters construction (including minor modifications or improvements.) The borrower shall use formal competitive bidding for all other headquarters contract construction.

* * * * *

Subpart F—General Plant

11. Section 1726.176 is amended by revising paragraphs (b)(2)(i) and (b)(3) to read as follows:

§ 1726.176 Communications and control facilities.

* * * * *

(b) * * *

(2) *Procurement procedures.* (i) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of $750,000 or one percent of NUP (not to exceed $5,000,000), whichever is greater, per calendar year of communications and control facilities construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

* * * * *

(3) *Contract approval.* Individual contracts in amounts of $750,000 or more or one percent of NUP (not to exceed $1,500,000 for distribution borrowers or $4,500,000 for power supply borrowers), whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to RUS approval.

Dated: May 6, 2011.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2011–11910 Filed 5–16–11; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

RIN 3150–AI50

[NRC–2009–0079]

Domestic Licensing of Source Material—Amendments/Integrated Safety Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend its regulations by adding additional requirements for source material licensees who possess significant quantities of uranium hexafluoride (UF6). The proposed amendments would require such licensees to conduct integrated safety analyses (ISAs) similar to the ISAs performed by 10 CFR part 70 licensees; set possession limits for UF6 for determining licensing authority (NRC or Agreement States); add defined terms; add an additional evaluation criterion for applicants who submit an evaluation in lieu of an emergency plan; require the NRC to perform a backfit analysis under specified circumstances; and make administrative changes to the structure of the regulations. The proposed ISA requirements would not apply to facilities that are currently undergoing decommissioning under the current regulations.

This rulemaking pertains to 10 CFR part 40 licensees and applicants who possess, or plan to possess, significant quantities of UF6. The current regulations do not contain ISA requirements for evaluating the consequences of facility accidents. The proposed amendment would require applicants and licensees who possess or plan to possess significant amounts of UF6 to conduct an ISA and submit an ISA summary to the NRC.

The ISA, which evaluates and categorizes the consequences of accidents at NRC licensed facilities, would address both the radiological and chemical hazards from licensed material and hazardous chemicals produced in the processing of licensed material. Similar hazards that exist at other fuel cycle facilities are addressed by ISA requirements elsewhere in the regulations.

The NRC is also proposing new guidance on the implementation of the additional regulatory requirements for licensees that would be authorized under this rulemaking.

DATES: Submit comments specific to the proposed rule and draft guidance document by August 1, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date. Submit comments specific to the information collection aspects of this rule by June 16, 2011.

ADDRESSES: Please include the applicable Docket ID in the subject line of your comments. For additional instructions on submitting comments and accessing documents related to this action, see Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments on the proposed rule (Docket ID NRC–2009–0079) by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0079 for the proposed rule. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1677).
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You may submit comments on the proposed guidance document (Docket ID NRC–2011–0080) by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0080. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

FOR FURTHER INFORMATION CONTACT: Edward M. Lohr, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0253, e-mail: *Edward.Lohr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information
II. Background
III. Discussion
  A. What issues is the NRC seeking public comments on?
  B. What action is the NRC taking?
  C. Whom would this action affect?
  D. What steps did NRC take to involve the public in this proposed rulemaking?
  E. What is the basis for the NRC to regulate the hazardous chemicals produced from licensed materials?
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I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they

should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to the proposed rule and draft guidance document using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.* The proposed rule and draft guidance document are available electronically under ADAMS Accession Numbers ML110890797 and ML102520022, respectively.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to the proposed rule and draft guidance document can be found at *http://www.regulations.gov* by searching on the applicable Docket ID, NRC–2009–0079 (proposed rule) and NRC–2011–0080 (draft guidance document).

II. Background

Health and safety risks at 10 CFR part 40 fuel cycle facilities authorized to possess significant quantities of UF6 are both radiological and chemical in nature. These facilities not only handle radioactive source material but also large volumes of hazardous chemicals that are involved in processing the nuclear material. For example, the presence of UF6 in large quantities means that the hazards of hydrogen fluoride (HF) must be considered. The HF gas (and uranyl fluoride) is quickly produced from the chemical reaction that occurs when UF6 is exposed to water, present as humidity in the air, and HF gas may quickly move offsite. The HF is a highly reactive and corrosive chemical that presents a substantial inhalation and skin absorption hazard to both workers and the public.

Such hazards were demonstrated in the 1986 accident involving UF6 and HF at Sequoyah Fuels (a 10 CFR part 40 licensed facility). A cylinder of UF6 ruptured and resulted in a worker fatality. The cause of the worker's death was the inhalation of HF gas produced when the cylinder ruptured. The fact that HF can be produced from UF6 under certain conditions, and that it has a significant potential for onsite and offsite consequences, are among the principle factors on which this proposed rulemaking is based.

The current 10 CFR part 40 does not contain ISA requirements for evaluating the consequences of facility accidents. Similar hazards, both radiological and chemical, that exist at fuel cycle facilities that are regulated under 10 CFR part 70 are addressed by requirements contained in 10 CFR part 70, subpart H, "Additional Requirements for Certain Licensees Authorized To Possess a Critical Mass of Special Nuclear Material."

In March 2007, the NRC staff briefed the Commission on health and safety concerns involving 10 CFR part 40 fuel cycle facilities authorized to possess significant quantities of UF6. Based on these concerns, the Commission issued Staff Requirements Memorandum (SRM)–M070308B, "Staff Requirements—Briefing on NMSS Programs, Performance, and Plans" (March 22, 2007) directing the staff to propose options for rulemaking that would impose ISA requirements (similar to those currently found in 10 CFR part 70, subpart H) on current and future 10 CFR part 40 fuel cycle facilities authorized to possess significant quantities of UF6. The SRM also directed the staff to inform the Agreement States that the NRC would be the sole regulator for future major fuel cycle facilities under 10 CFR part 40. The NRC sent a letter to the Agreement States (ADAMS Accession Number ML071030304) on April 13, 2007, notifying them of the Commission's directive.

In SECY–07–0146 (August 24, 2007), the staff recommended that the Commission:

(1) Approve keeping the Starmet and Aerojet Ordnance facilities under Agreement State jurisdiction and, if similar new facilities are proposed in Agreement States in the future, the NRC would retain jurisdiction of only those facilities that exceed the threshold quantity limits discussed in Recommendation 2.

(2) Approve conducting a rulemaking to amend 10 CFR part 40. This would require new applicants and existing licensees for 10 CFR part 40 fuel cycle facilities with UF6 or uranium tetrafluoride (UF4) inventories greater than 10,000 kilograms (or alternative threshold quantity) to meet ISA requirements similar to those in 10 CFR part 70, subpart H. These requirements would not apply to existing facilities currently undergoing decommissioning. If new applicants submit license applications before the completion of the rulemaking, the NRC would issue orders establishing the 10 CFR part 70, subpart H, performance requirements as part of the licensing basis for the application review.

The Commission issued SRM for SECY–07–0146, dated October 10, 2007, approving Recommendations 1 and 2. The Commission stated that if new license applications are submitted before the completion of the rulemaking, "the staff shall impose 10 CFR part 70, subpart H, performance requirements as part of the licensing basis for the application review." As further directed in the SRM, the NRC held a public meeting on February 22, 2008, at NRC Headquarters in Rockville, Maryland, to discuss the scope of the proposed rulemaking and to seek public input on the proposed threshold quantities for determining when a facility will be regulated by the NRC or an Agreement State. Industry stakeholders that would be impacted by the rulemaking and representatives from four Agreement States attended the meeting either in person or via teleconference. All participants were encouraged to send in written comments within 30 days.

The Nuclear Energy Institute (NEI) and Honeywell Specialty Materials (Honeywell) attended the meeting and both submitted similar written comments and concerns. While both supported the concept of threshold UF6 quantities to determine if ISA requirements analogous to 10 CFR part 70, subpart H, should be required for new licensees, neither supported implementing the proposed ISA requirements at existing facilities. The commenters expressed the opinion that the NRC's mission is to protect public health and safety from the effects of radiological materials, and that this mission does not encompass chemical hazards. Both noted that the 10 CFR part 70 ISA requirements focus on preventing criticality events, a concern not relevant to source material licensees, and assessing and mitigating the radiological risk of enrichment operations. They felt that the primary health and safety concerns from licensed operations are chemical in nature, and since chemical concerns are not the mission of the NRC, the ISA should be narrowly focused to deal only with radiological concerns.

Honeywell further noted that it had already voluntarily submitted a risk-based ISA to support the license renewal of its Metropolis, Illinois facility, and observed that its plant had only been operating under the ISA since November 2007. It argued that not enough time has passed to assess the effectiveness of the current ISA. Therefore, Honeywell should be given several years to determine whether its current ISA is adequate before the NRC proceeds with any ISA rulemaking.

The NRC does not agree with the above NEI and Honeywell comments. As discussed above, the Sequoyah Fuels accident that killed one of its employees did not involve a criticality event. The chemical hazard that produced the fatality resulted from the licensed UF6 material that was being handled at the facility, and such hazards are within the NRC's regulatory authority. A more in-depth discussion of the NRC's authority to regulate these specific chemical hazards can be found in the following section in Question E. Therefore, generic ISA requirements to ensure that an adequate level of public health and safety is maintained, are needed for existing and future 10 CFR part 40 facilities handling significant quantities of UF6.

The NRC staff, in later reviewing all the data and information available, determined that UF4 did not constitute the same risk as UF6 at 10 CFR part 40 fuel cycle facilities. In a memorandum to the Commission dated June 23, 2009, the staff informed the Commission of its findings and intentions not to pursue rulemaking at this time to require an ISA for licensees possessing UF4 in any quantity.

A draft proposed rule was provided to the Commission in SECY–10–0128, "Proposed Rule: Domestic Licensing of Source Material—Amendments/ Integrated Safety Analysis," dated October 1, 2010. In response to SECY–10–0128, the Commission issued an SRM dated November 30, 2010, which directed the staff to publish the draft proposed rule for public comment subject to Commission comments and changes which include:

(1) Adding a backfit provision similar to § 70.76, applicable to any source material licensee authorized to possess 2000 kilograms (kg) or more of UF6, which becomes effective once such a licensee's ISA summary has been approved by the NRC;

(2) Seeking public comment with regard to the potential challenges and impacts on the use of probabilistic risk analyses methodology at 10 CFR part 40 facilities;

(3) Publishing concurrently with the proposed rule draft regulatory guidance and a standard review plan related to the proposed rule;

(4) Issuing guidance regarding the completion of ISAs to account for differences in the processes or hazards for 10 CFR part 40 facilities, as compared to 10 CFR part 70 facilities; and

(5) Providing (from the effective date of the rule) 6 months to develop an ISA plan; 18 months to produce an ISA; and 3 years to correct all performance deficiencies.

Additionally, the SRM directed the staff to determine whether the 1988 Memorandum of Understanding (MOU) between the NRC and the Occupational Safety and Health Administration (OSHA) needs to be modified. If no need to modify the MOU was found, the SRM directed the staff to provide a clear explanation in this proposed rule and in guidance of how MOU Criterion 3 should be evaluated by a licensee in completing its ISA. The MOU Criterion 3 references plant conditions affecting "the safety of radioactive materials and [which] thus presents an increased radiation risk to workers." As discussed further in Question E in Section III (Discussion), the staff found there was no need to modify the MOU, and guidance on how MOU Criterion 3 should be evaluated in completing ISAs has been developed. Comments on the draft guidance for this proposed rule may be submitted to the NRC by the methods listed in the **ADDRESSES** section of this document.

III. Discussion

A. What issues is the NRC seeking public comments on?

In addition to seeking comments in general on the proposed rule, the NRC is seeking specific public comments on the proposed provision to require an additional evaluation criterion in § 40.84(b) for chemical hazards. This criterion is not currently required for any fuel cycle facility. Specific discussion on this issue is located in Question H of this section and in Section IV (Discussion of Proposed Amendments by Section).

Additionally, the NRC is seeking public comments on the potential challenges and impacts of conducting probabilistic risk analyses (PRAs) rather than ISAs for 10 CFR part 40 fuel cycle facilities. This issue is discussed in Question K of this section.

Comments on these issues may be submitted as described in the **ADDRESSES** section of this document.

B. What action is the NRC taking?

The NRC is proposing to amend 10 CFR part 40 to require applicants or licensees that are, or plan to be, authorized to possess 2000 kg or more of UF6 to conduct an ISA and submit an ISA summary. The new ISA requirements would be similar to requirements found in 10 CFR part 70 subpart H, which apply to fuel fabrication and enrichment facilities. In the rulemaking, the NRC would assert jurisdiction over all applicants and licensees that may possess 2000 kg or more of UF6.

The rulemaking would add an additional evaluation criterion for applicants or licensees that submit an evaluation in lieu of the emergency plan required by § 40.31(j). The evaluation would have to demonstrate that an acute chemical exposure from licensed material or hazardous chemicals produced from licensed material due to a release would result in neither irreversible nor mild transient health effects to a member of the public offsite. If such an evaluation is not submitted, an emergency plan must be submitted in accordance with § 40.31(j)(3).

The format of the requirements contained in 10 CFR part 40 would be administratively restructured to create subparts. Included in the restructuring would be the addition of a new subpart titled, "Additional Requirements for Certain Licensees Authorized to Possess 2000 kilograms (4400 lb) or More of Uranium Hexafluoride." The rulemaking would also add definitions to § 40.4 that pertain to the proposed ISA requirements.

The rulemaking would add a backfit provision applicable to licensees authorized to possess 2000 kg or more of UF6. This provision would be similar to existing § 70.76.

C. Whom would this action affect?

The proposed amendment would affect current licensees and future applicants that possess or plan to possess 2000 kg or more of UF6. Agreement States and NRC licensees that are currently in the process of decommissioning would be exempt from the new requirements.

All future facilities authorized to possess 2000 kg or more of UF6 would be licensed by the NRC. On April 13, 2007, a letter was sent to all the Agreement States (FSME–07–036) informing them that the NRC "will regulate future major fuel cycle facilities licensed under 10 CFR part 40, *e.g.,* uranium conversion and deconversion facilities."

D. What steps did NRC take to involve the public in this proposed rulemaking?

The NRC held a public meeting on February 22, 2008, at NRC Headquarters in Rockville, Maryland, to discuss the scope of the proposed rulemaking and to seek public input on the proposed threshold quantities for determining when a facility will be regulated by the NRC or an Agreement State. The NRC announced the meeting on the NRC Web site as well as in a press release sent out by the Office of Public Affairs. The industry stakeholders that would be impacted by the rulemaking attended the meeting. The meeting followed a workshop format, and representatives from Honeywell and NEI gave presentations. All participants were encouraged to send written comments within 30 days.

E. What is the basis for the NRC to regulate the hazardous chemicals produced from licensed materials?

Health and safety risks at uranium 10 CFR part 40 fuel cycle facilities authorized to possess significant quantities of UF6 are both radiological and chemical in nature. These facilities not only handle radioactive source material, but also large volumes of hazardous chemicals that are produced from the processing of the nuclear material. As previously explained, chemicals such as HF can be incidentally produced in processes that involve using UF6, and HF. Due to its reactive and corrosive qualities, HF has a significant potential to generate harmful onsite consequences to workers, and harmful offsite consequences to the public.

The basis for the NRC's oversight of hazardous chemicals produced from licensed materials is derived from the Atomic Energy Act (AEA). Section 161 of the AEA gives the NRC broad authority to establish regulatory requirements necessary to protect the public health and safety, and Chapter 7 of the AEA details the specific statutory bases for NRC licensing and regulating the use of source material, such as UF6. The 1988 MOU between the NRC and OSHA (53 FR 43950) further discusses the radiological and chemical hazards to workers handling radiological materials licensed by NRC. It defines the general areas of responsibilities for the NRC and OSHA at facilities that have both radiological and chemical hazards.

The NRC–OSHA MOU states that "there are four kinds of hazards that may be associated with NRC-licensed nuclear facilities." It identifies them as:

1. Radiation risk produced by radioactive materials;

2. Chemical risk produced by radioactive materials;

3. Plant conditions which affect the safety of radioactive materials and thus present an increased radiation risk to workers;

4. Plant conditions which result in an occupational risk, but do not affect the safety of licensed radioactive materials.

The NRC–OSHA MOU states that the "NRC responsibilities cover the first three nuclear facility hazards" and the "NRC does not have statutory authority for the fourth hazard."

The first three hazards and their attendant health and safety risks, involving the possession and use of licensed radioactive materials, are clearly regulated by the NRC (or by Agreement States to which AEA authority has been delegated) and are within the NRC's proper jurisdiction. Large quantities of hazardous chemicals, such as HF, can be generated during accidents at NRC-licensed facilities. Chemical hazards can impact radiological safety by incapacitating or causing death of a radiation worker who is performing a critical function in the processing of radioactive material.

As previously discussed, the SRM on SECY–10–0128 directed the staff to evaluate whether the MOU needed to be modified. Feedback from cognizant NRC Offices and OSHA indicated the MOU adequately delineates the agencies' respective responsibilities at nuclear facilities. In accordance with the SRM, a clear explanation and example of how to evaluate the MOU's Criterion 3 is in the discussion of the proposed § 40.81(a) in Section IV (Discussion of Proposed Amendments by Section) of this document. Guidance on the MOU's Criterion 3 has also been added to the draft guidance, NUREG–1962, developed to support the rulemaking. The draft guidance explains how MOU Criterion 3 should be evaluated by a licensee in completing its ISA.

F. Why was 2000 kilograms of UF6 chosen as the threshold for requiring an isa and the threshold for NRC jurisdiction?

The staff, in SECY–07–0146, recommended that 10,000 kg of UF6 be the threshold quantity for requiring 10 CFR part 40 fuel cycle licensees to perform an ISA and for NRC licensing jurisdiction. The NRC staff subsequently looked at threshold limits and determined that quantities of UF6 greater than 2000 kg represented a significant quantity. This reduction from 10,000 to 2000 kg was based in part on the chemical hazard associated with accident scenarios involving UF6. Specifically, in an accident scenario involving 2000 kg of UF6, approximately 453 kg (1000 lb) of HF vapor could be produced. OSHA, in Appendix A of Title 29 of the CFR (29 CFR) Section 1910.119, identifies threshold quantities of hazardous chemicals that "present a potential for a catastrophic event." The HF is listed in this appendix with a threshold quantity of 1000 lb. In Appendix A to 29 CFR 1910.119, OSHA lists toxic and reactive highly hazardous chemicals which present a potential for a catastrophic event at or above specified threshold quantities. The regulations also contain requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals that may result in toxic, fire, or explosion hazards.

The NRC believes that chemical quantities exceeding the quantities listed in Appendix A to 29 CFR 1910.119 at 10 CFR part 40 fuel cycle facilities can, and do, affect the safety of radioactive materials and thus present an increased radiation risk to workers.

Although the NRC staff originally recommended that licensees in possession of large quantities of UF4 also be required to submit an ISA, it was determined that UF4 did not pose the same risk as UF6. The UF4 is far less reactive than UF6, requiring days to months to react with moisture in the air. Based on a search of published literature, the staff does not believe there is sufficient information available to establish a threshold of UF4 for requiring an ISA or for the NRC to establish exclusive jurisdiction.

G. What is Appendix A to 29 CFR 1910.119?

Appendix A to 29 CFR 1910.119 is part of an OSHA regulation that contains a listing of toxic and reactive highly hazardous chemicals which present a potential for a catastrophic event at or above the threshold quantity. The regulations at 29 CFR 1910.119 has requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals that may result in toxic, fire, or explosion hazards. However, § 1910.119 does not provide structured risk-informed requirements for evaluating the consequences of facility accidents as an ISA does.

Under the OSHA regulation, facilities that possess hazardous chemicals in quantities greater than listed in Appendix A to 29 CFR 1910.119 must perform a process hazard analysis. This analysis is similar but less comprehensive than the requirements in

the proposed ISA. Additionally, § 1910.119 only addresses chemical hazards. An ISA would address both the radiological and chemical hazards from licensed material and hazardous chemicals produced in the processing of licensed material.

H. Is there an alternative to submitting an emergency plan?

Yes. The current regulations in § 40.31(j) require any licensee or applicant who plans to possess 1000 kg or more of UF6 (or more than 50 kg in a single container) to submit an emergency plan or, per § 40.31(j)(1)(i), an evaluation showing that the maximum intake of uranium by a member of the public due to a release would not exceed 2 milligrams. The proposed rule would add an additional criterion, in addition to § 40.31(j)(1)(i), for licensees or applicants who possess, or plan to possess, 2000 kg or more of UF6, and who opt to submit an evaluation in lieu of submitting an emergency plan. This additional criterion would require a demonstration that an acute chemical exposure from licensed material or hazardous chemicals produced from licensed material due to a release, would result in neither irreversible nor mild transient health effects to a member of the public offsite. An acute exposure guideline level (AEGL) or emergency response planning guidelines (ERPG) standard may be used in making this demonstration. Where no AEGL or ERPG is available, the applicant/licensee may develop or adopt a criterion that is comparable in severity to those that have been established for other chemicals.

I. What are ERPG's and AEGLs, and what are they used for?

Chemical consequence criteria corresponding to anticipated adverse health effects to humans from acute exposures (*i.e.,* a single exposure or multiple exposures occurring within a short time—24 hours or less) have been developed, or are under development, by a number of organizations. A set of chemical consequence criteria, known as ERPGs, has been developed by the American Industrial Hygiene Association to provide estimates of concentration ranges where defined adverse health effects might be observed because of short exposures to hazardous chemicals. The ERPG criteria are widely used by those involved in assessing or responding to the release of hazardous chemicals.

Another organization, the National Advisory Committee for Acute Guideline Levels for Hazardous Substances, is developing AEGLs. The committee, which works under the auspices of the Environmental Protection Agency (EPA) and the National Academy of Sciences, has identified a priority list of approximately 471 chemicals. Consequence criteria for approximately 200 extremely hazardous substances have been developed, including one for HF. As previously discussed, HF is a significant hazard associated with UF6.

J. When would these ISA requirements become effective?

Current licensees would have to submit for NRC approval, within 6 months after the rule becomes effective, a plan that describes the integrated safety analysis approach that will be used, the processes that will be analyzed, and the schedule for completing the analysis of each process. Unless an alternate schedule is approved, the licensee would submit for NRC approval an integrated safety analysis summary within 18 months after the rule becomes effective.

Additionally, within 3 years after the rule becomes effective (unless an alternate schedule is approved), current licensees would have to correct all unacceptable performance deficiencies identified in the ISA. Pending the correction of unacceptable performance deficiencies, the licensee would have to implement appropriate compensatory measures to ensure adequate protection.

K. Should the NRC use probabilistic risk analyses methodology at 10 CFR Part 40 licensed facilities?

A PRA is a systematic methodology to evaluate risks associated with complex technologies, often applied to light water power reactors licensed under 10 CFR part 50. A PRA usually answers three basic questions: What can go wrong, how severe are the consequences, and what are their probabilities or frequencies? The Commission has published a policy statement on the use of PRA entitled "Use of Probabilistic Risk Assessment Methods In Nuclear Regulatory Activities," dated August 10, 1995.

The proposed rule does not contain a provision for using a PRA. However, the Commission has directed the staff to seek public comments on the potential challenges and impacts regarding the use of PRA methodology at facilities licensed under 10 CFR part 40. Additional information on PRA is available in documents related to the review conducted by the Advisory Committee on Reactor Safeguards including:

1. December 15, 2010, staff document entitled "A Comparison of Integrated Safety Analysis and Probabilistic Risk Assessment" (accession number ML103330478); and

2. February 17, 2011, ACRS response letter entitled "Comparison of Integrated Safety Analysis (ISA) and Probabilistic Risk Assessment (PRA) for Fuel Cycle Facilities" (accession number ML110460328).

Comments on this issue may be submitted as described in the **ADDRESSES** section of this document.

L. Has NRC prepared a cost-benefit analysis of the proposed actions?

The NRC staff has prepared a regulatory analysis for this rulemaking. This analysis shows an estimated annual cost of $119,000 for each NRC licensee and $17,000 for the NRC from this proposed rule. The cost to Agreement States to implement this rule was estimated to be minimal; therefore, the cost to Agreement States was not quantified in the regulatory analysis supporting the rule.

M. Has NRC evaluated the paperwork burden to licensees?

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). The NRC staff has estimated the impact that this proposed rule will have on reporting and recordkeeping requirements for NRC licenses. There are no reporting or recordkeeping requirements for the Agreement State licensees. The NRC is seeking public comment on these proposed requirements. More information on this subject is in Section X, Paperwork Reduction Act Statement, of this document.

N. What should I consider as I prepare my comments to NRC?

Tips for preparing your comments. When submitting your comments, remember to:

i. Identify the rulemaking (RIN 3150–AI50), Docket ID NRC–2009–0079.

ii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iii. Describe any assumptions and provide any technical information and/or data that you used.

iv. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

v. Provide specific examples to illustrate your concerns, and suggest alternatives.

vi. Explain your views as clearly as possible.

vii. Make sure to submit your comments by the comment period deadline identified.

viii. See Section VII for the request for comments on the use of plain language, Section X for the request for comments on the information collection, and Section XI for the request for comments on the draft regulatory analysis.

IV. Discussion of Proposed Amendments by Section

The format of the requirements contained in 10 CFR part 40 would be administratively restructured to conform to the structures of other parts in 10 CFR. Currently 10 CFR part 40 has undesignated subject headings preceding related sections. This proposed rule would replace the undesignated subject headings with specific lettered and titled subparts. In addition to this administrative restructuring, a new subpart H would be added to 10 CFR part 40, titled "Additional Requirements for Certain Licensees Authorized to Possess 2000 Kilograms (4400 lb) or More of Uranium Hexafluoride." The proposed new 10 CFR part 40 subpart H would be similar to the existing subpart H to 10 CFR part 70.

Section 40.3a Denial of Licensing by Agreement States

This new section would specify that Agreement States lack regulatory authority over persons who possess or plan to possess 2000 kg or more of UF6. This section would not apply to facilities in Agreement States that are undergoing decommissioning as of the effective date of this regulation. The NRC would be the sole licensing authority for all classes of licensees who possess or plan to possess 2000 kg or more of UF6 (including generally and specifically licensed activities), and the NRC would thus hold licensing authority for all radiological activities of such licensees. This proposed requirement is consistent with the Commission's direction in SRM–M070308B, dated March 22, 2007, and the letter that the NRC sent to all the Agreement States (FSME–07–036), dated April 13, 2007, informing them that the NRC "will regulate future major fuel cycle facilities licensed under 10 CFR part 40, *e.g.,* uranium conversion and deconversion facilities." The proposed requirement is similar to the existing § 72.8 requirement.

Section 40.4 Definitions

Definitions of the following 11 terms used in the new subpart H would be added to § 40.4: "Acute," "Available and reliable to perform their function when needed, "Configuration management," "Defense-in-depth practices," "Hazardous chemicals produced from licensed materials," "Integrated safety analysis," "Integrated safety analysis summary," "Items relied on for safety," "Management measures," "Unacceptable performance deficiencies," and "Worker."

Except as specified below, these terms are defined the same as those used in 10 CFR part 70, subpart H. Language referencing criticality events was removed from the definitions for "integrated safety analysis" and "unacceptable performance deficiencies" because 10 CFR part 40 licensees do not possess special nuclear material in concentrations where criticality events are possible. The proposed "defense-in-depth" definition originates from the footnote in § 70.64 that describes what defense-in-depth means.

Section 40.8 Information Collection Requirements: OMB Approval

Paragraph (b) of this section would be amended to add the applicable sections in the new subpart H and to reflect the administrative renumbering of 10 CFR part 40.

Section 40.26 General License for Possession And Storage of Byproduct Material as Defined in This Part

Paragraph (c)(1) of this section would be amended to add the applicable sections in the new subpart H and to reflect the administrative renumbering of 10 CFR part 40.

Section 40.80 Applicability

This new section would list the types of NRC licensees or applicants who would be subject to the new subpart H. The new requirements would apply to all applicants or licensees that are or plan to be authorized to possess 2000 kg or more of UF6. In general, the new subpart is intended to ensure that significant accidents, that are possible at 10 CFR part 40 fuel cycle facilities authorized to possess 2000 kg or more of UF6 have been analyzed in advance and that appropriate controls or measures are established to ensure adequate protection of workers, the public, and the environment.

The requirements and provisions in subpart H are in addition to, and not a substitute for, other applicable requirements, including those of the EPA and the U.S. Department of Labor, OSHA. The proposed NRC requirements would only apply to NRC's areas of responsibility (radiological safety and chemical safety directly related to licensed radioactive material). In this regard, the proposed requirements for hazards and accident analyses are intended to complement but not supersede any parallel OSHA and EPA regulations.

The new requirements in subpart H would not apply to licensees who, as of the effective date of the final rule, are undergoing decommissioning under the provisions of § 40.42. The NRC notes that existing § 40.42(g)(4)(iii) states that a proposed decommissioning plan (DP) must include "a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning." Because the DP is submitted for NRC approval before initiation of procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area, the DP will continue to be the vehicle for regulatory approval of the licensee's practices for protection of health and safety during decommissioning. The ISA should provide valuable information with respect to developing the DP and the use of the ISA in this manner is encouraged.

Section 40.81 Performance Requirements

This new section would explicitly address potential radiological and chemical exposures to workers or members of the public and environmental releases as a result of accidents. The requirements in 10 CFR part 20 continue to be NRC's general standard for protection of workers and the public from licensed activities during normal operations and accidents. Although it is the NRC's intent that the regulations in 10 CFR part 20 also be observed to the extent practicable during an emergency, it is not the NRC's intent that the 10 CFR part 20 requirements apply as the design standard for all possible facility accidents, irrespective of the likelihood of those accidents. Because accidents are unanticipated events that usually occur over a relatively short period of time, the proposed changes to 10 CFR part 40 seek to assure adequate protection of workers, members of the public, and the environment by limiting the risk (combined likelihood and consequence) of accidents.

Two risk-informed performance requirements are being proposed, both of which are set out in § 40.81: (1) Paragraph (b) states that high-consequence events must meet a likelihood standard of highly unlikely; and (2) paragraph (c) states that intermediate-consequence events must

meet a likelihood standard of unlikely. The term "performance requirements" thus considers together consequences and likelihood. For regulatory purposes, each performance requirement is considered an equivalent level of risk. For example, the acceptable likelihood of intermediate-consequence events is allowed to be greater than the acceptable likelihood for high-consequence events.

Section 40.81(a). A risk-informed approach must consider not only the consequences of potential accidents, but also their likelihood of occurrence. As mentioned above, the performance requirements rely on the terms "unlikely" and "highly unlikely" to focus on the risk of accidents. However, the NRC has decided not to include in the proposed rule quantitative definitions of the terms "unlikely" and "highly unlikely," because a single definition for each term that would apply to all the facilities regulated by 10 CFR part 40 may not be appropriate. Depending on the type of facility and its complexity, the number of potential accidents and their consequences could differ markedly. Therefore, to ensure that the overall facility risk from accidents is acceptable for different types of facilities, the rule requires applicants to develop, for NRC approval, the meaning of "unlikely" and "highly unlikely" specific to their processes and facility (see discussion of § 40.84 in this document). Guidance documents are being developed to provide examples of acceptable approaches for the meaning of "unlikely" and "highly unlikely" that can be applied to existing 10 CFR part 40 fuel cycle facilities authorized to possess 2000 kg or more of UF6.

The general approach for complying with the performance requirements is that, at the time of licensing, each hazard (*e.g.,* fire, chemical, electrical, industrial) that can potentially affect either radiological health and safety, or chemical safety associated with hazardous chemicals produced from licensed material, is identified and evaluated by the licensee or applicant in an ISA. The impact of accidents, both internal and external, associated with these hazards is compared with the two performance requirements. Any (and all) structures, systems, components, or human actions, for which credit is taken in the ISA for mitigating (reducing the consequence of) or preventing (reducing the likelihood of) the accident such that the two performance requirements are satisfied, must be identified as an "item relied on for safety" (IROFS). Under this approach, the licensee or applicant has a great deal of flexibility in selecting and identifying the actual "items." For example, IROFS can be defined at the systems-level, component-level, or sub-component level. "Management measures" (see discussion of § 40.82(d) in this document) are applied to IROFS in a graded fashion to ensure that the item will perform its safety function when needed. The combination of the set of "items relied on for safety" and the "management measures" applied to each item will determine the extent of the licensee's programmatic and design requirements, consistent with the facility risk, and will ensure that at any given time, the facility risk is maintained safe and protected from accidents.

The proposed performance requirements also address certain hazardous chemicals produced from licensed nuclear material. The question of the extent of NRC's authority to regulate chemical hazards at its fuel cycle facilities was raised after the Sequoyah Fuels accident discussed above, which resulted in a worker fatality. The cause of the worker's death was the inhalation of HF gas, which was produced from the chemical reaction of UF6 and water (present as humidity in air). Partly as a result of the coordinated Federal response and resulting Congressional investigation into that accident, the NRC and the OSHA entered into an MOU in 1988 that clarified the agencies' interpretations of their respective responsibilities for the regulation of chemical hazards at nuclear facilities. The MOU identified the following four areas of responsibility. Generally, the NRC covers the first three areas, whereas OSHA covers the fourth area:

(1) Radiation risk produced by radioactive materials;

(2) Chemical risk produced by radioactive materials;

(3) Plant conditions that affect the safety of radioactive materials; and

(4) Plant conditions that result in an occupational risk, but do not affect the safety of licensed radioactive materials.

One goal of the proposed performance requirements in § 40.81 is to be consistent with the NRC–OSHA MOU. Therefore, the performance requirements in § 40.81 include explicit standards for the MOU's first two areas of responsibility. In addition, the third MOU area of responsibility is specifically evaluated by licensees under the ISA requirements of § 40.82(c)(1)(iii). As an example of the third MOU area, if the failure of a chemical system adjacent to a nuclear system could affect the safety of the nuclear system such that the radiation dose (and associated likelihood of that accident) exceeded a performance requirement, the chemical system failure would be within the scope of the ISA and the means to prevent the chemical system failure from impacting the nuclear system would be within the NRC's regulatory purview.

Within each performance requirement, the NRC recognizes that the proposed radiological standards are more restrictive, in terms of acute health effects to workers or the public, than the chemical standards for a given consequence (high or intermediate). This is consistent with the NRC's current regulatory practice. The choice of each criterion is discussed in a paragraph-by-paragraph discussion of § 40.81(b) through (e) in this document.

The use of any of the performance requirements is not intended to imply that the specified worker or public radiation dose or chemical exposure constitutes an acceptable criterion for a maximum allowed dose to a worker or the public. Rather, these values have been proposed in this section as a reference value, to be used by licensees in the ISA (a forward-looking analysis) to establish controls (*i.e.,* items relied on for safety (IROFS) and associated management measures) necessary to protect workers from potential accidents with low or exceedingly low probabilities of occurrence that are not expected to occur during the operating life of the facility.

Section 40.81(b). This provision addresses performance requirements for "high-consequence events." Such events include accidental radiological or chemical exposure of a worker or an individual located outside of the controlled area, and would involve exposure to high levels of radiation or hazardous chemicals produced from licensed materials. A high-consequence radiological accident, if it occurred, would produce radiation doses to a worker or an individual located outside of the controlled area at levels causing clinically observable biological damage. A high-consequence chemical accident would involve concentrations of hazardous chemicals produced from licensed material, and would be severe enough to cause death or life-threatening injury. The goal is to ensure an acceptable level of risk by limiting the combination of the likelihood of occurrence and the identified consequences. Thus, high-consequence events must be sufficiently mitigated to a lower consequence or prevented such that the event is highly unlikely to occur. The application of "items relied on for safety" provides this prevention or mitigation function.

Section 40.81(b)(1). An acute exposure of a worker to a radiation dose of 1 Sv (100 rem) or greater total effective dose equivalent (TEDE) is considered to be a high-consequence event. According to the National Council on Radiation Protection and Measurements (NCRP, 1971), life-saving actions—including the "search for and removal of injured persons, or entry to prevent conditions that would probably injure numbers of people"—should be undertaken only when the "planned dose to the whole body shall not exceed 100 rems." This is consistent with a later NCRP position (NCRP, 1987) on emergency occupational exposures, that states "when the exposure may approach or exceed 1 Gy (100 rad) of low-LET [linear energy transfer] radiation (or an equivalent high-LET exposure) to a large portion of the body, in a short time, the worker needs to understand not only the potential for acute effects but he or she should also have an appreciation of the substantial increase in his or her lifetime risk of cancer."

Section 40.81(b)(2). The exposure of an individual located outside of the controlled area to a radiation dose of 0.25 Sv (25 rem) or greater TEDE is considered a high-consequence event. This is generally consistent with the criterion established in 10 CFR 100.11, "Determination of exclusion area, low population zone, and population center distance," and 10 CFR 50.34, "Contents of applications; technical information," in which a whole-body dose of 0.25 Sv (25 rem) is used to determine the dimensions of the exclusion area and low-population zone required for siting nuclear power reactors.

Section 40.81(b)(3). The intake of 30 mg of soluble uranium by an individual located outside of the controlled area is considered a high-consequence event. This value is consistent with the performance requirements in § 70.61 which applies to fuel cycle facilities. Additionally, the use of this value is consistent with the selection of 30 mg of uranium as a criterion during the 10 CFR part 76 rulemaking (59 FR 48944; September 23, 1994).

Section 40.81(b)(4). An acute chemical exposure to hazardous chemicals produced from licensed material at concentrations that either (1) could cause death or life-threatening injuries to a worker; or (2) could cause irreversible health effects to an individual located outside of the controlled area, is considered a high-consequence event. Chemical consequence criteria corresponding to anticipated adverse health effects to humans from acute exposures (*i.e.,* a single exposure or multiple exposures occurring within a short time-24 hours or less) have been developed, or are under development, as discussed in Section II, question H above.

The qualitative language in § 40.81(b)(4) allows the applicant/licensee to propose and adopt an appropriate standard, which may be an AEGL or ERPG standard. Where no AEGL or ERPG is available, the applicant/licensee may develop or adopt a criterion that is comparable in severity to those that have been established for other chemicals. This approach is currently being used in 10 CFR part 70 for fuel cycle facilities.

Section 40.81(c). This provision addresses performance requirements for "intermediate-consequence events," which would be of a lower magnitude than high consequence events, and thus not involve risk of death or life-threatening injury. Intermediate-consequence events include accidental radiological or chemical exposure of a worker or an individual located outside of the controlled area and would involve exposure to levels of radiation or hazardous chemicals produced from licensed materials that generally correspond to permanent injury to a worker or transient injury to a non-worker. An intermediate-consequence event is also specified as including significant releases of radioactive material to the environment.

The goal is to ensure an acceptable level of risk by limiting the combination of the likelihood of occurrence and the identified consequences. Thus, "intermediate consequence events" must be sufficiently mitigated to a lower consequence or prevented such that the event is unlikely to occur. The application of "items relied on for safety" provides this prevention or mitigation function.

Section 40.81(c)(1). A worker radiation dose between 0.25 Sv (25 rem) and 1 Sv (100 rem) TEDE is considered an intermediate-consequence event. This value was chosen because of the use of 0.25 Sv (25 rem) as a criterion in existing NRC regulations. For example, in 10 CFR 20.2202, "Notification of incidents," immediate notification is required of a licensee if an individual receives "* * * a total effective dose equivalent of 0.25 Sv (25 rem) or more." Also, in 10 CFR 20.1206, "Planned special exposures," a licensee may authorize an adult worker to receive a dose in excess of normal occupational exposure limits if a dose of this magnitude does not exceed 5 times the annual dose limits [*i.e.,* 0.25 Sv (25 rem)] during an individual's lifetime. In addition, EPA's Protective Action Guides (U.S. Environmental Protection Agency, 1992) and NRC's regulatory guidance (Regulatory Guide 8.29, "Instruction Concerning Risks from Occupational Radiation Exposure" 1996) identify 0.25 Sv (25 rem) as the whole-body dose limit to workers for life-saving actions and protection of large populations. The NCRP has also stated that a TEDE of 0.25 Sv (25 rem) corresponds to the once-in-a-lifetime accidental or emergency dose for workers.

Section 40.81(c)(2). A dose to any individual located outside of the controlled area between 0.05 Sv (5 rem) and 0.25 Sv (25 rem) is considered an intermediate-consequence event. The NRC has used a 0.05–Sv (5-rem) exposure criterion in a number of its existing regulations. For example, 10 CFR 72.106, "Controlled area of an ISFSI or MRS," states that "Any individual located on or beyond the nearest boundary of the controlled area shall not receive a dose greater than 5 rem to the whole body or any organ from any design basis accident." In addition, in the regulation of the above-ground portion of a proposed geologic repository, 10 CFR 60.136, "Preclosure controlled areas," states that "for [accidents], no individual located on or beyond any point on the boundary of the preclosure controlled area will receive a total effective dose equivalent of 5 rem." A TEDE of 0.05 Sv (5 rem) is also the upper limit of EPA's Protective Action Guides of between 0.01 to 0.05 Sv (1 to 5 rem) for emergency evacuation of members of the public in the event of an accidental release that could result in inhalation, ingestion, or absorption of radioactive materials.

Section 40.81(c)(3). The release of radioactive material to the environment outside the restricted area in concentrations that, if averaged over a period of 24 hours, exceed 5000 times the values specified in Table 2 of Appendix B to 10 CFR part 20, is considered an intermediate-consequence event. In contrast to the other consequences criteria that directly protect workers and members of the public, the intent of this criterion is to minimize the environmental impacts. The value established for this consequence criterion is identical to the NRC Abnormal Occurrence (AO) criterion that addresses the discharge or dispersal of radioactive material from its intended place of confinement (Section 208 of the Energy Reorganization Act of 1974, as amended, requires that AOs be reported to Congress annually). In particular, the AO reporting Criterion 1.B requires the reporting of an event

that involves "* * * the release of radioactive material to an unrestricted area in concentrations which, if averaged over a period of 24 hours, exceed 5000 times the values specified in Table 2 of Appendix B to 10 CFR part 20, unless the licensee has demonstrated compliance with 10 CFR 20.1301 using 10 CFR 20.1302(b)(1) or 10 CFR 20.1302(b)(2)(ii)" [October 12, 2006, 71 FR 60199]. The concentrations listed in Table 2 of Appendix B to 10 CFR part 20 apply to radioactive materials in air and water effluents to unrestricted areas. The NRC established these concentrations based on an implicit effective dose equivalent limit of 0.5 mSv/yr (50 mrem/yr) for each medium, assuming an individual was continuously exposed to the listed concentrations present in an unrestricted area for a year. If an individual were continuously exposed for 1 day to concentrations of radioactive material 5000 times greater than the values listed in Appendix B to 10 CFR part 20, the projected dose would be about 6.8 mSv (680 mrem), or $5{,}000 \times 0.5$ mSv/yr $\times$ 1 day $\times$ 1 yr/365 days. In addition, a release of radioactive material, from a facility, resulting in these concentrations, would be expected to cause some contamination of property in the area affected by the release, with a resultant potential for further adverse health effects and loss of use. This contamination would pose a longer-term hazard to members of the public until it was properly remediated. Depending on the extent of contamination caused by such a release, the contamination could require considerable licensee resources to remediate. For these reasons, the NRC considered the existing AO reporting criterion for discharge or dispersal of radioactive material as an appropriate consequence criterion in this rulemaking.

Section 40.81(c)(4). An acute chemical exposure to hazardous chemicals produced from licensed material at concentrations that either: (1) Could cause irreversible health effects to a worker, or (2) could cause notable discomfort to an individual located outside of the controlled area, is considered an intermediate-consequence event. As stated in the § 40.81(b)(4) discussion, effects on humans from acute exposures to chemicals are being developed by a number of organizations. Two existing standards, AEGL–2 and ERPG–2, can be used to define the concentration level for irreversible health effects, and two existing standards, AEGL–1 and ERPG–1, can be used to define the concentration level for notable discomfort. The qualitative language in § 40.81(c)(4) allows the applicant/licensee to adopt and propose an appropriate standard, which may be an AEGL or ERPG standard. Where no such standard exists, the applicant/licensee may develop or adopt a criterion that is comparable in severity to those that have been established for other chemicals.

Section 40.81(d). This provision addresses IROFS and management measures. Paragraph (d) would require that each engineered or administrative control or control system that is needed to meet the performance requirements be designated as an item relied on for safety. This means that any control or control system that is necessary to maintain the acceptable combination of consequence and likelihood for an accident is designated an item relied on for safety. The importance of this section is that, once a control is designated as an item relied on for safety, it falls into the envelope of the safety program required by § 40.82. For example, records will be kept regarding the item, and management measures such as the configuration control program are applied to the item and to changes that affect the item, to ensure that the item will be available and reliable to perform its function when needed. The failure of an item relied on for safety does not necessarily mean that an accident will occur which will cause one of the consequences listed in the performance requirements to be exceeded.

Some control systems may have parallel (redundant or diverse) control systems that would continue to prevent the accident. The need for such defense-in-depth and single-failure resistance would ideally be based on the severity and likelihood of the potential accident. In other cases, the failure of an item may mean that the particular accident sequence is no longer "highly unlikely," or "unlikely." In these cases, the performance requirement is not met, and the expectation would be that a management measure would exist (possibly in the form of an operating procedure) that ensured that the facility would not operate in a condition that exceeds the performance requirement. For example, a facility that relies on emergency power could not operate for an extended time in the absence of an emergency power source even if grid power is available. In this manner, the IROFS and the management measures complement each other to ensure adequate protection from accidents at any given time.

Section 40.81(e). This provision addresses the term "controlled area" as defined in 10 CFR part 20 and as used in the performance requirements discussed above. Section 40.81(e) requires licensees to identify a controlled area consistent with the use of that term in 10 CFR part 20, and provides clarification regarding the activities that may occur inside the controlled area. The function of this term is to delimit an area over which the licensee exercises control of activities. Control includes the power to exclude individuals, if necessary.

The size of the controlled area is not specified in the regulation because it will be dependent upon the particular activities that are conducted at the site and their relationship to the licensed activities. Individuals who do not receive an "occupational dose" (as defined in 10 CFR part 20) in the controlled area will be subject to the dose limits for members of the public in 10 CFR 20.1301. However, the Commission recognizes that certain licensees may have ongoing activities at their site (*i.e.,* within the controlled area) that are not related to the licensed activities. For example, a non-nuclear facility may be adjacent to the nuclear facility but both are within the controlled area (which may be defined similar to the site boundary). This raises a question regarding the appropriate accident standard for these individuals.

Protection of members of the public within the controlled area boundary (*e.g.,* individuals working at a co-located non-nuclear facility) must consider that the fast-acting nature of many potential accidents at a UF6 facility covered by these proposed requirements is such that there will not be sufficient time to evacuate such individuals from the controlled area. Therefore, for purposes of the ISA accident evaluation, the rule explicitly contains two options to adequately protect these individuals (as well as an implicit third option). For the first option in § 40.81(e)(1), the licensee must demonstrate, in the ISA, that the risk to members of the public within the controlled area boundary does not exceed the performance requirements. For the second option in § 40.81(e)(2), the licensee must ensure that members of the public within the controlled area boundary are aware of the risks posed by potential accidents at the nuclear facility, and have received appropriate training and access to information. The NRC views the § 40.81(e) requirement as being consistent with the 10 CFR part 50 definition of "Exclusion area," which states in relevant part that: "Activities unrelated to operation of the reactor may be permitted in an exclusion area

under appropriate limitations, provided that no significant hazards to the public health and safety will result."

The implied third option is to define (or redefine) a controlled area, such that within it, only activities associated with the licensed nuclear facility are permitted. The NRC's intent is that the ISA need not evaluate compliance with the accident standards for individuals who make infrequent visits to the controlled area and restricted area (*e.g.,* visitors). Use of the ISA to determine the risks to these individuals would need to consider second-order effects such as the probability of the individual being present at the time that the unlikely (or highly unlikely) accident occurred. This level of detail is unnecessary to accomplish the purpose of this rule (viz., to document and maintain the safety basis of the facility design and operations). Application of the 10 CFR part 20 regulations provides adequate protection for these individuals. In addition, the provisions (*i.e.,* performance requirements) to protect workers and non-workers during accidents should, implicitly, provide a degree of protection to the infrequently present individuals.

Section 40.82 Safety Program and Integrated Safety Analysis

This new section would specify the safety program that licensees would be required to implement at covered UF6 facilities, including the performance of an ISA, and establishment of management measures. The performance of an ISA and the establishment of measures to ensure the availability and reliability of IROFS when needed are the means by which licensees would demonstrate an adequate level of protection at their UF6 facilities. The ISA is a systematic analysis to identify plant and external hazards and their potential for initiating accident sequences; the potential accident sequences and their consequences; and the site, structures, systems, equipment, components, and activities of personnel relied on for safety. As used here, an "integrated" analysis means joint consideration of, and protection from, all relevant hazards, including radiological, fire, and chemical. The structure of the safety program recognizes the critical role that the ISA plays in identifying potential accidents and the IROFS. However, it also recognizes that the performance of the ISA, by itself, will not ensure adequate protection. Instead, an effective management system is needed to ensure that the IROFS are available and reliable to perform their function when needed. Detailed requirements for each part of the safety program are included in this section.

Section 40.82(a). Each licensee would be required to establish and maintain a safety program that demonstrates compliance with the performance requirements of § 40.81. Although the ISA would be the primary tool in identifying the potential accidents requiring consequence mitigation and accident prevention, process safety information would be used to develop the ISA, and management measures would be used to ensure the availability and reliability of IROFS identified through the ISA. The management measures may be graded according to the risk importance associated with an IROFS.

The licensee is also required to establish and maintain records demonstrating that it has met, and continues to meet, the requirements of this section. These records serve two major purposes. First, they can supplement information that has been submitted as part of the license application. Second, records are often needed to demonstrate licensee compliance with applicable regulations and license commitments. It is important, therefore, that an appropriate system of recordkeeping be implemented to allow easy retrieval of required information.

Section 40.82(b). This provision would require the licensee to maintain process-safety information pertaining to the hazards of the materials used or produced from licensed materials, the technology of the process, and the equipment in the process. The NRC's confidence in the margin of safety at its licensed facilities depends, in part, on the ability of licensees to maintain a set of current, accurate, and complete records available for NRC inspection. The process-safety information should be used in support of development of an ISA.

Section 40.82(c). This provision proposes requirements for conducting an ISA. There are four major steps in performing an ISA:

(1) Identify all hazards at the facility, including both radiological and non-radiological hazards. Hazardous materials, their location, and quantities, should be identified, as well as all hazardous conditions, such as high temperature and high pressure. In addition, any interactions that could result in the generation of hazardous materials or conditions should be identified.

(2) Analyze the hazards to identify how they might result in potential accidents. These accidents could be caused by process deviations or other events internal to the plant, or by credible external events, including natural phenomena such as floods, earthquakes, *etc.* To accomplish the task of identifying potential accidents, the licensee needs to ensure that detailed and accurate information about plant processes is maintained and made available to the personnel performing the ISA.

(3) Determine the consequences of each accident that has been identified. For an accident with consequences at a "high" or "intermediate level," as defined in § 40.81, the likelihood of such an accident must be shown to be commensurate with the consequences, as required in § 40.81.

(4) Identify the IROFS (*i.e.,* those items that are relied on to prevent accidents or to mitigate their consequences, identified in the ISA). These IROFS are needed to reduce the consequences or likelihood of the accidents to acceptable levels. The identification of IROFS is required only for accidents with consequences at a high or intermediate level, as defined in § 40.81.

It is expected that the licensee or applicant would perform the ISA using a "team" of individuals with expertise in engineering and process operations related to the system being evaluated. The team should include persons with experience in radiation safety, fire safety, and chemical process safety, as warranted by the materials and potential hazards associated with the process being evaluated. At least one member of the ISA team should be an individual who has experience and knowledge that is specific to the process being evaluated. Finally, at least one individual in the team must be knowledgeable in the specific ISA methodology being used.

Current 10 CFR part 40 licensees covered by the proposed rule would be required to develop plans and submit them to the NRC within 3 months of the effective date of the rule. Each plan would identify the processes that would be subject to an ISA, the ISA approach that would be implemented for each process and the schedule for completing the analysis of each process. Licensees would be expected to complete their ISA within the required time, correct any unacceptable vulnerabilities identified, and submit the results to the NRC for approval in the form of an ISA summary that contains the information required by § 40.84(b). Pending the correction of any unacceptable vulnerabilities, licensees would be expected to implement appropriate compensatory measures to ensure adequate protection until the

vulnerability can be more appropriately corrected.

Applicants for licenses to operate new facilities or new processes at existing facilities would be expected to design their facilities or processes to protect against the occurrence of the adverse consequences identified in § 40.81, using the baseline design criteria specified in § 40.83(a). Before operation, applicants would be expected to update their ISAs, based on as-built conditions and submit the results to the NRC as ISA summaries, along with the applications, following the requirements in § 40.84(b).

Section 40.82(d). This provision proposes requirements to establish management measures. Although the ISA would play a critical role in identifying potential accidents and the IROFS, the performance of an ISA would not, by itself, ensure adequate protection. Thus, in addition to performing an ISA, management measures need to be established to ensure that an effective management system is in place such that IROFS will be available and reliable to perform their function when needed.

As indicated, management measures are functions performed by the licensee, in general on a continuing basis that are applied to IROFS. Management measures address topics such as: (a) Configuration management, (b) maintenance, (c) training and qualifications, (d) procedures, (e) audits and assessments, (f) incident investigations, (g) records management, and (h) other quality assurance elements. For example, changes in a UF6 facility's configuration need to be carefully controlled to ensure consistency among the facility design and operational requirements, the physical configuration, and the facility documentation. Maintenance measures must be in place to ensure the availability and reliability of all IROFS. Training measures must be established to ensure that all personnel relied on for safety are appropriately trained to perform their safety functions. Periodic audits and assessments of licensee safety programs must be performed to ensure that facility operations are conducted in a manner that will adequately protect the worker, the public health and safety, and the environment. When abnormal events occur, investigations of those events must be carried out to determine the root cause and identify corrective actions to prevent their recurrence; this will better ensure that such events do not lead to more serious consequences. To demonstrate compliance with NRC regulations, records that document safety program activities must be maintained for the life of the facility.

The phrase "when needed" is used in § 40.82(d) to acknowledge that a particular safety control need not be continuously functioning. For example, such a control may not be operational during maintenance or calibration testing or may not be required when the process is not operational. But this "when needed" concept does not relieve a licensee from compliance with the performance requirements. For example, if a particular component is out for maintenance, the licensee must consider credible event sequences which may occur under the new conditions, when developing the ISA and identifying IROFS.

Section 40.83 Requirements for New Facilities or New Processes at Existing Facilities

This new section specifies the baseline design criteria (BDC) that licensees of new UF6 facilities would be required to meet and that licensees of existing UF6 facilities would be required to meet when adding new processes to existing facilities. The BDC are based on the existing criteria in 10 CFR 70.64.

Section 40.83(a). This provision would specify nine initial safety design considerations: (1) Quality standards and records; (2) natural phenomena hazards; (3) fire protection; (4) environmental and dynamic effects; (5) chemical protection; (6) emergency capability; (7) utility services; (8) inspection, testing, and maintenance; and (9) instrumentation and controls. Each proposed BDC is discussed below.

(1) The quality standards and records BDC would need to be developed and implemented in accordance with management measures. Management measures that would be applied include the development and implementation of the design to provide adequate assurance that the IROFS are adequate and available when called upon. References to specific, definitive, and adequate commitments in other parts of the submittal, such as management measures, industry programs, or consensus standards may be sufficient. Information would need to be provided as to how appropriate records would be maintained.

(2) The natural phenomena hazards BDC would have to provide for adequate protection against natural phenomena with consideration of the most severe documented historical events for the site. The criteria would have to specifically address how natural phenomena such as earthquakes and volcanoes, stream flooding, coastal flooding, winds (including tornadoes), ice and snow loadings, and temperature extremes were considered in designing the new facility, or adding to an existing facility.

(3) The fire protection BDC would have to provide for adequate protection against fires and explosions. As appropriate, the criteria would need to address how the design considered (a) the use of fire hazards analyses in the ISA and pre-fire planning; (b) the facility design in regard to building construction, fire areas, life safety, and ventilation; (c) process fire safety including explosion protection; (d) fire protection systems including detection and suppression; and e) manual fire suppression capability.

(4) The environmental and dynamic effects BDC would have to address adequate protection from environmental conditions and dynamic effects associated with normal operations, maintenance, testing, and postulated accidents that could lead to the loss of safety functions. The design would have to ensure that IROFS will perform their safety functions under the environmental and dynamic service conditions in which they would be required to function and for the length of time their function would be required. The criteria would also have to include how the design ensures that non-IROFS will not prevent satisfactory accomplishment of safety functions of IROFS.

(5) The chemical protection BDC would have to address adequate protection against chemical risks produced from licensed material, facility conditions which affect safety of licensed material, and hazardous chemicals produced from licensed material.

(6) The emergency capability BDC would have to address how the design of the new facility or process provides for the emergency capability to maintain control of licensed material and hazardous chemicals produced from licensed material during an event. It would also have to address the evacuation of on-site personnel including the design of the facility to allow personnel to evacuate (*e.g.,* time, dose, ease of egress) as well as onsite emergency facilities and services that facilitate the use of available offsite services.

(7) The utility services BDC would have to address how the design of the new facility or process provides for the continued operation of essential utility services. Essential utilities are the support systems that provide for the safety function of the IROFS; *e.g.,* power, air supply, ventilation. The BDC

would have to address methods to ensure continued operation of essential utilities during emergency events.

(8) The inspection, testing, and maintenance BDC would have to address how the design of the new facility or process provides for adequate inspection, testing, and maintenance of IROFS to ensure their availability and reliability to perform their function when needed. The criteria would need to address the possible methods to provide adequate inspection, testing, and maintenance to ensure their availability and reliability. This would need to include the capability for periodic testing and inspection to assess the operability and performance of IROFS, the capability to test the functions of IROFS such as active engineered controls as a completed functioning system and under appropriate design conditions, and the capability to perform needed maintenance actions or to identify system or component maintenance needs to assure availability of IROFS features that are relied upon in the ISA to meet § 40.81 performance requirements.

(9) The instrumentation and controls BDC would have to address the inclusion of these systems in the implementation of IROFS. The criteria would need to include methods to monitor the behavior of IROFS such as failure detection diagnostics (*e.g.,* information read-out in the control room or locally for variables) and when the bypass indication for IROFS is intentionally rendered inoperable.

The BDC are generally an acceptable set of initial design safety considerations, which may not be sufficient to ensure adequate safety for all new processes and facilities. The BDC do not provide relief from compliance with the safety performance requirements of § 40.81. The ISA process is intended to identify additional safety features that may be needed. On the other hand, the NRC recognizes that there may be processes or facilities for which some of the BDC may not be necessary or appropriate, based on the results of the ISA. For these processes and facilities, any design features that are inconsistent with the BDC would need to be identified and justified.

Section 40.83(b). This new provision requires licensees to base their facility and system design and facility layout on practices. The facility and system design must incorporate, to the extent practicable: (1) Preference for the selection of engineered controls over administrative controls to increase overall system reliability, and (2) features that enhance safety by reducing challenges to IROFS. Using the BDC and defense-in-depth practices when building new facilities or adding to existing facilities should result in designs that provide successive levels of protection such that health and safety will not be wholly dependent on any single element of the design, construction, maintenance, or operation of the facility. The net effect of incorporating defense-in-depth practices is a conservatively designed facility and system that will exhibit greater tolerance for failures and external challenges. The risk insights obtained through performance of the ISA can then be used to supplement the final design by focusing attention on the prevention and mitigation of potential high-risk accidents.

Section 40.84 Additional Content of Applications

In addition to the information that currently must be submitted to NRC under § 40.31, for a license application, this new section would specify additional information that must be submitted to demonstrate compliance with the proposed performance requirements. This additional information includes a description of the applicant's safety program and management measures established under § 40.82, and an ISA summary.

Section 40.84(a). This provision would require an applicant to submit, as part of the license application, a description of the applicant's safety program established under § 40.82. This is in addition to what is currently required in § 40.31, Application for specific license.

Section 40.84(b). This new provision supplements the existing requirements in § 40.31(j) to capture the additional hazards posed by operations involving 2000 kg or more of UF6. As previously discussed, accidents involving UF6 can produce HF, a highly reactive and corrosive chemical generated in gaseous form when UF6 interacts with moisture in the air. The HF presents a substantial inhalation and skin absorption hazard to both workers and the public, as clouds of HF can quickly move offsite. Thus, licensees authorized to possess 2000 kg or more of UF6 must either submit an evaluation in accordance with § 40.31(j)(1)(i) and this new provision or an emergency plan pursuant to § 40.31(j)(3). Compliance with this new provision would require the evaluation to also show that an acute chemical exposure from licensed material or hazardous chemicals produced from licensed material due to a release would not result in irreversible or mild transient health effects to a member of the public offsite. In performing such an evaluation, an applicant/licensee may use an AEGL or ERPG standard. This approach is currently being used by fuel cycle facility licensees subject to the 10 CFR part 70 ISA requirements.

Section 40.84(c). This provision would require that an ISA summary be submitted with the license or renewal application (and amendment application as necessary). The ISA summary would not be incorporated in the license.

The ISA summary would have to contain all the items specified below:

(1) *Site:* The site description in the ISA Summary will focus on those factors that could affect safety, such as meteorology (*e.g.,* high winds and flood potential) and seismology.

(2) *Facility:* The facility description in the ISA Summary will focus on areas that could affect safety, and will identify the controlled area boundaries.

(3) *Processes, Hazards and Accident Sequences:* The process description in the ISA Summary must address each process that was analyzed as part of the ISA. This description must include a list of the hazards for each process and the accident sequences that could result from such hazards.

(4) *Demonstration of Compliance with § 40.81:* The ISA Summary must demonstrate compliance with the performance requirements, and describe the management measures.

(5) *Team Qualifications and ISA Methods:* The ISA Summary must discuss the applicant's ISA team qualifications and ISA methods.

(6) *List of IROFS:* The ISA Summary must describe the IROFS for all intermediate- and high-consequence accidents in sufficient detail to permit an understanding of their safety function.

(7) *Chemical Consequence Standards:* The ISA Summary must describe the proposed quantitative standards for assessing the chemical consequence levels specified in § 40.81.

(8) *List of Sole IROFS:* The ISA Summary must identify those IROFS that are the sole item preventing or mitigating an accident for which the consequences could exceed the performance requirements of § 40.81.

(9) *Definitions of* "*Unlikely*"*,* "*Highly Unlikely*" *and* "*Credible*"*:* The ISA Summary must define the terms "unlikely," "highly unlikely," and "credible," as used in the ISA.

The IROFS must be clearly and unambiguously listed in the ISA summary. This list of items is then managed and controlled by the applicant/licensee through the

management measures required by § 40.82(d) to ensure that the IROFS continue to perform the safety function required. The NRC's review includes evaluating the ISA methodology, and the ISA summary, and may be supplemented by reviewing the ISA and other information, as needed, at the licensee's facility. This enables the NRC to better understand the potential hazards at the facility, how the applicant plans to address these hazards, and thereby have confidence in the safety basis supporting the license.

As previously indicated, the ISA summary would be required to be submitted on the docket in conjunction with the license application but would not be considered part of the license. The ISA, on which the ISA summary is based, would be maintained current at the licensee's facility and available for NRC review, but it would not be submitted and docketed. Although the ISA summary will be on the docket, it is not part of the license and can be changed without a license amendment, unless it reflects a change that cannot be made without prior approval, as specified in § 40.86(c) (discussed later in this document). However, the information used to perform the ISA, and the ISA summary, both form integral parts of the safety basis for issuance of the license and therefore must be maintained to adequately represent the current status of the facility.

Section 40.85 Additional Requirements for Approval of License Application

This new section would focus on the factors the NRC would use to determine that requirements in §§ 40.80 through 40.85 have been met. These proposed new regulations are in addition to the existing licensing regulations being introduced into 10 CFR part 40 under the new subpart D.

Section 40.85(a). This provision would require the NRC to approve a license application from an applicant subject to the requirements of the proposed subpart H if the NRC determines that the applicant has complied with the requirements of subpart D of 10 CFR part 40 and §§ 40.80 through 40.85.

Section 40.85(b). This provision details the criteria that the NRC would use for approving ISA-related submissions by existing licensees (*i.e.,* such submissions will be approved if the integrated safety analysis approach and the schedule meet the specified requirements).

Section 40.85(c). This provision details the criteria the NRC would use for approving ISA summaries. These include determining if the requirements of § 40.84(b) are satisfied and based on the information in the ISA summary and if the performance requirements in § 40.81(b), (c) and (d) are satisfied.

Section 40.86 Facility Changes and Change Process

This new section would specify the process for making changes to a UF6 facility's site, structures, systems, equipment, components, and activities of personnel after a license application has been approved. Past incidents at NRC-licensed facilities have been the result of improperly analyzed changes that were not authorized by licensee management or changes that were not adequately understood by facility personnel. Effective control of changes to a facility's site, structures, systems, equipment, components, and activities of personnel is a key element in better ensuring safe operation. Under this process, the licensee can make certain changes without NRC pre-approval. All changes made pursuant to this section must be reflected promptly in on-site documents. This approach is the one now applicable to fuel cycle facilities licensed under 10 CFR part 70.

Section 40.86(a). This provision would require the licensee to establish a configuration management system documented in written procedures to track operational changes made by the licensee. The system would have to assure that prior to implementing any change, its technical basis, impact on safety and other specified factors are evaluated.

Section 40.86(b). This provision would require the licensee, before implementing any change, to determine whether the change requires NRC pre-approval through the license amendment process.

Section 40.86(c). This provision would specify five types of changes that could not be implemented without prior NRC approval. Generally, such changes could have a significant impact on health and safety.

Section 40.86(d). For changes that are found not to require NRC pre-approval, the licensee would be required to submit to the NRC annually, within 30 days after the end of the calendar year, a brief summary of all such changes. For changes that affect the ISA summary, the licensee would be required to submit to the NRC annually, within 30 days after the end of the calendar year, revised ISA summary pages. These yearly updates would allow the NRC staff to maintain relatively current facility and safety information on the docket and to ensure that the ISA summary reflects the current configuration of the facility, thus facilitating the license renewal process (as discussed further in this document).

Section 40.86(e). Licensees who make changes under the provisions of this section would be required to promptly up-date all affected on-site documents.

Section 40.86(f). Records documenting facility changes would be maintained until termination of the license. Such records would include a written evaluation providing the bases for the determination that the changes do not require prior NRC pre-approval.

Section 40.87 Renewal of Licenses

This new section would specify that license renewal applications may incorporate by reference information contained in previous applications, statements, or reports filed with the NRC, provided that these references are clear and specific. In the past, the license renewal process was burdensome to the NRC and the licensee, because all changes made to the facility since the last license renewal would be reviewed at one time. However, maintaining a "living license," as required by proposed § 40.86, is expected to make the review of license renewal applications less burdensome since previously approved information could be incorporated with minimal re-evaluation.

Section 40.88 Additional Reporting Requirements

This new section is based in part on existing Appendix A to 10 CFR part 70 and would establish event reporting requirements for licensees required to conduct ISAs. These requirements would become applicable after the ISA summary had been submitted. The required reports would have to be made by a knowledgeable licensee representative in a manner ensuring timely reporting of events, and licensees would have to provide reasonable assurance that a reliable communication link with the NRC Operations Center is maintained.

The reporting of events supports the NRC's need to be aware of conditions that could result in an imminent danger to the worker or to public health and safety or to the environment. In particular, the NRC needs to be aware of licensee efforts to address potential emergencies. Further, once safe conditions have been restored after an event, the NRC has an interest in disseminating information on the event to the nuclear industry and other interested parties, to reduce the likelihood that the event will occur in the future. Also, in the event of an

accident, the NRC must be able to respond accurately to requests for information by the public and the media. Event reporting helps the NRC evaluate the performance of individual licensees and the industry as a whole in order to fulfill its statutory mandate to protect the health and safety of the worker and the public.

Section 40.88(a). This provision would require licensees to report specified events to the NRC Operations Center within 1 hour of their discovery. These events would be: (1) An acute intake by an individual of 30 mg or greater of uranium in a soluble form; (2) An acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed material that are high-consequence events under the performance requirements; and (3) An event or condition in which no IROFS remain available and reliable to perform their function. One-hour reports must be supplemented with additional information as it becomes available, and must be followed up by a written report to the NRC within 60 days.

Section 40.88(b). This provision would require licensees to report specified events to the NRC Operations Center within 24 hours of their discovery. These events are ones which result in: (1) The facility being in a state that was not analyzed, was improperly analyzed, or is different from that analyzed in the ISA, and which causes a failure to meet the performance requirements; (2) the loss or degradation of one or more IROFS that causes a failure to meet the performance requirements; and (3) an acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed materials that is an intermediate consequence event under the performance requirements. Additional events that must be reported within 24 hours of their discovery are fires that have affected or may have affected one or more IROFS. Twenty-four hour reports must be supplemented with additional information as it becomes available, and must be followed up by a written report to the NRC within 60 days.

Section 40.88(c). This provision would pertain to situations involving a planned news release (or notification to another government agency) by the licensee, which relates to the health and safety of the public or onsite personnel. At the same time that the news release (or notification) is given, the licensee would have to also report the situation to the NRC Operations Center.

Section 40.88(d). This provision specifies information licensees would be required to include in their reports called in to the NRC Operations Center, such as: The caller's name; the date, time, and exact location of the event being reported; a description of the event; actions taken in response to the event; and whether the event is ongoing or has been terminated. The provision would further require that follow-up information be provided to the NRC Operations Center until all information required to be reported is complete.

Section 40.88(e). This provision would pertain to the written reports submitted under § 40.88(a) and (b). In addition to including the information required by § 40.88(d)(1), written reports would include: A discussion of the probable cause of the event, specific information regarding any equipment that failed or malfunctioned, any corrective actions taken to prevent future similar events, the results of any evaluations or assessments of the event, and a discussion of whether the event was previously identified and evaluated in the ISA.

Section 40.89 Backfitting

This new section would establish backfit requirements similar to those in § 70.76. These requirements would apply to the subset of 10 CFR part 40 licensees authorized to possess significant quantities (2000 kilograms or more) of UF6. The backfit provision is being added in accordance with the Commission SRM dated November 30, 2010.

Section 40.89(a). This provision would make the backfit requirements applicable to licensees authorized to possess 2000 kilograms (4400 lb) or more of UF6, and its terms would become effective once such a licensee's ISA summary has been approved by the NRC. The proposed backfit requirements would not be applicable to 10 CFR part 40 licensees who are not authorized to possess 2000 kilograms or more of UF6.

Section 40.89(b). This provision would define backfitting as the modification of, or addition to: (1) Systems, structures, or components of a facility of a licensee subject to ISA requirements; or (2) the procedures or organization required to operate such a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previous NRC staff position. This proposed definition is substantially similar as the one in existing § 70.76(a)(1).

Section 40.89(c). This provision contains identical backfit analysis requirements as in the existing § 70.76(a)(2) through (a)(7). Exceptions to requiring a backfit analysis would be listed in this provision and include: (1) Modifications necessary to bring a facility into compliance with subpart H, a license, the rules or orders of the Commission, or into conformance with written commitments by the licensee; (2) regulatory action necessary to ensure adequate protection to the health and safety of the public and is in accord with the common defense and security; or (3) the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

Other provisions in proposed § 40.89(c): (1) Would require the Commission to require backfitting of a facility if it is necessary to ensure adequate protection to the health and safety of the public; (2) would require the Commission to include a statement of the objectives and reasons for modifications when invoking the exception under § 40.89(a)(3); and (3) would allow, in most cases, for the licensee to choose its own way to achieve compliance with a license or the rules or orders of the Commission, or with written license commitments provided that the objective of compliance or adequate protection is met.

Section 40.89(d). This provision would require the Commission, in the determinations required by Paragraph (a)(2) of this section, to consider how the backfit would be scheduled in light of other ongoing regulatory activities at the facility, and follows the existing requirements in § 70.76(b). Additionally, this provision would require the Commission to consider specific information relevant to the backfit. These factors include: (1) The potential change in the risk to the public from the accidental release of radioactive material and hazardous chemicals produced from such material, and (2) the potential impact on facility employees from exposure to radioactive material and to hazardous chemicals produced from such material.

Section 40.89(e). This provision would prohibit withholding a license during the backfit analyses and is the same as existing § 70.76(c).

Section 40.89(f). This provision is the same as existing § 70.76(d) and would designate the Executive Director for Operations as the party responsible for its implementation. Additionally, it would require that all backfit analyses be approved by the Executive Director for Operations or his or her designee.

Section 40.102 Criminal Penalties

Existing § 40.82 would be re-designated as § 40.102. Additionally, Paragraph (b) of this section would be amended to add the applicable sections in the new subpart H and to reflect the administrative renumbering of 10 CFR part 40.

Section 150.15 Persons Not Exempt

A new Paragraph (a)(10) would be added to support the NRC's determination that licensees who possess or plan to possess 2000 kg or more of UF6 would be exclusively under the NRC's jurisdiction. Since the events of September 11, 2001, major nuclear facilities with hazardous radioactive or chemical materials have received increased security oversight to address the potential heightened threat of sabotage and terrorist attacks. The complex procedural operations at these facilities involve hazardous chemicals as well as nuclear material, making it difficult to separate the additional common defense and security requirements from the program requirements designed to protect public health and safety. The NRC is the only regulatory agency, under the AEA, that is authorized to implement such a unified program.

V. Criminal Penalties

For the purpose of Section 223 of the AEA, the Commission is proposing to amend 10 CFR part 40 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

VI. Agreement State Compatibility

This proposed rule applies only to NRC licensees and therefore contains no components that have Agreement State compatibility.

VII. Plain Language

The Presidential Memorandum "Plain Language in Government Writing" published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** section of this document.

VIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add performance requirements to fuel cycle facilities regulated by 10 CFR part 40 similar to the performance requirements for fuel cycle facilities regulated by 10 CFR part 70. The NRC is not aware of any voluntary consensus standards that address the proposed subject matter of this proposed rule. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain why the standard should be used.

IX. Environmental Impact: Categorical Exclusion

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this proposed rule, because the Commission has concluded on the basis of an environmental assessment that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment.

Licensees are required to protect against the occurrence of or to mitigate the consequences of accidents that could adversely affect workers, the public, or the environment. Implementation of the proposed amendments, including the requirement to protect against events that could damage the environment, is expected to result in a significant improvement in licensees', NRC's, other governmental agencies', and the public's understanding of the risks at these facilities and licensees' ability to ensure that those risks are appropriately controlled. For existing licensees, any deficiencies identified in the ISA would need to be promptly addressed. For new licensees, operations will not begin unless licensees demonstrate an adequate level of protection against potential accidents identified in the ISA. As a result, the safety and environmental impact of the new amendments is positive. There would be less potential adverse impact on the environment from licensed operations carried out under the final rule than if those operations were carried out under the existing 10 CFR part 40 regulation.

The determination of this environmental assessment is that there will be no significant impact to the public from this action. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC by the following methods: (1) Mail comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff; (2) e-mail comments to *Rulemaking.Comments@nrc.gov;* (3) hand deliver comments to 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone 301–415–1677); or (4) fax comments to Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

The NRC has sent a copy of the Environmental Assessment and this proposed rule to every State Liaison Officer and requested their comments on the Environmental Assessment. The Environmental Assessment may be examined at the NRC's PDR, O–1F21, 11555 Rockville Pike, Rockville, MD 20852. The environmental assessment is available electronically under ADAMS Accession Number ML102380248.

X. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). This rule has been submitted to the Office of Management and Budget (OMB) for approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR part 40—Integrated Safety Analysis, Proposed Rule.

The form number if applicable: N/A.

How often the collection is required: One hour, 24 hours, 60 days and annually.

Who will be required or asked to report: Licensees Authorized to Possess 2000 Kilograms (4400 lb) or More of Uranium Hexafluoride.

An estimate of the number of annual responses: 7.4.

The estimated number of annual respondents: 1.

An estimate of the total number of hours needed annually to complete the requirement or request: 295.

Abstract: The NRC is proposing to amend its regulations to amend 10 CFR part 40 to require current licensees and future applicants who are authorized to possess 2000 kilograms or more of uranium hexafluoride to perform an ISA. The proposed amendments would require licensees to submit several one-time reports including a plan of action and an ISA summary. Annual reporting

requirements would be reduced by this proposed rulemaking by allowing the licensees to amend aspects of their licenses through the ISA process without a formal amendment request to the NRC. Record keeping burden would be increased by the requirement to perform an ISA and document changes to it as well as records of training and other necessary actions. Event reporting under this proposed rule would require licensees to report at 1 hour, 24 hours, and 60 day intervals. The information included in the applications, reports and records required by the proposed rule would be mandatory and would be reviewed by the NRC staff to assess the adequacy of the applicant's or licensee's physical plant, equipment, organization, training, experience, procedures and plans for protection of public health and safety.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

The public may examine and have copied, for a fee, publicly available documents, including the draft supporting statement, at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. The OMB clearance package and rule are available at the NRC's Web site, *http://www.nrc.gov/public-involve/doc-comment/omb/index.html,* for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the issues previously discussed in this section, by June 16, 2011 to the Records and FOIA/Privacy Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *Infocollects.Resources@NRC.gov* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 3150–0020, Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal rulemaking Web site, *http://www.regulations.gov,* Docket ID NRC–2009–0079. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC by the following methods: (1) Mail comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff; (2) e-mail comments to *Rulemaking.Comments@nrc.gov;* (3) hand deliver comments to 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone 301–415–1677); or (4) fax comments to Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

The analysis is available for inspection in the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. The draft regulatory analysis is available electronically under ADAMS Accession Number ML102380248.

XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The majority of companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIII. Backfit Analysis

The backfit rule (which is found in the regulations at §§ 50.109, 70.76, 72.62, 76.76, and in 10 CFR part 52) does not apply to this proposed rule. Title 10 of the CFR part 40 does not contain a backfit requirement. Therefore, a backfit analysis is not required.

List of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 40 and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

Subpart A—General Provisions

2. The undesignated subject heading that precedes § 40.1 is designated as "Subpart A–General Provisions".

3. A new § 40.3a is added to read as follows:

§ 40.3a Denial of licensing by Agreement States.

After [insert effective date of final rule], Agreement States may not issue new licenses covering the possession of 2000 kilograms (4400 lb) or more of uranium hexafluoride.

4. In § 40.4, the definitions *Acute, Available and reliable to perform their function when needed, Configuration management, Defense-in-depth practices, Hazardous chemicals produced from licensed material, Integrated safety analysis, Integrated safety analysis summary, Items relied on for safety, Management measures, Unacceptable performance deficiencies,* and *Worker* are added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Acute, as used in this part, means a single radiation dose or chemical exposure event or multiple radiation dose or chemical exposure events occurring within a short time (24 hours or less).

* * * * *

Available and reliable to perform their function when needed, as used in subpart H of this part, means that, based on the analyzed, credible conditions in the integrated safety analysis, items relied on for safety will perform their intended safety function when needed, and management measures will be implemented that ensure compliance with the performance requirements of § 40.81, considering factors such as necessary maintenance, operating limits, common-cause failures, and the likelihood and consequences of failure or degradation of the items and measures.

* * * * *

Configuration management means a management measure that provides oversight and control of design information, safety information, and records of modifications (both temporary and permanent) that might impact the ability of items relied on for safety to perform their functions when needed.

* * * * *

Defense-in-depth practices means a design philosophy, applied from the outset and through completion of the design, that is based on providing successive levels of protection such that health and safety will not be wholly dependent upon any single element of the design, construction, maintenance, or operation of the facility. The net effect of incorporating defense-in-depth practices is a conservatively designed facility and system that will exhibit greater tolerance to failures and external challenges. The risk insights obtained through performance of the integrated safety analysis can then be used to supplement the final design by focusing attention on the prevention and mitigation of the higher-risk potential accidents.

* * * * *

Hazardous chemicals produced from licensed materials means substances having licensed material as precursor compound(s) or substances that physically or chemically interact with licensed materials; and that are toxic, explosive, flammable, corrosive, or reactive to the extent that they can endanger life or health if not adequately controlled. These include substances commingled with licensed material, and include substances such as hydrogen fluoride that is produced by the reaction of uranium hexafluoride and water, but do not include substances prior to process addition to licensed material or after process separation from licensed material.

Integrated safety analysis means a systematic analysis to identify facility and external hazards and their potential for initiating accident sequences, the potential accident sequences, their likelihood and consequences, and the items relied on for safety. As used here, integrated means joint consideration of, and protection from, all relevant hazards, including radiological, fire, and chemical. The NRC's ISA requirement is limited to consideration of the effects of all relevant hazards on radiological safety or chemical hazards directly associated with NRC licensed radioactive material. An integrated safety analysis can be performed process by process, but all processes must be integrated, and process interactions considered.

Integrated safety analysis summary means a document or documents submitted with the license application, license amendment application, license renewal application, or pursuant to § 40.82(c)(3)(ii) that provides a synopsis of the results of the integrated safety analysis and contains the information specified in § 40.84(b). The integrated safety analysis summary can be submitted as one document for the entire facility, or as multiple documents that cover all relevant portions and processes of the facility.

Items relied on for safety mean structures, systems, equipment, components, and activities of personnel that are relied on to prevent potential accidents at a facility that could exceed the performance requirements in § 40.81 or to mitigate their potential consequences. This does not limit the licensee from identifying additional structures, systems, equipment, components, or activities of personnel (*i.e.,* beyond those in the minimum set necessary for compliance with the performance requirements) as items relied on for safety.

* * * * *

Management measures mean the functions performed by the licensee, generally on a continuing basis, that are applied to items relied on for safety, to ensure the items are available and reliable to perform their functions when needed. Management measures include configuration management, maintenance, training and qualifications, procedures, audits and assessments, incident investigations, records management, and other quality assurance elements.

* * * * *

Unacceptable performance deficiencies mean deficiencies in the items relied on for safety or the management measures that need to be corrected to ensure an adequate level of protection as defined in § 40.81(b) or (c).

* * * * *

Worker, when used in subpart H of this part, means an individual who receives an occupational dose as defined in § 20.1003 of this chapter.

5. In § 40.8, paragraph (b) is revised to read as follows:

§ 40.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 40.9, 40.23, 40.25, 40.26, 40.27, 40.31, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.51, 40.60, 40.61, 40.64, 40.65, 40.66, 40.67, 40.80, 40.81, 40.82, 40.83, 40.84, 40.86, 40.87, 40.88, 40.89, and appendix A to this part.

* * * * *

Subpart B—General Licenses

6. The undesignated subject heading that precedes § 40.20 is designated as "Subpart B—General Licenses".

7. In § 40.26, paragraph (c)(1) is revised to read as follows:

§ 40.26 General license for possession and storage of byproduct material as defined in this part.

* * * * *

(c) * * *

(1) The provisions of parts 19, 20, and 21 of this chapter, and §§ 40.1, 40.2a, 40.3, 40.4, 40.5, 40.6, 40.41, 40.46, 40.60, 40.61, 40.62, 40.63, 40.65, 40.71, and 40.101; and

* * * * *

Subpart C—License Applications

8. The undesignated subject heading that precedes § 40.31 is designated as "Subpart C—License Applications".

Subpart D—Licenses

9. The undesignated subject heading that precedes § 40.41 is designated as "Subpart D—Licenses".

Subpart E—Transfer of Source Material

10. The undesignated subject heading that precedes § 40.51 is designated as "Subpart E—Transfer of Source Material".

Subpart F—Records, Reports, and Inspections

11. The undesignated subject heading that precedes § 40.60 is designated as "Subpart F—Records, Reports, and Inspections".

Subpart G—Modification and Revocation of Licenses

12. The undesignated subject heading that precedes § 40.71 is designated as "Subpart G—Modification and Revocation of Licenses".

Subpart I—Enforcement

§ 40.81 and 40.82 [Redesignated as §§ 40.101 and 40.102].

13. Sections 40.81 and 40.82 are redesignated as §§ 40.101 and 40.102, respectively.

14. The undesignated subject heading that precedes the newly designated § 40.101 is designated as "Subpart I—Enforcement".

15. In the newly redesignated § 40.102, paragraph (b) is revised to read as follows:

§ 40.102 Criminal penalties.

* * * * *

(b) The regulations in part 40 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 40.1, 40.2, 40.2a, 40.4, 40.5, 40.6, 40.8, 40.11, 40.12, 40.13, 40.14, 40.20, 40.21, 40.31, 40.32, 40.34, 40.43, 40.44, 40.45, 40.71, 40.85, 40.87, 40.101, and 40.102.

16. A new subpart H is added after § 40.71 to read as follows:

Subpart H—Additional Requirements for Certain Licensees Authorized to Possess 2000 Kilograms (4400 lb) or More of Uranium Hexafluoride

Sec.

40.80 Applicability.
40.81 Performance requirements.
40.82 Safety program and integrated safety analysis.
40.83 Requirements for new facilities or new processes at existing facilities.
40.84 Additional content of applications.
40.85 Additional requirements for approval of license application.
40.86 Facility changes and change process.
40.87 Renewal of licenses.
40.88 Additional reporting requirements.
40.89 Backfitting.

Subpart H—Additional Requirements for Certain Licensees Authorized to Possess 2000 Kilograms (4400 lb) or More of Uranium Hexafluoride

§ 40.80 Applicability.

The regulations in this subpart apply, in addition to other applicable Commission regulations, to each applicant or licensee that is or plans to be authorized to possess 2000 kilograms (4400 lb) or more of uranium hexafluoride. The regulations in this subpart do not apply to licensees that are undergoing decommissioning under the provisions of § 40.42 on [Insert the effective date of this regulation].

§ 40.81 Performance requirements.

(a) Each applicant or licensee must evaluate, in the integrated safety analysis performed in accordance with § 40.82, its compliance with the performance requirements in paragraphs (b), (c), and (d) of this section.

(b) The risk of each credible high-consequence event must be limited. Engineered controls, administrative controls, or both, subject to § 40.83(b)(1), must be applied to the extent needed to reduce the likelihood of occurrence of the event so that, upon implementation of such controls, the event is highly unlikely or its consequences are less severe than those in paragraphs (b)(1) through (b)(4) of this section. High consequence events are those internally or externally initiated events that result in:

(1) An acute worker dose of 1 Sv (100 rem) or greater total effective dose equivalent;

(2) An acute dose of 0.25 Sv (25 rem) or greater total effective dose equivalent to any individual located outside the controlled area as specified in paragraph (e) of this section;

(3) An intake of 30 mg or greater of uranium in soluble form by any individual located outside the controlled area as specified in paragraph (e) of this section; or

(4) An acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed material that:

(i) Could endanger the life of a worker; or

(ii) Could lead to irreversible or other serious, long-lasting health effects to any individual located outside the controlled area as specified in paragraph (e) of this section. If an applicant or licensee possesses or plans to possess quantities of material capable of such chemical exposures, then the applicant or licensee must propose appropriate quantitative standards for these health effects, as part of the information submitted under § 40.84.

(c) The risk of each credible intermediate-consequence event must be limited. Engineered controls, administrative controls, or both must be applied to the extent needed so that, upon implementation of such controls, the event is unlikely or its consequences are less than those in paragraphs (c)(1) through (c)(4) of this section. Intermediate consequence events are those internally or externally initiated events that are not high consequence events that result in:

(1) An acute worker dose of 0.25 Sv (25 rem) or greater total effective dose equivalent;

(2) An acute dose of 0.05 Sv (5 rem) or greater total effective dose equivalent to any individual located outside the controlled area as specified in paragraph (e) of this section;

(3) A 24-hour averaged release of radioactive material outside the restricted area in concentrations exceeding 5000 times the values in Table 2 of Appendix B to part 20 of this chapter; or

(4) An acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed material that:

(i) Could lead to irreversible or other serious, long-lasting health effects to a worker; or

(ii) Could cause mild transient health effects to any individual located outside the controlled area as specified in paragraph (e) of this section. If an applicant or licensee possesses or plans to possess quantities of material capable of such chemical exposures, then the applicant or licensee must propose appropriate quantitative standards for these health effects, as part of the information submitted under § 40.84.

(d) Each engineered or administrative control or control system necessary to comply with paragraphs (b), (c), or (d) of this section must be designated as an item relied on for safety. The safety program, established and maintained under § 40.82, must ensure that each item relied on for safety will be available and reliable to perform its intended function when needed and in the context of the performance requirements of this section.

(e) Each licensee must establish a controlled area, as defined in § 20.1003 of this chapter. In addition, the licensee must retain the authority to exclude or

remove personnel and property from the area. For the purpose of complying with the performance requirements of this section, individuals who are not workers, as defined in § 40.4, may be permitted to perform ongoing activities (*e.g.,* at a facility not related to the licensed activities) in the controlled area, if the licensee:

(1) Demonstrates and documents, in the integrated safety analysis, that the risk for those individuals at the location of their activities does not exceed the performance requirements of paragraphs (b)(2), (b)(3), (b)(4)(ii), (c)(2), and (c)(4)(ii) of this section; or

(2) Provides training to these individuals that satisfies the requirements of § 19.12(a)(1) through (a)(5) of this chapter and ensures that they are aware of the risks associated with accidents involving the licensed activities as determined by the integrated safety analysis, and conspicuously posts and maintains notices stating where these individuals may examine the information contained in § 19.11(a) of this chapter. Under these conditions, the performance requirements for workers specified in paragraphs (b) and (c) of this section may be applied to these individuals.

§ 40.82 Safety program and integrated safety analysis.

(a) *Safety program.* (1) Each licensee or applicant must establish and maintain a safety program that demonstrates compliance with the performance requirements of § 40.81. The safety program may be graded such that management measures applied are graded commensurate with the reduction of the risk attributable to that item. Three elements of this safety program, namely, process safety information, integrated safety analysis, and management measures, are described in paragraphs (b) through (d) of this section.

(2) Each licensee or applicant must establish and maintain records that demonstrate compliance with the requirements of paragraphs (b) through (d) of this section.

(3) Each licensee or applicant must maintain records of failures readily retrievable and available for NRC inspection, documenting each discovery that an item relied on for safety or management measure has failed to perform its function upon demand or has degraded such that the performance requirements of § 40.81 are not satisfied. These records must identify the item relied on for safety or management measure that has failed and the safety function affected, the date of discovery, date (or estimated date) of the failure, duration (or estimated duration) of the time that the item was unable to perform its function, any other affected items relied on for safety or management measures and their safety function, affected processes, cause of the failure, whether the failure was in the context of the performance requirements or upon demand or both, and any corrective or compensatory action that was taken. A failure must be recorded at the time of discovery and the record of that failure updated promptly upon the conclusion of each failure investigation of an item relied on for safety or management measure.

(b) *Process safety information.* Each licensee or applicant must maintain process safety information to enable the performance and maintenance of an integrated safety analysis. This process safety information must include information pertaining to the hazards of the materials used or produced in the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(c) *Integrated safety analysis*—(1) *Requirements.* Each licensee or applicant shall conduct and maintain an integrated safety analysis that is of appropriate detail for the complexity of the process and identifies:

(i) Radiological hazards related to possessing or processing licensed material at its facility;

(ii) Chemical hazards of licensed material and hazardous chemicals produced from licensed material;

(iii) Facility hazards that could affect the safety of licensed materials and thus present an increased risk due to licensed material or hazardous chemicals produced from licensed material;

(iv) Potential accident sequences caused by process deviations or other events internal to the facility and credible external events, including natural phenomena;

(v) The consequence and the likelihood of occurrence of each potential accident sequence as specified in paragraph (c)(1)(iv) of this section, and the methods used to determine the consequences and likelihoods; and

(vi) Each item relied on for safety as specified in § 40.81(d), the characteristics of its preventive, mitigative, or other safety function, and the assumptions and conditions under which the item is relied upon to support compliance with the performance requirements of § 40.81.

(2) *Integrated safety analysis team qualifications.* To assure the adequacy of the integrated safety analysis, the analysis must be performed by a team with expertise in engineering and process operations. The team must include at least one person who has experience and knowledge specific to each process being evaluated, and persons who have experience in radiation safety, fire safety, and chemical process safety. One member of the team must be knowledgeable in the specific integrated safety analysis methodology being used.

(3) *Requirements for existing licensees.* Individuals holding an NRC license on [insert effective date of final rule] shall, with regard to existing licensed activities:

(i) Submit for NRC approval, within [insert date six months after the effective date of final rule], a plan that describes the integrated safety analysis approach that will be used, the processes that will be analyzed, and the schedule for completing the analysis of each process.

(ii) Complete an integrated safety analysis within [insert date 18 months after effective date of final rule], unless an approved plan submitted under paragraph (c)(3)(i) of this section, authorizes an alternative schedule.

(iii) Submit for NRC approval, an integrated safety analysis summary within [insert date 18 months after effective date of final rule], unless an approved plan submitted under paragraph (c)(3)(i) of this section, authorizes an alternative schedule. The integrated safety analysis summary must include a description of the management measures identified in this section.

(iv) Correct all unacceptable performance deficiencies within [insert date 3 years after effective date of final rule]. The Commission may approve a request for an alternative schedule for completing the correction of unacceptable performance deficiencies if the Commission determines that the alternative is warranted by consideration of the following:

(A) Adequate compensatory measures have been established;

(B) Whether it is technically feasible to complete the correction of the unacceptable performance deficiencies within the required time;

(C) Other site-specific factors which the Commission may consider appropriate on a case-by-case basis and that are beyond the control of the licensee.

(v) Pending the correction of unacceptable performance deficiencies identified during the conduct of the integrated safety analysis, the licensee must implement appropriate compensatory measures to ensure adequate protection.

(d) *Management measures.* Each applicant or licensee must establish management measures to ensure compliance with the performance requirements of § 40.81. The measures applied to a particular engineered or administrative control or control system may be graded commensurate with the reduction of the risk attributable to that control or control system. The management measures must ensure that engineered and administrative controls and control systems that are identified as items relied on for safety pursuant to § 40.81(d) are designed, implemented, and maintained, as necessary, to ensure they are available and reliable to perform their function when needed, to comply with the performance requirements of § 40.81.

§ 40.83 Requirements for new facilities or new processes at existing facilities.

(a) *Baseline design criteria.* Each prospective applicant or licensee must address the following baseline design criteria in the design of new facilities. Each existing licensee must address the following baseline design criteria in the design of new processes at existing facilities that require a license amendment under § 40.86. The baseline design criteria must be applied to the design of new facilities and new processes, but do not require retrofits to existing facilities or existing processes (*e.g.,* those housing or adjacent to the new process); however, all facilities and processes must comply with the performance requirements in § 40.81. Licensees must maintain the application of these criteria unless the analysis performed as specified in § 40.82(c) demonstrates that a given item is not relied on for safety or does not require adherence to the specified criteria.

(1) *Quality standards and records.* The design must be developed and implemented in accordance with management measures, to provide adequate assurance that items relied on for safety will be available and reliable to perform their function when needed. Appropriate records of these items must be maintained by or under the control of the licensee throughout the life of the facility.

(2) *Natural phenomena hazards.* The design must provide for adequate protection against natural phenomena with consideration of the most severe documented historical events for the site.

(3) *Fire protection.* The design must provide for adequate protection against fires and explosions.

(4) *Environmental and dynamic effects.* The design must provide for adequate protection from environmental conditions and dynamic effects associated with normal operations, maintenance, testing, and postulated accidents that could lead to loss of safety functions.

(5) *Chemical protection.* The design must provide for adequate protection against chemical risks produced from licensed material, facility conditions which affect the safety of licensed material, and hazardous chemicals produced from licensed material.

(6) *Emergency capability.* The design must provide for emergency capability to maintain control of:

(i) Licensed material and hazardous chemicals produced from licensed material;

(ii) Evacuation of on-site personnel; and

(iii) Onsite emergency facilities and services that facilitate the use of available offsite services.

(7) *Utility services.* The design must provide for continued operation of essential utility services.

(8) *Inspection, testing, and maintenance.* The design of items relied on for safety must provide for adequate inspection, testing, and maintenance, to ensure their availability and reliability to perform their function when needed.

(9) *Instrumentation and controls.* The design must provide for inclusion of instrumentation and control systems to monitor and control the behavior of items relied on for safety.

(b) *Design and layout.* Facility and system design and facility layout must be based on defense-in-depth practices. The design must incorporate, to the extent practicable:

(1) Preference for the selection of engineered controls over administrative controls to increase overall system reliability; and

(2) Features that enhance safety by reducing challenges to items relied on for safety.

§ 40.84 Additional content of applications.

(a) In addition to the contents required by § 40.31, each license application must include a description of the applicant's safety program established under § 40.82.

(b) In any evaluation submitted under § 40.31(j)(1)(i), licensees and applicants must also show that, in the event of a release, an acute chemical exposure from licensed material or hazardous chemicals produced from licensed materials would not result in irreversible or mild transient health effects to a member of the public offsite. If such an evaluation is not submitted, licensees and applicants must submit an emergency plan pursuant to § 40.31(j)(3).

(c) The integrated safety analysis summary must be submitted with the license or renewal application (and amendment application as necessary), but will not be incorporated in the license. However, changes to the integrated safety analysis summary are subject to the § 40.86 requirements. The integrated safety analysis summary must contain:

(1) A general description of the site with emphasis on those factors that could affect safety (*i.e.,* meteorology, seismology);

(2) A general description of the facility with emphasis on those areas that could affect safety, including an identification of the controlled area boundaries;

(3) A description of each process (defined as a single reasonably simple integrated unit operation within an overall production line) analyzed in the integrated safety analysis in sufficient detail to understand the theory of operation; and, for each process, the hazards that were identified in the integrated safety analysis as specified in § 40.82(c)(1)(i) through (c)(1)(iii) and a general description of the types of accident sequences considered for that process;

(4) Information that demonstrates the licensee's compliance with the performance requirements of § 40.81, including a description of the management measures and, if applicable, the requirements of § 40.83;

(5) A description of the team, qualifications, and the methods used to perform the integrated safety analysis;

(6) A list briefly describing each item relied on for safety which is identified as specified in § 40.81(d) in sufficient detail to understand their functions in relation to the performance requirements of § 40.81;

(7) A description of the proposed quantitative standards used to assess the consequences to an individual from acute chemical exposure to licensed material or chemicals produced from licensed materials which are on-site, or expected to be on-site as described in §§ 40.81(b)(4) and (c)(4);

(8) A descriptive list that identifies all items relied on for safety that are the sole item preventing or mitigating an accident sequence that exceeds the performance requirements of § 40.81; and

(9) A description of the definitions of unlikely, highly unlikely, and credible as used in the evaluations in the integrated safety analysis.

§ 40.85 Additional requirements for approval of license application.

(a) A license application from an applicant subject to the requirements of this subpart will be approved if the Commission determines that the applicant has complied with the license requirements (subpart D) of this part and §§ 40.80 through 40.85.

(b) Submittals by existing licensees in accordance with § 40.82(c)(3)(i) will be approved if the Commission determines that:

(1) The integrated safety analysis approach is in accordance with the requirements of §§ 40.81, 40.82(c)(1), and 40.82(c)(2); and

(2) The schedule is in compliance with § 40.82(c)(3)(ii).

(c) Integrated safety analysis summaries submitted by licensees will be approved if the Commission determines that:

(1) The requirements of § 40.84(b) are satisfied; and

(2) The performance requirements in §§ 40.81(b), (c) and (d) are satisfied, based on the information in the integrated safety analysis summary, together with other information submitted to the NRC or available to the NRC at the licensee's site.

§ 40.86 Facility changes and change process.

(a) The licensee must establish a configuration management system to evaluate, implement, and track each change to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel. This system must be documented in written procedures and must assure that the following are evaluated prior to implementing any change:

(1) The technical basis for the change;

(2) Impact of the change on safety and health or control of licensed material;

(3) Modifications to existing operating procedures including any necessary training or retraining before operation;

(4) Authorization requirements for the change;

(5) For temporary changes, the approved duration (*e.g.,* expiration date) of the change; and

(6) The impacts or modifications to the integrated safety analysis, integrated safety analysis summary, or other safety program information, developed in accordance with § 40.82.

(b) Any change to site, structures, processes, systems, equipment, components, computer programs, and activities of personnel must be evaluated by the licensee as specified in paragraph (a) of this section, before the change is implemented. The evaluation of the change must determine, before the change is implemented, if an amendment to the license is required to be submitted in accordance with § 40.44.

(c) The licensee may make changes to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel, without prior Commission approval, if the change does not:

(1) Create new types of accident sequences that, unless mitigated or prevented, would exceed the performance requirements of § 40.81 and that have not previously been described in the integrated safety analysis summary;

(2) Use new processes, technologies, or control systems for which the licensee has no prior experience;

(3) Remove, without at least an equivalent replacement of the safety function, an item relied on for safety that is listed in the integrated safety analysis summary and is necessary for compliance with the performance requirements of § 40.81;

(4) Alter any item relied on for safety, listed in the integrated safety analysis summary, that is the sole item preventing or mitigating an accident sequence that exceeds the performance requirements of § 40.81; or

(5) Violate the requirements of this section, or any license condition, or order.

(d)(1) For changes that require pre-approval under this section, the licensee must submit an amendment request to the NRC in accordance with §§ 40.44 and 40.84.

(2) For changes that do not require pre-approval under this section, the licensee must submit to the NRC annually, within 30 days after the end of the calendar year during which the changes occurred, a brief summary of all changes to the records required by § 40.82(a)(2).

(3) For all changes that affect the integrated safety analysis summary, the licensee must submit to the NRC annually, within 30 days after the end of the calendar year during which the changes occurred, revised integrated safety analysis summary pages.

(e) If a change covered by this section is made, the affected on-site documentation must be updated promptly.

(f) The licensee must maintain records of changes to its facility carried out under this section. These records must include a written evaluation that provides the bases for the determination that the changes do not require prior Commission approval under paragraph (c) or (d) of this section. These records must be maintained until termination of the license.

§ 40.87 Renewal of licenses.

Applications for renewal of a license must be filed in accordance with § 2.109 of this chapter, and §§ 40.43 and 40.85. Information contained in previous applications, statements, or reports filed with the Commission under the license may be incorporated by reference, provided that these references are clear and specific.

§ 40.88 Additional reporting requirements.

Licensees who are required to conduct an integrated safety analysis must comply with the following reporting requirements (except for paragraphs (a)(1), (a)(2), and (b)(4) of this section), after they have submitted an integrated safety analysis summary. Licensees must comply with paragraphs (a)(1), (a)(2), and (b)(4) of this section after [insert effective date of final rule]. Reports must be made by a knowledgeable licensee representative and by any method that will ensure compliance with the required time period for reporting. Licensees must provide reasonable assurance that reliable communication with the NRC Operations Center is available during events that trigger these reporting requirements.

(a) *One-hour reports.* In addition to the events described in § 40.60(a) that must be reported within 4 hours of discovery, the following events must be reported to the NRC Operations Center within 1 hour of discovery, supplemented with the information described in paragraph (d)(1) of this section as it becomes available, followed by a written report within 60 days:

(1) An acute intake by an individual of 30 mg or greater of uranium in a soluble form.

(2) An acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed material that exceeds the quantitative standards established to satisfy the requirements in § 40.81(b)(4).

(3) An event or condition such that no items relied on for safety, as documented in the integrated safety analysis summary, remain available and reliable, in an accident sequence evaluated in the integrated safety analysis, to perform their function in the context of the performance requirements in §§ 40.81(b) and (c).

(b) *Twenty-four hour reports.* In addition to the events described in § 40.60(b), the following events must also be reported to the NRC Operations Center within 24 hours of discovery, supplemented with the information

described in paragraph (d)(1) of this section as it becomes available, followed by a written report within 60 days:

(1) Any event or condition that results in the facility being in a state that was not analyzed, was improperly analyzed, or is different from that analyzed in the integrated safety analysis, and which results in failure to meet the performance requirements of § 40.81.

(2) Loss or degradation of items relied on for safety that results in failure to meet the performance requirement of § 40.81.

(3) An acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed materials that exceeds the quantitative standards that satisfy the requirements of § 40.81(c)(4).

(4) Any natural phenomenon or other external event, including fires internal and external to the facility that has affected or may have affected the intended safety function or availability or reliability of one or more items relied on for safety.

(c) *Concurrent reports.* Any event or situation, related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other government agencies has been or will be made, must be reported to the NRC Operations Center concurrent to the news release or other notification.

(d) *Follow-up reports to the NRC Operations Center.* (1) To the extent that the information is available at the time of notification, all reports called in to the NRC Operations Center must include:

(i) Caller's name, position title, and call-back telephone number;

(ii) Date, time, and exact location of the event;

(iii) Description of the event, including:

(A) Radiological or chemical hazards involved, including isotopes, quantities, and chemical and physical form of any material released;

(B) Actual or potential health and safety consequences to the workers, the public, and the environment, including relevant chemical and radiation data for actual personnel exposures to radiation or radioactive materials or hazardous chemicals produced from licensed materials (*e.g.,* level of radiation exposure, concentration of chemicals, and duration of exposure);

(C) The sequence of occurrences leading to the event including degradation or failure of structures, systems, equipment, components, and activities of personnel relied on to prevent potential accidents or mitigate their consequences; and

(D) Whether the remaining structures, systems, equipment, components, and activities of personnel relied on to prevent potential accidents or mitigate their consequences are available and reliable to perform their functions;

(iv) External conditions affecting the event;

(v) Additional actions taken by the licensee in response to the event;

(vi) Status of the event (*e.g.,* whether the event is on-going or was terminated);

(vii) Current and planned site status, including any declared emergency class;

(viii) Notifications, related to the event, that were made or are planned to any local, State, or other Federal agencies; and

(ix) Status of any press releases related to the event that were made or are planned.

(2) Follow-up information in the reports called in to the NRC Operations Center must be provided until all information required to be reported is complete.

(e) *Written reports.* Written reports required by paragraphs (a) and (b) of this section are subject to the following requirements:

(1) These written reports must be sent to the NRC's Document Control Desk, using an appropriate method listed in § 40.5(a), with a copy to the appropriate NRC regional office listed in Appendix D to part 20 of this chapter.

(2) The reports must include the following:

(i) Complete applicable information required by paragraph (d)(1) of this section;

(ii) Probable cause of the event, including all factors that contributed to the event and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(iii) Corrective actions taken or planned to prevent occurrence of similar or identical events in the future and the results of any evaluations or assessments; and

(iv) Whether the event was identified and evaluated in the integrated safety analysis.

§ 40.89 Backfitting.

(a) *Applicability.* The requirements in this section apply with respect to those facilities of licensees who are authorized to possess 2000 kilograms (4400 lb) or more of uranium hexafluoride, and are applicable once such a licensee's ISA summary has been approved by the NRC pursuant to § 40.85.

(b) *Definition of backfiting.* Backfitting is defined as the modification of, or addition to, systems, structures, or components of a facility of a licensee subject to ISA requirements; or to the procedures or organization required to operate such a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previous NRC staff position.

(c) *Backfit analysis.* (1) Except as provided in paragraph (c)(3) of this section, the Commission shall require a systematic and documented analysis for backfits which it seeks to impose.

(2) Except as provided in paragraph (c)(3) of this section, the Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (d) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.

(3) The provisions of paragraphs (c)(1) and (c)(2) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (c)(2) of this section do not apply where the Commission finds and declares, with appropriately documented evaluation for its finding, any of the following:

(i) That a modification is necessary to bring a facility into compliance with subpart H of this part;

(ii) That a modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by the licensee;

(iii) That regulatory action is necessary to ensure that the facility either provides adequate protection to the health and safety of the public, or is in accord with the common defense and security; or

(iv) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(4) The Commission shall always require the backfitting of a facility if it determines that the regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

(5) The documented evaluation required by paragraph (c)(3) of this section must include a statement of the objectives of and reasons for the

modification and the basis for invoking the exception. If immediate effective regulatory action is required, then the documented evaluation may follow, rather than precede, the regulatory action.

(6) If there are two or more ways to achieve compliance with a license or the rules or orders of the Commission, or with written license commitments, or there are two or more ways to reach an adequate level of protection, then ordinarily the licensee is free to choose the way that best suits its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(d) *Considerations to be addressed in backfit analysis.* In reaching the determination required by paragraph (c)(2) of this section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the facility and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(1) Statement of the specific objectives that the proposed backfit is designed to achieve;

(2) General description of the activity that would be required by the licensee in order to complete the backfit;

(3) Potential change in the risk to the public from the accidental release of radioactive material and hazardous chemicals produced from licensed material;

(4) Potential impact on facility employees from radiological exposure or exposure to hazardous chemicals produced from licensed material;

(5) Installation and continuing costs associated with the backfit, including the cost of facility downtime;

(6) The potential safety impact of changes in facility or operational complexity, including the relationship to proposed and existing regulatory requirements;

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(8) The potential impact of differences in facility type, design, or age on the relevancy and practicality of the proposed backfit; and

(9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(e) *Prohibition on withholding license amendment or ISA approval.* No license amendment or ISA approval will be withheld during the pendency of backfit analyses required by the Commission's rules.

(f) *Authority of the EDO.* The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his or her designee.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

17. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073).

Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

18. In § 150.15, paragraph (a)(10) is added to read as follows:

§ 150.15 Persons not exempt.

(a) * * *

(10) Possession of 2000 kilograms (4400 lb) or more of uranium hexafluoride.

* * * * *

Dated at Rockville, Maryland, this 6th day of May 2011.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–11927 Filed 5–16–11; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AD81

Retail Foreign Exchange Transactions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing regulations that would impose requirements for foreign currency futures, options on futures, and options that an insured depository institution supervised by the Federal Deposit Insurance Corporation engages in with retail customers. Pursuant to section 742(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, such transactions will be prohibited as of July 16, 2011, in the absence of the proposed requirements. The proposed regulations would also impose requirements on other foreign currency transactions that are functionally or economically similar to futures, options on futures, or options. These similar transactions include so-called "rolling spot" transactions that an individual enters into with a foreign currency dealer, usually through the Internet or other electronic platform, to transact in foreign currency. The regulations would not apply to traditional foreign currency forwards or spot transactions that a depository institution engages in with business customers to hedge foreign exchange risk.

DATES: Comments must be received by June 16, 2011.

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

- *Agency Web Site: http:www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include "Retail Foreign Exchange Transactions" in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EDT).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Nancy W. Hunt, Associate Director, (202) 898–6643, Bobby R. Bean, Chief,

Policy Section, (202) 898–6705, John Feid, Senior Capital Markets Specialist, (202) 898–8649, Division of Risk Management Supervision, David N. Wall, Assistant General Counsel, (703) 562–2440, Thomas Hearn, Counsel, (202) 898–6967, Diane Nguyen, Counsel, (703) 562–6102, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).[1] As amended by the Dodd-Frank Act,[2] the Commodity Exchange Act (CEA) provides that a United States financial institution [3] for which there is a Federal regulatory agency [4] shall not enter into, or offer to enter into, a transaction described in section 2(c)(2)(B)(i)(I) of the CEA with a retail customer [5] except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe [6] (a "retail forex rule"). Section 2(c)(2)(B)(i)(I) includes "an agreement, contract, or transaction in foreign currency that * * * is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a))." [7] A Federal regulatory agency's retail forex rule must treat all such futures and options and all agreements, contracts, or transactions that are functionally or economically similar to such futures and options, similarly.[8]

This Dodd-Frank Act amendment to the CEA takes effect 360 days from the enactment of the Act.[9] After that date an institution for which the FDIC is the "appropriate Federal banking agency" pursuant to § 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q) (FDIC-supervised IDI) may not engage in off-exchange foreign currency futures and options with a customer who does not qualify as an eligible contract participant (ECP) under the CEA (ECP) except pursuant to a retail forex rule issued by the FDIC.[10] The restrictions in the Proposed Rule do not apply to (1) transactions with a customer who qualifies as an ECP, or (2) transactions that are spot contracts or forward contracts irrespective of whether the customer is or is not an ECP. The retail forex rule does, however, apply to "rolling spot" transactions in foreign currency. The discussion of the definition of "retail forex transaction" below elaborates on the distinctions between rolling spot transactions and spot and forward contracts.

Any retail forex rule must prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation requirements, and may include such other standards or requirements as the Federal regulatory agency determines to be necessary.[11]

On September 10, 2010, the Commodity Futures Trading Commission (CFTC) adopted a retail forex rule for persons subject to its jurisdiction.[12] After studying and considering the CFTC's retail forex rule, and being mindful of the desirability of issuing comparable rules, the FDIC is proposing to adopt a substantially similar rule for FDIC-supervised IDIs wishing to engage in retail forex transactions. The Dodd-Frank Act does not require that retail forex rules be issued jointly, or on a coordinated basis, with any other Federal regulatory agency. While each Federal banking agency is issuing a separate proposed rule, the Federal banking agencies are coordinating their efforts. The FDIC's notice of proposed rulemaking is substantially similar to the OCC's notice of proposed rulemaking regarding retail foreign currency transactions published on April 22, 2011.[13]

The requirements in this proposed rule may overlap with applicable expectations contained in the Interagency Statement on Retail Sales of Nondeposit Investment Products (NDIP Policy Statement).[14] The NDIP Policy Statement describes the FDIC's expectations for an FDIC-supervised IDI that engages in the sale of nondeposit investment products to retail customers. The NDIP Policy Statement addresses issues such as disclosure, suitability, sales practices, compensation, and compliance. The FDIC preliminarily views retail forex transactions as nondeposit investment products, but the terms "retail forex customer" in this proposed rule and "retail customer" in the NDIP Policy Statement are not necessarily co-extensive. After the effective date of the final version of this proposed rule, the FDIC will expect FDIC-supervised IDIs engaging in or offering retail forex transactions to also comply with the NDIP Policy Statement to the extent such compliance does not conflict with the requirements of the FDIC's final retail forex rule.

Question I.1: Does the proposed rule create issues concerning application of the NDIP Policy Statement to retail forex transactions that the FDIC should address in this rule or through updates to the NDIP Policy Statement? Does the Agencies' proposed method for developing retail forex rules create material confusion for the marketplace?

II. Section-by-Section Description of the Rule

Structure and Approach

The FDIC's proposed retail forex rule is designed to promote consistent treatment of retail forex transactions regardless of whether a retail forex customer's dealer is an FDIC-supervised IDI or a CFTC registrant. While the FDIC's proposed rule is modeled on the CFTC's retail forex rule, the FDIC has adapted the CFTC's rule to reflect differences between FDIC and CFTC supervisory regimes and differences

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[1] Public Law 111–203, 124 Stat. 1376.

[2] Dodd-Frank Act § 742(c)(2) (to be codified at 7 U.S.C. 2(c)(2)(E)). In this preamble, citations to the retail forex statutory provisions will be to the section where the provisions will be codified in the CEA.

[3] The CEA defines "financial institution" as including "a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813))." 7 U.S.C. 1a(21)(E).

[4] Section 2(c)(2)(E)(i)(III) of the CEA, as amended by § 742(c), defines a "Federal regulatory agency" to mean the CFTC, the Securities and Exchange Commission, an appropriate Federal banking agency, the National Credit Union Association, and the Farm Credit Administration. Section 1a(2) of the CEA defines an "appropriate Federal banking agency" by incorporation of § 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

When the proposed rule is published in the **Federal Register**, the FDIC is the appropriate Federal banking agency for any State nonmember insured bank and any foreign bank having an insured branch. 12 U.S.C. 1813(q)(3). When the powers of the Office of Thrift Supervision are transferred to the Office of Comptroller of the Currency, the FDIC and the Board of Governors of the Federal Reserve System, the FDIC will be the appropriate Federal banking agency for any State nonmember insured bank, any foreign bank having an insured branch and any State savings association. See Dodd-Frank Act § 312(c) (amending 12 U.S.C. 1813(q) to redefine "appropriate Federal banking agency").

[5] A retail customer is a person who is not an "eligible contract participant" under the CEA.

[6] 7 U.S.C. 2(c)(2)(E)(ii)(I).

[7] 7 U.S.C. 2(c)(2)B(i)(II).

[8] 7 U.S.C. 2(c)(2)(E)(iii)(II).

[9] *See* Dodd-Frank Act 754.

[10] Under 12 U.S.C. 1813(q), the FDIC is the "appropriate Federal banking agency" for a foreign bank having an insured branch.

[11] 7 U.S.C. 2(c)(2)(E)(iii)(I).

[12] *Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 55409 (Sept. 10, 2010) (Final CFTC Retail Forex Rule). The CFTC proposed these rules prior to the enactment of the Dodd-Frank Act. *Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 3281 (Jan. 20, 2010) (Proposed CFTC Retail Forex Rule).

[13] *See* Retail Foreign Exchange Transactions, 76 FR 22633 (Apr. 22, 2011).

[14] FDIC FIL–61–95 (Sept. 13, 1995).

between FDIC-supervised IDIs and CFTC registrants. For example:

- The FDIC's proposed retail forex rule does not include registration requirements, because FDIC-supervised IDIs are already subject to comprehensive supervision by the FDIC. Instead of a registration requirement, the proposed rule would require an FDIC-supervised IDI to obtain the FDIC's consent prior to conducting a retail forex business.
- Because FDIC-supervised IDIs are already subject to various capital and other supervisory requirements,[15] proposed § 349.8 would require institutions wishing to engage in retail forex transactions to be "well capitalized."
- Proposed § 349.6 would require that the risk disclosure statement highlight that a retail forex transaction is not insured by the FDIC. The CFTC's regulations do not address FDIC insurance because financial intermediaries under the CFTC's jurisdiction are not insured depository institutions.
- Proposed § 349.9 would prohibit cross-collateralization or set-off against a retail customer's other property or accounts held at the financial institution. This is consistent with the heightened customer protection provided to banking customers.

Proposed Rule 349.1—Authority, Purpose, and Scope

This section would provide that an FDIC-supervised IDI that engages in covered retail forex transactions with retail customers would be subject to requirements contained in part 349.

The FDIC notes that some FDIC-supervised IDIs may wish to engage in retail forex transactions through a foreign branch. The CEA does not clearly define whether foreign branches of FDIC-supervised IDIs may be considered United States financial institutions that can be included in the rule.[16]

Question II.1.1: Should foreign branches of FDIC-supervised IDIs that wish to conduct retail forex transactions abroad, whether with U.S. or foreign customers, be permitted to engage in the activity?

Proposed Rule 349.2—Definitions

This section proposes definitions of terms specific to retail forex transactions and to the regulatory requirements that apply to retail forex transactions.

The definition of "retail forex transaction" generally includes the following transactions in foreign currency between an FDIC-supervised IDI and a person that is not an ECP:[17] (a) A future or option on such a future;[18] (b) options not traded on a registered national securities exchange;[19] and (c) certain leveraged or margined transactions.[20] This definition has several important features.

First, certain transactions in foreign currency are not "retail forex transactions." For example, a "spot" forex transaction where one currency is bought for another and the two currencies are exchanged within two days would not meet the definition of a "retail forex transaction," since actual delivery occurs as soon as practicable.[21] Similarly, a "retail forex transaction" does not include a forward contract with a commercial entity that creates an enforceable obligation to make or take delivery, provided the commercial counterparty has the ability to make delivery and accept delivery in connection with its line of business.[22] In addition, the definition does not include transactions executed on an exchange or designated contract market; those transactions are subject to CFTC regulation.

Second, rolling spot forex transactions (so-called *Zelener*[23] contracts), including without limitation such transactions traded on the Internet, through a mobile phone, or on an electronic platform, could fall within the definition's third category. This notice of proposed rulemaking proposes that rolling spot transactions with retail customers (non-ECPs) should be regulated as retail forex transactions.[24] A rolling spot forex transaction nominally requires delivery of currency within two days, like spot transactions. However, in practice, the contracts are indefinitely renewed every other day and no currency is actually delivered until one party affirmatively closes out the position.[25] Therefore, the the FDIC believes that these contracts are better viewed as economically more like futures than spot contracts, although some courts have held them to be spot contracts in form.[26]

This section would also define several terms by reference to the CEA, the most important of which is "eligible contract participant." Foreign currency transactions with ECPs are not considered retail forex transactions and are therefore not subject to this rule. In addition to a variety of financial entities, certain governmental entities, businesses, and individuals may be ECPs.[27]

[15] *See* 12 CFR part 325.

[16] *See* 7 U.S.C. 2(c)(2)(B)(i)(II)(aa).

[17] The definition of "eligible contract participant" is found in CEA section 1a(18) and is discussed below.

[18] 7 U.S.C. 2(c)(2)(B)(i)(I).

[19] 7 U.S.C. 2(c)(2)(B)(i)(I).

[20] 7 U.S.C. 2(c)(2)(C).

[21] *See generally CFTC* v. *Int'l Fin. Servs. (New York), Inc.,* 323 F. Supp. 2d 482, 495 (S.D.N.Y. 2004) (distinguishing between foreign exchange futures contracts and spot contracts in foreign exchange, and noting that foreign currency trades settled within two days are ordinarily spot transactions rather than futures contracts); *see also Bank Brussels Lambert* v. *Intermetals Corp.,* 779 F. Supp. 741, 748 (S.D.N.Y. 1991).

[22] *See generally CFTC* v. *Int'l Fin. Servs. (New York), Inc.,* 323 F. Supp. 2d 482, 495 (S.D.N.Y. 2004) (distinguishing between forward contracts in foreign exchange and foreign exchange futures contracts); *see also* William L. Stein, *The Exchange-Trading Requirement of the Commodity Exchange Act,* 41 Vand. L.Rev. 473, 491 (1988). In contrast to forward contracts, futures contracts generally include several or all of the following characteristics: (i) Standardized nonnegotiable terms (other than price and quantity); (ii) parties are required to deposit initial margin to secure their obligations under the contract; (iii) parties are obligated and entitled to pay or receive variation margin in the amount of gain or loss on the position periodically over the period the contract is outstanding; (iv) purchasers and sellers are permitted to close out their positions by selling or purchasing offsetting contracts; and (v) settlement may be provided for by either (a) cash payment through a clearing entity that acts as the counterparty to both sides of the contract without delivery of the underlying commodity; or (b) physical delivery of the underlying commodity. *See* Edward F. Greene *et al., U.S. Regulation of International Securities and Derivatives Markets* § 14.08[2] (8th ed. 2006).

[23] *CFTC* v. *Zelener,* 373 F.3d 861 (7th Cir. 2004); *see also CFTC* v. *Erskine,* 512 F.3d 309 (6th Cir. 2008).

[24] 7 U.S.C. 2(c)(2)(E)(iii) (requiring that retail forex rules treat all functionally or economically similar transactions similarly); *see* 17 CFR 5.1(m) (defining "retail forex transaction" for CFTC-registered retail forex dealers).

[25] For example, in *Zelener,* the retail forex dealer retained the right, at the date of delivery of the currency to deliver the currency, roll the transaction over, or offset all or a portion of the transaction with another open position held by the customer. *See CFTC* v. *Zelener,* 373 F.3d 861, 868 (7th Cir. 2004).

[26] *See, e.g., CFTC* v. *Erskine,* 512 F.3d 309, 326 (6th Cir. 2008); *CFTC* v. *Zelener,* 373 F.3d 861, 869 (7th Cir. 2004).

[27] The term "eligible contract participant" is defined at 7 U.S.C. 1a(18), and for purposes most relevant to this proposed rule generally includes:

(a) a corporation, partnership, proprietorship, organization, trust, or other entity—

(1) that has total assets exceeding $10,000,000;

(2) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by certain other eligible contract participants; or

(3) that—

(i) has a net worth exceeding $1,000,000; and

(ii) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(b) subject to certain exclusions,

Question II.2.1: What types of customers engage in retail forex transactions, including rolling spot transactions? Should regulations governing retail forex transactions cover additional categories of retail customers, that is, those customers that are ECPs? If so, which eligible contract participants should be considered retail forex customers?

Proposed Rule 349.3—Prohibited Transactions

This section would prohibit an FDIC-supervised IDI and its institution-affiliated parties from engaging in fraudulent conduct in connection with retail forex transactions. This section would also prohibit an FDIC-supervised IDI from acting as a counterparty to a retail forex transaction if the institution or its affiliate exercises discretion over the customer's retail forex account because the FDIC views such self-dealing as inappropriate.

Proposed Rule 349.4—Filing Procedures

The proposed rule would require that, before engaging in a retail forex business, as defined in proposed § 349.2, an FDIC-supervised IDI shall provide prior written notice and obtain the FDIC's prior written consent. Under the proposed rule, the notice would be filed with the appropriate FDIC office and would include: (1) A brief description of the FDIC-supervised IDI's proposed retail forex business and the manner in which it will be conducted; (2) the amount of the institution's existing or proposed direct or indirect investment in the retail forex business as well as calculations sufficient to indicate compliance with all capital requirements in proposed § 349.8, discussed below, and all other applicable capital standards; (3) a copy of the institution's comprehensive business plan that includes a discussion of, among other things, conflict of interest and how the operation of the retail forex business is consistent with the institution's overall strategy; (4) a description of the institution's target customers for its proposed retail forex business and related information, including without limitation credit evaluations, customer appropriateness, and "know your customer" documentation; (5) a resolution by the institution's board of directors that the proposed retail forex business is an appropriate activity for the institution and that the institution's written policies, procedures, and risk measurement and management systems and controls address conducting retail forex business in a safe and sound manner and in compliance with this part; and (6) sample disclosures sufficient to demonstrate compliance with proposed § 349.6, discussed below.

The FDIC may request additional information, as necessary.

Question: The FDIC invites comment on whether additional specific information should be required in the notice.

For FDIC-supervised IDIs that have an existing retail forex business, the proposed rule would allow the entity to continue to operate the business for up to six months if it provides the written notice and requests the FDIC's written consent within 30 days of the effective date of this rule.

Question IV.I.I: With respect to FDIC-supervised IDIs that have an existing retail forex business, does a 30-day time period provide adequate time to provide notification to the FDIC?

Proposed Rule 349.5—Application and Closing Out of Offsetting Long and Short Positions

This section would require an FDIC-supervised IDI to close out offsetting long and short positions in a retail forex account. The institution would have to offset such positions regardless of whether the customer has instructed otherwise. The CFTC concluded that "keeping open long and short positions in a retail forex customer's account removes the opportunity for the customer to profit on the transactions, increases the fees paid by the customer and invites abuse."[28] The FDIC agrees with this concern. Under the proposed rule, an FDIC-supervised IDI may offset retail forex transactions as instructed by the retail forex customer or the customer's agent if the instructions do not come from the institution.

Proposed Rule 349.6—Disclosure

This section would require an FDIC-supervised IDI to provide retail forex customers with a risk disclosure statement similar to the one required by the CFTC's retail forex rule, but tailored to address certain unique characteristics of retail forex in FDIC-supervised IDIs. The prescribed risk disclosure statement would describe the risks associated with retail forex transactions. The disclosure statement would make clear that an FDIC-supervised IDI is prohibited from applying customer losses arising out of retail forex transactions against any property of a customer other than money or property specifically transferred to the FDIC-supervised IDI as margin for retail forex transactions; the FDIC-supervised IDI may not use rights of set-off to collect margin against other assets it may hold for the retail forex customer to cover losses arising out of retail forex transactions. Under the proposed rule, the risk disclosure must be provided as a separate document and be signed by the retail forex customer.

In its retail forex rule, the CFTC requires its registrants to disclose to retail customers the percentage of retail forex accounts that earned a profit, and the percentage of such accounts that experienced a loss, during each of the most recent four calendar quarters.[29] The CFTC initially explained that "the vast majority of retail customers who enter these transactions do so solely for speculative purposes, and that relatively few of these participants trade profitably."[30] In its final rule, the CFTC found this requirement appropriate to protect retail customers from "inherent conflicts embedded in the operations of the retail over-the-counter forex industry."[31] The FDIC generally agrees with the CFTC and this proposed rule requires this disclosure; however, the FDIC invites comments regarding this approach.

Question II.6.1: Would this disclosure provide meaningful information to retail customers of FDIC- IDIs? Would alternative disclosures more effectively accomplish the objectives of the disclosure?

Similarly, the CFTC's retail forex rule requires a disclosure that when a retail customer loses money trading, the dealer makes money on such trades, in addition to any fees, commissions, or spreads.[32] The proposed rule includes this disclosure requirement.

Question II.6.2: Would this disclosure provide meaningful information to retail customers of FDIC-supervised IDIs? Would alternative disclosures more

(1) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(2) a multinational or supranational governmental entity; or

(3) an instrumentality, agency or department of an entity described in (b)(1) or (2); and

(c) an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(1) $10,000,000; or

(2) $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.

[28] Proposed CFTC Retail Forex Rule, 75 FR at 3287 n.54.

[29] 17 CFR 5.5(e)(1).

[30] Proposed CFTC Retail Forex Rule, 75 FR at 3289.

[31] Final CFTC Retail Forex Rule, 75 FR at 55412.

[32] 17 CFR 5.5(b).

effectively accomplish the objectives of the disclosure?

Question II.6.3: Should FDIC-supervised IDIs be allowed to combine the retail forex risk disclosure with other disclosures that institutions make to their customers? Or would combining disclosures diminish the impact of the retail forex disclosure?

Question II.6.4: Should the rule require disclosure of the fees the FDIC-supervised IDI charges retail forex customers for retail forex transactions? What fees do FDIC-supervised IDIs currently charge retail forex customers for retail forex transactions? Are there other costs to retail forex customers of engaging in retail forex transactions that FDIC-supervised IDIs should disclose? If so, what are these costs?

Proposed Rule 349.7—Recordkeeping

This section would specify which documents and records an FDIC-supervised IDI engaged in retail forex transactions must retain for examination by the FDIC. This section would also prescribe document maintenance standards.

Proposed Rule 349.8—Capital Requirements

This section would require that an FDIC-supervised IDI that offers or enters into retail forex transactions must be "well capitalized" as defined in the FDIC's prompt corrective action regulation [33] or the FDIC-supervised IDI must obtain an exemption from the FDIC. In addition, under the proposed rule, an FDIC-supervised IDI must continue to hold capital against retail forex transactions as provided in the FDIC's capital regulation.[34] This rule does not amend the FDIC's prompt corrective action regulation or capital regulation.

Proposed Rule 349.9—Margin Requirements

Under the proposed rule, paragraph (a) would require an FDIC-supervised IDI that engages in retail forex transactions, in advance of any such transaction, to collect from the retail forex customer margin equal to at least 2 percent of the notional value of the retail forex transaction if the transaction is in a major currency pair, and at least 5 percent of the notional value of the retail forex transaction otherwise. These margin requirements are identical to the requirements imposed by the CFTC's retail forex rule. A major currency pair is a currency pair with two major currencies. The major currencies currently are the U.S. Dollar (USD), Canadian Dollar (CAD), Euro (EUR), United Kingdom Pound (GBP), Japanese Yen (JPY), Swiss franc (CHF), New Zealand Dollar (NZD), Australian Dollar (AUD), Swedish Kronor (SEK), Danish Kroner (DKK), and Norwegian Krone (NOK).[35] An evolving market could change the major currencies, so the FDIC is not proposing to define the term "major currency," but rather expects that FDIC-supervised IDIs will adhere to standard market interpretations.[36]

Question II.9.1: The FDIC requests comment on whether it should explicitly define the major currencies or major currency pairs in the proposed rule and whether commenters have any other suggestions on how the FDIC should identify a major currency or major currency pair.

For retail forex transactions involving rolling spots, for example, higher margin requirements protects the retail forex customer from the risks related to trading with excessive leverage. The volatility of the foreign currency markets exposes retail forex customers with high leverage to greater risk of substantial losses. High leverage ratios can significantly increase a customer's losses and gains. Even a small move against a customer's position can result in a substantial loss. Even with required margin, losses can exceed the margin posted, and if the account is not closed out, and depending on the specific circumstances, the customer could be liable for additional losses. Given the risks involved in the trading of retail forex transactions by retail customers using high leverage, the only funds that should be invested in such transactions are those that the customer can afford to lose.

Prior to the CFTC's rule, non-bank dealers routinely permitted customers to trade with 1 percent margin (leverage of 100:1) and sometimes with as little as 0.25 percent margin (leverage of 400:1). When the CFTC proposed its retail forex rule in January 2010, it proposed a margin requirement of 10 percent (leverage of 10:1). In response to comments, the CFTC reduced the required margin in the final rule to 2 percent (leverage of 50:1) for trades involving major currencies and 5 percent (leverage of 20:1) for trades involving non-major currencies.

Question II.9.2: Will the proposed margin requirements provide adequate protection for retail customers engaged in this particular type of trade or should the requirements be adjusted and how?

Under the proposed rule, paragraph (b) would specify the acceptable forms of margin that customers may post. FDIC-supervised IDIs must establish policies and procedures providing for haircuts for noncash margin collected from customers and must review these haircuts annually. It may be prudent for FDIC-supervised IDIs to review and modify the size of the haircuts more frequently.

Question II.9.3: Should the FDIC provide for haircuts for noncash margin posted for retail forex transactions? If so, how should those haircuts be determined?

In proposed rule 349.9(c), the FDIC would require an FDIC-supervised IDI to hold each retail forex customer's retail forex transaction margin in a separate account that contains only that customer's retail forex margin. This paragraph is designed to work with the prohibition on set-off in paragraph (e), so that an FDIC-supervised IDI may not have an account agreement that treats all of a retail forex customer's assets held by a bank as margin for retail forex transactions.

Paragraph (d) would require an FDIC-supervised IDI to collect additional margin from the customer or to liquidate the customer's position if the amount of margin held by the institution fails to meet the requirements of paragraph (a). The proposed rule would require the institution to mark the customer's open retail forex positions and the value of the customer's margin to the market daily to ensure that a retail forex customer does not accumulate substantial losses not covered by margin.

Question II.9.4: How frequently do FDIC-supervised IDIs currently mark retail forex customers' open retail forex positions and the value of the customers' margin to the market? Should the rule require marking customer positions and margin to the market daily, or would more frequent marks be more appropriate in light of the speed at which currency markets move? What is the most frequent mark to market requirement that is practical in light of the characteristics of the forex markets and the assets that retail forex customers may pledge as margin for retail forex transaction?

Paragraph (e) would prohibit an FDIC-supervised IDI from applying a retail forex customer's losses against any asset or liability of the retail forex customer other than money or property given as

[33] 12 CFR part 325.

[34] 12 CFR part 325.

[35] *See* National Futures Association, *Forex Transaction: A Regulatory Guide* 17 (Feb. 2011); New York Federal Reserve Bank, *Survey of North American Foreign Exchange Volume* tbl. 3e (Jan. 2011); Bank for International Settlements, *Report on Global Foreign Exchange Market Activity in 2010* at 15 tbl. B.6 (Dec. 2010).

[36] The Final CFTC Retail Forex Rule similarly does not define "major currency."

margin. An FDIC-supervised IDI's relationship with a retail forex customer may evolve out of a prior relationship of providing financial services or may evolve into such a relationship. Thus it is more likely that an FDIC-supervised IDI acting as a retail forex counterparty will hold other assets or liabilities of a retail forex customer, for example a deposit account or mortgage, than it is for a retail forex dealer regulated by the CFTC to hold such other assets. The FDIC believes it would be inappropriate to allow an FDIC-supervised IDI to leave trades open and allow additional losses to accrue that can be applied against a retail forex customer's other assets or liabilities held by the FDIC-supervised IDI.

Question II.9.5: The FDIC requests comment on whether this section provides sufficient incentives for FDIC-supervised IDIs to liquidate a retail forex customer's losing position within a reasonably short period of time in an effort to minimize such losses. Do the proposed rules accomplish that objective? Are there more effective methods of achieving the objective?

Proposed Rule 349.10—Required Reporting to Customers

This section would require an FDIC-supervised IDI engaging in retail forex transactions to provide each retail forex customer a monthly statement and confirmation statements.

Question II.10.1: Does proposed § 349.10 provide meaningful statements that would be useful to retail customers, or, in light of the distinctive characteristics of retail forex transactions, would other information be more appropriate? If so, what information would be more appropriate?

Proposed Rule 349.11—Unlawful Representations

Under the proposed rule, this section would prohibit an FDIC-supervised IDI and its institutional-affiliated parties from representing that the Federal government, the FDIC, or any other Federal agency has sponsored, recommended, or approved retail forex transactions or products in any way. This section also would prohibit an FDIC-supervised IDI from implying or representing that it will guarantee against or limit retail forex customer losses or not collect margin as required by section 349.9. However, this section would not prohibit an FDIC-supervised IDI from sharing in a loss resulting from error or mishandling of an order, and guaranties entered into prior to effectiveness of the prohibition would only be affected if an attempt is made to extend, modify, or renew them. Further, this section would not prohibit an FDIC-supervised IDI from hedging or otherwise mitigating its own exposure to retail forex transactions or any other foreign exchange risk.

Proposed Rule 349.12—Authorization to Trade

This section would require an FDIC-supervised IDI to have specific written authorization from a retail forex customer before effecting a retail forex transaction for that customer.

Proposed Rule 349.13—Trading and Operational Standards

This section largely follows the trading standards of the CFTC's retail forex rule, which were developed to prevent some of the deceptive or unfair practices identified by the CFTC and the National Futures Association.

Under paragraph (a) of the proposed rule, an FDIC-supervised IDI engaged in retail forex transactions would be required to establish and enforce internal rules, procedures and controls (1) to prevent front running, in which transactions in accounts of the FDIC-supervised IDI or its related persons are executed before a similar customer order; (2) to establish settlement prices fairly and objectively; and (3) to record and maintain transaction records and make them available to customers.

Paragraph (b) would prohibit an FDIC-supervised IDI engaging in retail forex transactions from disclosing that it holds another person's order unless disclosure is necessary for execution or is made at the FDIC's request.

As written, paragraph (c) would ensure that institution-affiliated parties of another retail forex counterparty do not open accounts with an FDIC-supervised IDI without the knowledge and authorization of the account surveillance personnel of the other retail forex counterparty to which they are affiliated. Similarly, paragraph (d) would ensure that institution-affiliated parties of an FDIC-supervised IDI do not open accounts with other retail forex counterparties without the knowledge and authorization of the account surveillance personnel of the FDIC-supervised IDI to which they are affiliated.

Paragraph (e) would prohibit an FDIC-supervised IDI engaging in retail forex transactions from (1) entering a retail forex transaction to be executed at a price that is not at or near prices at which other retail forex customers have executed materially similar transactions with the FDIC-supervised IDI during the same time period, (2) changing prices after confirmation, (3) providing a retail forex customer with a new bid price that is higher (or lower) than previously provided without providing a new ask price that is similarly higher (or lower) as well, and (4) establishing a new position for a retail forex customer (except to offset an existing position) if the FDIC-supervised IDI holds one or more outstanding orders of other retail forex customers for the same currency pair at a comparable price.

However, paragraph (e)(3) would not prevent an FDIC-supervised IDI from changing the bid or ask prices of a retail forex transaction to respond to market events. The FDIC understands that market practice among CFTC-registrants is not to offer requotes, but to simply reject orders and advise customers they may submit a new order (which the dealer may or may not accept). Similarly, an FDIC-supervised IDI could reject an order and advise customers they may submit a new order.

Question II.13.1: Would this requirement appropriately protect retail forex customers? If not, how it should be modified? Would it be simpler for the rule to simply prohibit requoting, because FDIC-supervised IDIs may instead reject an order and accept new orders from their retail forex customers?

Paragraph (e)(4) would require an FDIC-supervised IDI engaging in retail forex transactions to execute similar orders in the order they are received. The prohibition would prevent an FDIC-supervised IDI from offering preferred execution to some of its retail forex customers but not others.

Proposed Rule 349.14—Supervision

This section would impose on an FDIC-supervised IDI and its agents, officers, and employees a duty to supervise subordinates with responsibility for retail forex transactions to ensure compliance with the FDIC's retail forex rule.

Question II.14.1: Would this section impose any additional requirements not already encompassed by safety and soundness standards applicable to FDIC-supervised IDIs and their agents, officers, and employees?

Proposed Rule 349.15—Notice of Transfers

This section describes the requirements for transferring a retail forex account. Generally, an FDIC-supervised IDI would be required to provide retail forex customers 30 days' prior notice before transferring or assigning their account. Affected customers may then instruct the FDIC-supervised IDI to transfer the account to an institution of their choosing or liquidate the account. There are three exceptions to the above notice

requirement: A transfer in connection with the receivership or conservatorship under the Federal Deposit Insurance Act; a transfer pursuant to a retail forex customer's specific request; and a transfer otherwise allowed by applicable law. An FDIC-supervised IDI that is the transferee of retail forex accounts generally would be required to provide the transferred customers with the risk disclosure statement of proposed § 349.6 and obtain each affected customer's written acknowledgement within 60 days.

Proposed Rule 349.16—Customer Dispute Resolution

This section would prohibit an FDIC-supervised IDI from entering into any agreement or understanding with a retail forex customer in which the customer agrees, prior to the time a claim or grievance arises, to submit the claim or grievance to any settlement procedure.

This provision differs from the applicable CFTC dispute settlement procedures, which permit pre-dispute settlement procedures under certain conditions.[37] The substance of the CFTC dispute settlement resolution regulation, however, dates back to August 10, 2001. Since that time, concerns about predispute settlement resolution agreements have emerged. Congress addressed these concerns in seven provisions in the Dodd-Frank Act that prohibit, or give the agency involved the authority to prohibit, the use of predispute arbitration provisions.[38] Consonant with this demonstrated Congressional concern with such agreements, the FDIC is proposing, pursuant to its authority to adopt "such other standards or requirements as [it] shall determine to be necessary," to prohibit a FDIC-supervised IDI from entering into a pre-dispute settlement dispute resolution agreement with a retail forex customer.

III. Request for Comments

The FDIC requests comment on all aspects of the proposed rule, including the questions posed in the preamble. In addition, the FDIC requests comments on the following questions:

- *Question III.1:* Would the proposed rule appropriately protect retail forex customers of FDIC-supervised IDIs?
- *Question III.2:* Are the proposed rule's variations from the CFTC retail forex rule appropriately tailored to the differences between FDIC-supervised IDIs and CFTC registrants and the regulatory regimes applicable to each?
- *Question III.3:* Should the proposed rule include further disclosure requirements with respect to whether or not retail forex transactions or margin for retail forex transactions are insured by the FDIC?
- *Question III.4:* Should the proposed rule limit the ability of an FDIC-supervised IDI to enter into speculative retail forex transactions, such as rolling spot transactions, with only certain retail forex customers? Do FDIC-supervised IDIs limit customer access to these transactions at this time? How do FDIC-supervised IDIs determine if these types of trades may be appropriate for those customers?

To assist in the review of comments, the FDIC requests that commenters identify their comments by question number.

IV. Regulatory Analysis

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. The RFA provides that an agency is not required to prepare and publish an initial regulatory flexibility analysis if the agency certifies that the proposed rule will not, if promulgated as a final rule, have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration, a small entity includes an FDIC-supervised IDI with assets of $175 million or less.[39] The proposed rule would impose recordkeeping and disclosure requirements on any FDIC-supervised IDI, including one that engages in retail forex transactions with their customers.

Pursuant to section 605(b) of the RFA, the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of the small entities it supervises. Accordingly, a regulatory flexibility analysis is not required. In making this determination, the FDIC estimated that there are no small banks currently engaging in retail forex transactions with their customers. Therefore, the FDIC estimates that no small banks under its supervision would be affected by the proposed rule.

Persons wishing to submit written comments regarding the FDIC's certification under the RFA should refer to the instructions for submitting comments in the front of this release. Such comments will be considered and placed in the same public file as comments on the proposal itself.

B. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this notice of proposed rulemaking have been submitted by the FDIC to OMB for review and approval under section 3506 of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR 1320 *et seq.*). The information collection requirements are found in §§ 349.4–349.7, 349.9–349.10, 349.13, 349.15–349.16.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) The accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

[37] 17 CFR 166.5. The CFTC's regulation permits predispute dispute settlement agreements with a customer with certain restrictions such as that signing the agreement must not be made a condition for the customer to utilize the services offered by the CFTC registrant.

[38] *See* Dodd-Frank Act section 748 (amending CEA section 23(n)(2) to provide: "No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section."); section 921(a) (adding similar provisions to section 15(o) to the Securities Exchange Act of 1934 and section 205(f) to the Investment Advisers Act of 1940); section 922(c) (adding a similar provision to 18 U.S.C. 1514A, which provides employee protections, including a right to a jury trial to enforce such protections, to employees of publicly registered companies and nationally recognized statistical rating organizations); section 1028(requiring the Consumer Financial Protection Bureau (CFPB) to conduct a study and report to Congress on the use of predispute arbitration agreements "between covered persons and consumers in connection with the offering or providing of consumer financial products or services" and giving the CFPB authority to adopt regulations prohibiting such agreements; section 1057(d) (prohibiting predispute arbitration agreements that affect the employee protection rights of a person that is employed by an entity subject to CFPB regulation; and section 1414 (amending section 129C of the Truth in Lending Act to prohibit predispute arbitration agreements with respect to residential mortgage loans and home equity loans).

[39] Small Business Administration regulations define "small entities" to include banks with a four-quarter average of total assets of $175 million or less (13 CFR 121.201).

(d) Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Proposed Information Collection

Title of Information Collection: Retail Foreign Exchange Transactions.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Respondents: State nonmember insured banks and foreign banks having insured branches.

Filing Requirements

The filing requirements in proposed § 349.4 would require that, prior to initiating a retail forex business, an FDIC-supervised IDI provide the FDIC with prior notice, obtain the FDIC's prior written consent, and submit the documents provided for in proposed § 349.4(c). The FDIC-supervised IDI must also provide other information required by the FDIC, such as documentation of customer due diligence. An FDIC-supervised IDI already engaged in a retail forex business may continue to do so, provided it request the FDIC's written consent.

Disclosure Requirements

Proposed § 349.5, regarding the application and closing out of offsetting long and short positions, would require an FDIC-supervised IDI to promptly provide the customer with a statement reflecting the financial result of the transactions and the name of the introducing broker to the account. The customer would provide specific written instructions on how the offsetting transaction should be applied.

Proposed § 349.6 would require that an FDIC-supervised IDI furnish a retail forex customer with a written disclosure before opening an account that will engage in retail forex transactions for a retail forex customer and receive an acknowledgment from the customer that it was received and understood. It also requires the disclosure by an FDIC-supervised IDI of its fees and other charges and its profitable accounts ratio.

Proposed § 349.10 would require an FDIC-supervised IDI to issue monthly statements to each retail forex customer and to send confirmation statements following transactions.

Proposed § 349.13(b) would allow disclosure by an FDIC-supervised IDI that an order of another person is being held by them only when necessary to the effective execution of the order or when the disclosure is requested by the FDIC. Proposed rule 349.13(c) would prohibit an FDIC-supervised IDI engaging in retail forex transactions from knowingly handling the account of any related person of another retail forex counterparty unless it receives proper written authorization, promptly prepares a written record of the order, and transmits to the counterparty copies all statements and written records. Proposed Rule 349.13(d) would prohibit a related person of an FDIC-supervised IDI engaging in forex transactions from having an account with another retail forex counterparty unless it receives proper written authorization and copies of all statements and written records for such accounts are transmitted to the counterparty.

Proposed § 349.15 would require an FDIC-supervised IDI to provide a retail forex customer with 30 days' prior notice of any assignment of any position or transfer of any account of the retail forex customer. It would also require an FDIC-supervised IDI to which retail forex accounts or positions are assigned or transferred to provide the affected customers with risk disclosure statements and forms of acknowledgment and receive the signed acknowledgments within 60 days.

The customer dispute resolution provisions in § 349.16 would require certain endorsements, acknowledgments, and signature language. It also would require that within 10 days after receipt of notice from the retail forex customer that they intend to submit a claim to arbitration, the FDIC-supervised IDI provide them with a list of persons qualified in the dispute resolution and that the customer must notify the FDIC-supervised IDI of the person selected within 45 days of receipt of such list.

Policies and Procedures; Recordkeeping

Proposed §§ 349.7 and 349.13 would require that an FDIC-supervised IDI engaging in retail forex transactions keep full, complete, and systematic records and establish and implement internal rules, procedures, and controls. Proposed § 349.7 also would require that an FDIC-supervised IDI keep account, financial ledger, transaction and daily records, as well as memorandum orders, post-execution allocation of bunched orders, records regarding its ratio of profitable accounts, possible violations of law, records for noncash margin, and monthly statements and confirmations. Proposed § 349.9 would require policies and procedures for haircuts for noncash margin collected under the rule's margin requirements, and annual evaluations and modifications of the haircuts.

Estimated PRA Burden

Estimated Number of Respondents: 3 FDIC-supervised IDIs; 1 service provider.

Total Reporting Burden: 48 hours.

Total Disclosure Burden: 5,326 hours.

Total Recordkeeping Burden: 664 hours.

Total Annual Burden: 6,038 hours.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites comment on how to make this proposed rule easier to understand. For example, the FDIC requests comment on such questions as:

- Have we organized the material to suit your needs? If not, how could the material be better organized?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 349

Consumer protection, Definitions, Foreign currencies, Foreign exchange, State nonmember insured bank, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FDIC proposes to add part 349 to Title 12, Chapter III of the Code of Federal Regulations to read as follows:

PART 349—RETAIL FOREIGN EXCHANGE TRANSACTIONS

Sec.

349.1 Authority, purpose, and scope.
349.2 Definitions.
349.3 Prohibited transactions.
349.4 Filing procedures.
349.5 Application and closing out of offsetting long and short positions.
349.6 Disclosure.
349.7 Recordkeeping.
349.8 Capital requirements.
349.9 Margin requirements.
349.10 Required reporting to customers.
349.11 Unlawful representations.

349.12 Authorization to trade.
349.13 Trading and operational standards.
349.14 Supervision.
349.15 Notice of transfers.
349.16 Customer dispute resolution.

Authority: 12 U.S.C. 1813(q), 1818, 1819, and 3108; 7 U.S.C. 2(c)(2)(E).

§ 349.1 Authority, purpose and scope.

(a) *Authority.* An FDIC-supervised insured depository institution that engages in retail forex transactions shall comply with the requirements of this part.

(b) *Purpose.* This part establishes rules applicable to retail forex transactions engaged in by FDIC-supervised insured depository institutions and applies on or after the effective date.

(c) *Scope.* This part applies to FDIC-supervised insured depository institutions.

§ 349.2 Definitions.

For purposes of this part, the following terms have the same meaning as in the Commodity Exchange Act: "affiliated person of a futures commission merchant"; "associated person"; "contract of sale"; "commodity"; "eligible contract participant"; "futures commission merchant"; "security"; and "security futures product."

Affiliate has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

Commodity Exchange Act means the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

FDIC-supervised insured depository institution means any insured depository institution, or foreign bank having an insured branch for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

Forex means foreign exchange.

Institution-affiliated party or *IAP* has the same meaning as in 12 U.S.C. 1813(u)(1), (2), or (3).

Insured depository institution or *IDI* has the same meaning as in 12 U.S.C. 1813(c)(2).

Introducing broker means any person who solicits or accepts orders from a retail forex customer in connection with retail forex transactions.

Related person, when used in reference to a retail forex counterparty, means:

(1) Any general partner, officer, director, or owner of 10 percent or more of the capital stock of the FDIC-supervised insured depository institution;

(2) An associated person or employee of the retail forex counterparty, if the retail forex counterparty is not an FDIC-supervised insured depository institution;

(3) An IAP, if the retail forex counterparty is an FDIC-supervised insured depository institution; and

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons.

Retail foreign exchange dealer means any person other than a retail forex customer that is, or that offers to be, the counterparty to a retail forex transaction, except for a person described in item (aa), (bb), (cc)(AA), (dd), or (ff) of section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)).

Retail forex account means the account of a retail forex customer, established with an FDIC-supervised insured depository institution, in which retail forex transactions with the FDIC-supervised insured depository institution as counterparty are undertaken, or the account of a retail forex customer that is established in order to enter into such transactions.

Retail forex account agreement means the contractual agreement between an FDIC-supervised insured depository institution and a retail forex customer that contains the terms governing the customer's retail forex account with the FDIC-supervised insured depository institution.

Retail forex business means engaging in one or more retail forex transactions with the intent to derive income from those transactions, either directly or indirectly.

Retail forex counterparty includes, as appropriate:

(1) An FDIC-supervised insured depository institution;

(2) A retail foreign exchange dealer;

(3) A futures commission merchant; and

(4) An affiliated person of a futures commission merchant.

Retail forex customer means a customer that is not an eligible contract participant, acting on his, her, or its own behalf and engaging in retail forex transactions.

Retail forex proprietary account means a retail forex account carried on the books of an FDIC-supervised insured depository institution for one of the following persons; a retail forex account of which 10 percent or more is owned by one of the following persons; or a retail forex account of which an aggregate of 10 percent or more of which is owned by more than one of the following persons:

(1) The FDIC-supervised insured depository institution;

(2) An officer, director or owner of ten percent or more of the capital stock of the FDIC-supervised insured depository institution; or

(3) An employee of the FDIC-supervised insured depository institution, whose duties include:

(i) The management of the FDIC-supervised insured depository institution's business;

(ii) The handling of the FDIC-supervised insured depository institution's retail forex transactions;

(iii) The keeping of records, including without limitation the software used to make or maintain those records, pertaining to the FDIC-supervised insured depository institution's retail forex transactions; or

(iv) The signing or co-signing of checks or drafts on behalf of the FDIC-supervised insured depository institution;

(4) A spouse or minor dependent living in the same household as of any of the foregoing persons; or

(5) An affiliate of the FDIC-supervised insured depository institution;

Retail forex transaction means an agreement, contract, or transaction in foreign currency that is offered or entered into by an FDIC-supervised insured depository institution with a person that is not an eligible contract participant and that is:

(1) A contract of sale of a commodity for future delivery or an option on such a contract;

(2) An option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78(f)(a)); or

(3) Offered or entered into on a leveraged or margined basis, or financed by an FDIC-supervised insured depository institution, its affiliate, or any person acting in concert with the FDIC-supervised insured depository institution or its affiliate on a similar basis, other than:

(i) A security that is not a security futures product as defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)); or

(ii) A contract of sale that—

(A) Results in actual delivery within two days; or

(B) Creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

§ 349.3 Prohibited transactions.

(a) *Fraudulent conduct prohibited.* No FDIC-supervised insured depository

institution or its IAPs may, directly or indirectly, in or in connection with any retail forex transaction:

(1) Cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

(3) Willfully deceive or attempt to deceive any person by any means whatsoever.

(b) *Acting as counterparty and exercising discretion prohibited.* If an FDIC-supervised insured depository institution can cause retail forex transactions to be effected for a retail forex customer without the retail forex customer's specific authorization, then neither the FDIC-supervised insured depository institution nor its affiliates may act as the counterparty for any retail forex transaction with that retail forex customer.

§ 349.4 Filing procedures.

(a) *General.* Before commencing a retail forex business, an FDIC-supervised insured depository institution shall provide the FDIC prior written notice and obtain the FDIC's prior written consent.

(b) *Where to file.* A notice required by this section shall be submitted in writing to the appropriate FDIC office.

(c) *Contents of filing.* A complete letter notice shall include the following information:

(1) *Filings generally.* (i) A brief description of the FDIC-supervised institution's proposed retail forex business and the manner in which it will be conducted;

(ii) The amount of the institution's existing or proposed direct or indirect investment in the retail forex business as well as calculations sufficient to indicate compliance with all capital requirements in § 349.8 and all other applicable capital standards;

(iii) A copy of the FDIC-supervised insured depository institution's comprehensive business plan that includes a discussion of, among other things, how the operation of the retail forex business is consistent with the institution's overall strategy;

(iv) A description of the FDIC-supervised insured depository institution's target customers for its proposed retail forex business and related information, including without limitation credit evaluations, customer appropriateness, and "know your customer" documentation;

(v) A resolution by the FDIC-supervised insured depository institution's board of directors that the proposed retail forex business is an appropriate activity for the institution and that the institution's written policies, procedures, and risk measurement and management systems and controls address conducting retail forex business in a safe and sound manner and in compliance with this part;

(vi) Sample risk disclosures sufficient to demonstrate compliance with § 349.6.

(2) *Copy of application or notice filed with another agency.* If an FDIC-supervised insured depository institution has filed an application or notice with another regulatory authority which contains all of the information required by paragraph (c)(1) of this section, the institution may submit a copy to the FDIC in lieu of a separate filing.

(3) *Additional information.* The FDIC may request additional information to complete the processing of the notification.

(d) *Treatment of existing retail forex Business.* Any FDIC-supervised insured depository institution that is engaged in retail forex business on the effective date of this part may continue to do so for up to six months, subject to an extension of time by the FDIC, provided that it notifies the FDIC of its retail forex business and requests the FDIC's written consent in accordance with paragraph (a) of this section.

(e) *Compliance with the Commodities Exchange Act.* Any FDIC-supervised insured depository institution that is engaged in retail forex business on the effective date of this part shall be deemed, during the six-month period (including any extension) provided in paragraph (d) of this section, to be acting pursuant to a rule or regulation described in section 2(c)(2)(E)(ii)(I) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(E)(ii)(I)).

§ 349.5 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* Any FDIC-supervised insured depository institution that—

(1) Engages in a retail forex transaction involving the purchase of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such purchase has an open retail forex transaction for the sale of the same currency;

(2) Engages in a retail forex transaction involving the sale of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such sale has an open retail forex transaction for the purchase of the same currency;

(3) Purchases a put or call option involving foreign currency for the account of any retail forex customer when the account of such retail forex customer at the time of such purchase has a short put or call option position with the same underlying currency, strike price, and expiration date as that purchased; or

(4) Sells a put or call option involving foreign currency for the account of any retail forex customer when the account of such retail forex customer at the time of such sale has a long put or call option position with the same underlying currency, strike price, and expiration date as that sold shall:

(i) Immediately apply such purchase or sale against such previously held opposite transaction; and

(ii) Promptly furnish such retail forex customer with a statement showing the financial result of the transactions involved and the name of any introducing broker to the account.

(b) *Close-out against oldest open position.* In all instances where the short or long position in a customer's retail forex account immediately prior to an offsetting purchase or sale is greater than the quantity purchased or sold, the FDIC-supervised insured depository institution shall apply such offsetting purchase or sale to the oldest portion of the previously held short or long position.

(c) *Transactions to be applied as directed by customer.* Notwithstanding paragraph (b) of this section, the offsetting transaction shall be applied as directed by a retail forex customer's specific written instructions. These instructions may not be made by the FDIC-supervised insured depository institution or an IAP.

§ 349.6 Disclosure.

(a) *Risk disclosure statement required.* No FDIC-supervised insured depository institution may open or maintain open an account that will engage in retail forex transactions for a retail forex customer unless the FDIC-supervised insured depository institution has furnished the retail forex customer with a separate written disclosure statement containing only the language set forth in paragraph (d) of this section and the disclosures required by paragraphs (e) and (f) of this section.

(b) *Acknowledgement of risk disclosure statement required.* The FDIC-supervised insured depository institution must receive from the retail forex customer a written acknowledgement signed and dated by the customer that the customer received and understood the written disclosure

statement required by paragraph (a) of this section.

(c) *Placement of risk disclosure statement.* The disclosure statement may be attached to other documents as the initial page(s) of such documents and as the only material on such page(s).

(d) *Content of risk disclosure statement.* The language set forth in the written disclosure statement required by paragraph (a) of this section shall be as follows:

RISK DISCLOSURE STATEMENT

RETAIL FOREX TRANSACTIONS INVOLVE THE LEVERAGED TRADING OF CONTRACTS DENOMINATED IN FOREIGN CURRENCY WITH AN FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION AS YOUR COUNTERPARTY. BECAUSE OF THE LEVERAGE AND THE OTHER RISKS DISCLOSED HERE, YOU CAN RAPIDLY LOSE ALL OF THE FUNDS YOU GIVE THE FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION AS MARGIN FOR SUCH TRADING AND YOU MAY LOSE MORE THAN YOU PLEDGE AS MARGIN.

YOUR FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION IS PROHIBITED FROM APPLYING LOSSES THAT YOU EXPERIENCE ON RETAIL FOREX TRANSACTIONS ON ANY FUNDS OR PROPERTY OF YOURS OTHER THAN FUNDS OR PROPERTY THAT YOU HAVE GIVEN OR PLEDGED AS MARGIN FOR RETAIL FOREX TRANSACTIONS.

YOU SHOULD BE AWARE OF AND CAREFULLY CONSIDER THE FOLLOWING POINTS BEFORE DETERMINING WHETHER SUCH TRADING IS APPROPRIATE FOR YOU.

(1) TRADING IS A NOT ON A REGULATED MARKET OR EXCHANGE—YOUR FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION IS YOUR TRADING COUNTERPARTY AND HAS CONFLICTING INTERESTS. The retail forex transaction you are entering into is not conducted on an interbank market, nor is it conducted on a futures exchange subject to regulation as a designated contract market by the Commodity Futures Trading Commission. The foreign currency trades you transact are trades with your FDIC-supervised insured depository institution as the counterparty. WHEN YOU SELL, THE FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION IS THE BUYER. WHEN YOU BUY, THE FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION IS THE SELLER. As a result, when you lose money trading, your FDIC-supervised insured depository institution is making money on such trades, in addition to any fees, commissions, or spreads the FDIC-supervised insured depository institution may charge.

(2) AN ELECTRONIC TRADING PLATFORM FOR RETAIL FOREIGN CURRENCY TRANSACTIONS IS NOT AN EXCHANGE. IT IS AN ELECTRONIC CONNECTION FOR ACCESSING YOUR FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION. THE TERMS OF AVAILABILITY OF SUCH A PLATFORM ARE GOVERNED ONLY BY YOUR CONTRACT WITH YOUR FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION. Any trading platform that you may use to enter into off-exchange foreign currency transactions is only connected to your FDIC-supervised insured depository institution. You are accessing that trading platform only to transact with your FDIC-supervised insured depository institution. You are not trading with any other entities or customers of the FDIC-supervised insured depository institution by accessing such platform. The availability and operation of any such platform, including the consequences of the unavailability of the trading platform for any reason, is governed only by the terms of your account agreement with the FDIC-supervised insured depository institution.

(3) YOU MAY BE ABLE TO OFFSET OR LIQUIDATE ANY TRADING POSITIONS ONLY THROUGH YOUR BANKING ENTITY BECAUSE THE TRANSACTIONS ARE NOT MADE ON AN EXCHANGE OR REGULATED CONTRACT MARKET, AND YOUR FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION MAY SET ITS OWN PRICES. Your ability to close your transactions or offset positions is limited to what your FDIC-supervised insured depository institution will offer to you, as there is no other market for these transactions. Your FDIC-supervised insured depository institution may offer any prices it wishes, including prices derived from outside sources or not in its discretion. Your FDIC-supervised insured depository institution may establish its prices by offering spreads from third party prices, but it is under no obligation to do so or to continue to do so. Your FDIC-supervised insured depository institution may offer different prices to different customers at any point in time on its own terms. The terms of your account agreement alone govern the obligations your FDIC-supervised insured depository institution has to you to offer prices and offer offset or liquidating transactions in your account and make any payments to you. The prices offered by your FDIC-supervised insured depository institution may or may not reflect prices available elsewhere at any exchange, interbank, or other market for foreign currency.

(4) PAID SOLICITORS MAY HAVE UNDISCLOSED CONFLICTS. The FDIC-supervised insured depository institution may compensate introducing brokers for introducing your account in ways that are not disclosed to you. Such paid solicitors are not required to have, and may not have, any special expertise in trading, and may have conflicts of interest based on the method by which they are compensated. You should thoroughly investigate the manner in which all such solicitors are compensated and be very cautious in granting any person or entity authority to trade on your behalf. You should always consider obtaining dated written confirmation of any information you are relying on from your FDIC-supervised insured depository institution in making any trading or account decisions.

(5) THIS TRANSACTION IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.

(6) THIS TRANSACTION IS NOT A DEPOSIT IN, OR GUARANTEED BY, AN FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION.

(7) THIS TRANSACTION IS SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF ALL AMOUNTS INVESTED.

FINALLY, YOU SHOULD THOROUGHLY INVESTIGATE ANY STATEMENTS BY ANY FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION THAT MINIMIZE THE IMPORTANCE OF, OR CONTRADICT, ANY OF THE TERMS OF THIS RISK DISCLOSURE. SUCH STATEMENTS MAY INDICATE SALES FRAUD.

THIS BRIEF STATEMENT CANNOT, OF COURSE, DISCLOSE ALL THE RISKS AND OTHER ASPECTS OF TRADING OFF-EXCHANGE FOREIGN CURRENCY WITH AN FDIC-SUPERVISED INSURED DEPOSITORY INSTITUTION.

I hereby acknowledge that I have received and understood this risk disclosure statement.

_____

Date

_____

Signature of Customer

(e)(1) *Disclosure of profitable accounts ratio.* Immediately following the language set forth in paragraph (d) of this section, the statement required by paragraph (a) of this section shall include, for each of the most recent four calendar quarters during which the FDIC-supervised insured depository institution maintained retail forex customer accounts:

(i) The total number of retail forex customer accounts maintained by the FDIC-supervised insured depository institution over which the FDIC-supervised insured depository institution does not exercise investment discretion;

(ii) The percentage of such accounts that were profitable for retail forex customer accounts during the quarter; and

(iii) The percentage of such accounts that were not profitable for retail forex customer accounts during the quarter.

(2) The FDIC-supervised insured depository institution's statement of profitable trades shall include the following legend: PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS. Each FDIC-supervised insured depository institution shall provide, upon request, to any retail forex customer or prospective retail forex customer the total number of retail forex accounts maintained by the FDIC-supervised insured depository institution for which the FDIC-supervised insured depository institution does not exercise investment discretion, the percentage of such

accounts that were profitable, and the percentage of such accounts that were not profitable for each calendar quarter during the most recent five-year period during which the FDIC-supervised insured depository institution maintained such accounts.

(f) *Disclosure of fees and other charges.* Immediately following the language required by paragraph (e) of this section, the statement required by paragraph (a) of this section shall include:

(1) The amount of any fee, charge, commission, or spreads that the FDIC-supervised insured depository institution may impose on the retail forex customer in connection with a retail forex account or retail forex transaction;

(2) An explanation of how the FDIC-supervised insured depository institution will determine the amount of such fees, charges, commissions, or spreads; and

(3) The circumstances under which the FDIC-supervised insured depository institution may impose such fees, charges, commissions, or spreads.

(g) *Future disclosure requirements.* If, with regard to a retail forex customer, the FDIC-supervised insured depository institution changes any fee, charge, commission or spreads required to be disclosed under paragraph (f) of this section, then the FDIC-supervised insured depository institution shall mail or deliver to the retail forex customer a notice of the changes at least 15 days prior to the effective date of the change.

(h) *Form of disclosure requirements.* The disclosures required by this section shall be clear and conspicuous and designed to call attention to the nature and significance of the information provided.

(i) *Other disclosure requirements unaffected.* This section does not relieve an FDIC-supervised insured depository institution from any other disclosure obligation it may have under applicable law.

§ 349.7 Recordkeeping.

(a) *General rule.* An FDIC-supervised insured depository institution engaging in retail forex transactions shall keep full, complete and systematic records, together with all pertinent data and memoranda, of all transactions relating to its retail forex business, including:

(1) *Retail forex account records* for each customer reflecting:

(i) The name and address of the person for whom such retail forex account is carried or introduced and the principal occupation or business of such person.

(ii) The name of any other person guaranteeing such retail forex account or exercising trading control with respect to such account;

(iii) The establishment or termination of each retail forex account; and

(iv) For each retail forex account the records must also show the name of the person who has solicited and is responsible for the account or assign account numbers in such a manner as to identify that person.

(2) *Financial ledger records* that show separately for each retail forex customer all charges against and credits to such retail forex customer's account, including but not limited to retail forex customer funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions.

(3) *Transaction records* that show separately for each retail forex account and each retail forex proprietary account:

(i) All retail forex transactions that are futures transactions executed for such account, including the date, price, quantity, market, currency pair, and delivery date;

(ii) All retail forex transactions that are option transactions executed for such account, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, and details of the purchase price of the option, including premium, mark-up, commission, and fees; and

(iii) All other retail forex transactions that are executed for such account, including the date, price, quantity, and currency pair.

(4) *Daily records* which show for each business day complete details of:

(i) All retail forex transactions that are futures transactions executed on that day, including the date, price, quantity, market, currency pair, delivery date, and the person for whom such transaction was made;

(ii) All retail forex transactions that are option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, currency pair, delivery date, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees, and the person for whom the transaction was made; and

(iii) All other retail forex transactions executed on that day for such account, including the date, price, quantity, currency and the person for whom such transaction was made.

(5) *Memorandum order (order ticket).* Except as provided in paragraph (a)(6) of this section, immediately upon the written or verbal receipt of a retail forex transaction order, an FDIC-supervised insured depository institution shall prepare a separate written memorandum order (order ticket) for the order (whether unfulfilled, executed or canceled), including:

(i) Account identification (account or customer name with which the retail forex transaction was effected);

(ii) Order number;

(iii) Type of order (market order, limit order, or subject to special instructions);

(iv) Date and time, to the nearest minute, the retail forex transaction order was received (as evidenced by timestamp or other timing device);

(v) Time, to the nearest minute, the retail forex transaction order was executed; and

(vi) Price at which the retail forex transaction was executed.

(6) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution as required under paragraph (a)(5) of this section if the following requirements are met:

(i) The FDIC-supervised insured depository institution placing and directing the allocation of an order eligible for post-execution allocation has been granted written investment discretion with regard to participating customer accounts and makes the following information available to customers upon request:

(A) The general nature of the allocation methodology the FDIC-supervised insured depository institution will use;

(B) Whether the FDIC-supervised insured depository institution has any interest in accounts which may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable, any account in which the FDIC-supervised insured depository institution has an interest.

(ii) An FDIC-supervised insured depository institution must allocate orders eligible for post-execution allocation in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed;

(B) Allocations must be fair and equitable; no account or group of accounts may receive consistently favorable or unfavorable treatment; and

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by the FDIC.

(7) *Other records.* Other records covered by this section include written acknowledgements of receipt of the risk disclosure statement required by § 349.6(b), trading cards, signature cards, street books, journals, ledgers, payment records, copies of statements of purchase, and all other records, data and memoranda that have been prepared in the course of the FDIC-supervised insured depository institution's retail forex business.

(b) *Ratio of profitable accounts.* (1) With respect to its active retail forex customer accounts over which it did not exercise investment discretion and that are not retail forex proprietary accounts open for any period of time during the quarter, an FDIC-supervised insured depository institution shall prepare and maintain on a quarterly basis (calendar quarter):

(i) A calculation of the percentage of such accounts that were profitable;

(ii) A calculation of the percentage of such accounts that were not profitable; and

(iii) Data supporting the calculations described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(2) In calculating whether a retail forex account was profitable or not profitable during the quarter, the FDIC-supervised insured depository institution shall compute the realized and unrealized gains or losses on all retail forex transactions carried in the retail forex account at any time during the quarter, and subtract all fees, commissions, and any other charges posted to the retail forex account during the quarter, and add any interest income and other income or rebates credited to the retail forex account during the quarter. All deposits and withdrawals of funds made by the retail forex customer during the quarter must be excluded from the computation of whether the retail forex account was profitable or not profitable during the quarter. Computations that result in a zero or negative number shall be considered a retail forex account that was not profitable. Computations that result in a positive number shall be considered a retail forex account that was profitable.

(3) A retail forex account shall be considered "active" for purposes of paragraph (b)(1) of this section if and only if, for the relevant calendar quarter, a retail forex transaction was executed in that account or the retail forex account contained an open position resulting from a retail forex transaction.

(c) *Records related to possible violations of law.* An FDIC-supervised insured depository institution engaging in retail forex transactions shall make a record of all communications, including customer complaints, received by the FDIC-supervised insured depository institution or its IAPs concerning facts giving rise to possible violations of law related to the FDIC-supervised insured depository institution's retail forex business. The record shall contain: the name of the complainant, if provided; the date of the communication; the relevant agreement, contract, or transaction; the substance of the communication; the name of the person who received the communication, and the final disposition of the matter.

(d) *Records for noncash margin.* An FDIC-supervised insured depository institution shall maintain a record of all noncash margin collected pursuant to § 349.9. The record shall show separately for each retail forex customer:

(1) A description of the securities or property received;

(2) The name and address of such retail forex customer;

(3) The dates when the securities or property were received;

(4) The identity of the depositories or other places where such securities or property are segregated or held, if applicable;

(5) The dates in which the FDIC-supervised insured depository institution placed or removed such securities or property into or from such depositories; and

(6) The dates of return of such securities or property to such retail forex customer, or other disposition thereof, together with the facts and circumstances of such other disposition.

(e) *Record of monthly statements and confirmations.* An FDIC-supervised insured depository institution shall retain a copy of each monthly statement and confirmation required by § 349.10.

(f) *Manner of maintenance.* The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Record maintenance may include the use of automated or electronic records provided that the records are easily retrievable, readily available for inspection, and capable of being reproduced in hard copy.

(g) *Length of maintenance.* An FDIC-supervised insured depository institution shall keep each record required by this section for at least five years from the date the record is created.

§ 349.8 Capital requirements.

An FDIC-supervised insured depository institution offering or entering into retail forex transactions must be well capitalized as defined by 12 CFR part 325, unless specifically exempted by the FDIC in writing.

§ 349.9 Margin requirements.

(a) *Margin required.* An FDIC-supervised insured depository institution engaging, or offering to engage, in retail forex transactions must collect from each retail forex customer an amount of margin not less than:

(1) Two percent of the notional value of the retail forex transaction for major currency pairs and 5 percent of the notional value of the retail forex transaction for all other currency pairs;

(2) For short options, 2 percent for major currency pairs and 5 percent for all other currency pairs of the notional value of the retail forex transaction, plus the premium received by the retail forex customer; or

(3) For long options, the full premium charged and received by the FDIC-supervised insured depository institution.

(b)(1) *Form of margin.* Margin collected under paragraph (a) of this section or pledged by a retail forex customer in excess of the requirements of paragraph (a) of this section must be in the form of cash or the following financial instruments:

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States;

(ii) General obligations of any State or of any political subdivision thereof;

(iii) General obligations issued or guaranteed by any enterprise, as defined in 12 U.S.C. 4502(10);

(iv) Certificates of deposit issued by an insured depository institution, as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

(v) Commercial paper;

(vi) Corporate notes or bonds;

(vii) General obligations of a sovereign nation;

(viii) Interests in money market mutual funds; and

(ix) Such other financial instruments as the FDIC deems appropriate.

(2) *Haircuts.* An FDIC-supervised insured depository institution shall establish written policies and procedures that include:

(i) Haircuts for noncash margin collected under this section; and

(ii) Annual evaluation, and, if appropriate, modification of the haircuts.

(c) *Separate margin account.* Margin collected by the FDIC-supervised

insured depository institution from a retail forex customer for retail forex transactions or pledged by a retail forex customer for retail forex transactions shall be placed into a separate account containing only such margin.

(d) *Margin calls; liquidation of position.* For each retail forex customer, at least once per day, an FDIC-supervised insured depository institution shall:

(1) Mark the value of the retail forex customer's open retail forex positions to market;

(2) Mark the value of the margin collected under this section from the retail forex customer to market;

(3) Determine if, based on the marks in paragraphs (c)(1) and (c)(2) of this section, the FDIC-supervised insured depository institution has collected margin from the retail forex customer sufficient to satisfy the requirements of this section; and

(4) Collect such margin from the retail forex customer as the FDIC-supervised insured depository institution may require to satisfy the requirements of this section, or liquidate the retail forex customer's retail forex transactions.

(e) *Set-off prohibited.* An FDIC-supervised insured depository institution may not:

(1) Apply a retail forex customer's losses on retail forex transactions against any funds or other asset of the retail forex customer other than margin in the retail forex customer's separate margin account described in paragraph (c) of this section;

(2) Apply a retail forex customer's losses on retail forex transactions to increase the amount owed by the retail forex customer to the FDIC-supervised insured depository institution under any loan; or

(3) Collect the margin required under this section by use of any right of set-off.

§ 349.10 Required reporting to customers.

(a) *Monthly statements.* Each FDIC-supervised insured depository institution must promptly furnish to each retail forex customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement that clearly shows:

(1) For each retail forex customer:

(i) The open retail forex transactions with prices at which acquired;

(ii) The net unrealized profits or losses in all open retail forex transactions marked to the market;

(iii) Any money, securities or other property in the separate margin account required by § 349.9(c); and

(iv) A detailed accounting of all financial charges and credits to the retail forex customer's retail forex accounts during the monthly reporting period, including: money, securities, or property received from or disbursed to such customer; realized profits and losses; and fees, charges, commissions, and spreads.

(2) For each retail forex customer engaging in retail forex transactions that are options:

(i) All such options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;

(ii) The open option positions carried for such customer and arising as of the end of the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;

(iii) All such option positions marked to the market and the amount each position is in the money, if any;

(iv) Any money, securities or other property in the separate margin account required by § 349.9(c); and

(v) A detailed accounting of all financial charges and credits to the retail forex customer's retail forex accounts during the monthly reporting period, including: money, securities, or property received from or disbursed to such customer; realized profits and losses; premiums and mark-ups; and fees, charges, and commissions.

(b) *Confirmation statement.* Each FDIC-supervised insured depository institution must, not later than the next business day after any retail forex transaction, send:

(1) To each retail forex customer, a written confirmation of each retail forex transaction caused to be executed by it for the customer, including offsetting transactions executed during the same business day and the rollover of an open retail forex transaction to the next business day;

(2) To each retail forex customer engaging in forex option transactions, a written confirmation of each forex option transaction, containing at least the following information:

(i) The retail forex customer's account identification number;

(ii) A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the forex option transaction;

(iii) The strike price;

(iv) The underlying retail forex transaction or underlying currency;

(v) The final exercise date of the forex option purchased or sold; and

(vi) The date the forex option transaction was executed.

(3) To each retail forex customer engaging in forex option transactions, upon the expiration or exercise of any option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and, in the case of exercise, the details of the retail forex or physical currency position which resulted therefrom including, if applicable, the final trading date of the retail forex transaction underlying the option.

(c) Notwithstanding the provisions of paragraphs (b)(1) through (b)(3) of this section, a retail forex transaction that is caused to be executed for a pooled investment vehicle that engages in retail forex transactions need be confirmed only to the operator of such pooled investment vehicle.

(d) *Controlled accounts.* With respect to any account controlled by any person other than the retail forex customer for whom such account is carried, each FDIC-supervised insured depository institution shall promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section.

(e) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the FDIC-supervised insured depository institution was introduced by an introducing broker and the name of the introducing broker.

§ 349.11 Unlawful representations.

(a) *No implication or representation of limiting losses.* No FDIC-supervised insured depository institution engaged in retail foreign exchange transactions or its IAPs may imply or represent that it will, with respect to any retail customer forex account, for or on behalf of any person:

(1) Guarantee such person or account against loss;

(2) Limit the loss of such person or account; or

(3) Not call for or attempt to collect margin as established for retail forex customers.

(b) *No implication of representation of engaging in prohibited acts.* No FDIC-supervised insured depository institution or its IAPs may in any way imply or represent that it will engage in any of the acts or practices described in paragraph (a) of this section.

(c) *No Federal government endorsement.* No FDIC-supervised insured depository institution or its IAPs may represent or imply in any manner whatsoever that any retail forex transaction or retail forex product has been sponsored, recommended, or approved by the FDIC, the Federal government, or any agency thereof.

(d) *Assuming or sharing of liability from bank error.* This section shall not be construed to prevent an FDIC-supervised insured depository institution from assuming or sharing in the losses resulting from the FDIC-supervised insured depository institution's error or mishandling of a retail forex transaction.

(e) *Certain guaranties unaffected.* This section shall not affect any guarantee entered into prior to the effective date of this part, but this section shall apply to any extension, modification or renewal thereof entered into after such date.

§ 349.12 Authorization to trade.

(a) *Specific authorization required.* No FDIC-supervised insured depository institution may directly or indirectly effect a retail forex transaction for the account of any retail forex customer unless, before the transaction occurs, the retail forex customer specifically authorized the FDIC-supervised insured depository institution, in writing, to effect the retail forex transaction.

(b) A retail forex transaction is "specifically authorized" for purposes of this section if the retail forex customer specifies:

(1) The precise retail forex transaction to be effected;

(2) The exact amount of the foreign currency to be purchased or sold; and

(3) In the case of an option, the identity of the foreign currency or contract that underlies the option.

§ 349.13 Trading and operational standards.

(a) *Internal rules, procedures, and controls required.* An FDIC-supervised insured depository institution engaging in retail forex transactions shall establish and implement internal rules, procedures, and controls designed, at a minimum, to:

(1) Ensure, to the extent reasonable, that each order received from a retail forex customer that is executable at or near the price that the FDIC-supervised insured depository institution has quoted to the customer is entered for execution before any order in any retail forex transaction for any proprietary account, any other account in which a related person has an interest, or any account for which such a related person may originate orders without the prior specific consent of the account owner (if such related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account), an account in which such a related person has an interest, or an account in which such a related person may originate orders without the prior specific consent of the account owner;

(2) Prevent FDIC-supervised insured depository institution related persons from placing orders, directly or indirectly, with another person in a manner designed to circumvent the provisions of paragraph (a)(1) of this section;

(3) Fairly and objectively establish settlement prices for retail forex transactions; and

(4) Record and maintain essential information regarding customer orders and account activity, and to provide such information to customers upon request. Such information shall include:

(i) Transaction records for the customer's account, including:

(A) The date and time each order is received by the FDIC-supervised insured depository institution;

(B) The price at which each order is placed, or, in the case of an option, the premium paid;

(C) If the transaction was entered into by means of a trading platform, the price quoted on the trading platform when the order was placed, or, in the case of an option, the premium quoted;

(D) The customer account identification information;

(E) The currency pair;

(F) The size of the transaction;

(G) Whether the order was a buy or sell order;

(H) The type of order, if the order was not a market order;

(I) If a trading platform is used, the date and time the order is transmitted to the trading platform;

(J) If a trading platform is used, the date and time the order is executed;

(K) The size and price at which the order is executed, or in the case of an option, the amount of the premium paid for each option purchased, or the amount credited for each option sold; and

(L) For options, whether the option is a put or call, the strike price, and expiration date.

(ii) Account records that contain the following information:

(A) The funds in the account, net of any commissions and fees;

(B) The net profits and losses on open trades; and

(C) The funds in the account plus or minus the net profits and losses on open trades. (In the case of open option positions, the account balance should be adjusted for the net option value);

(iii) If a trading platform is used, daily logs showing each price change on the platform, the time of the change to the nearest second, and the trading volume at that time and price; and

(iv) Any method or algorithm used to determine the bid or asked price for any retail forex transaction or the prices at which customer orders are executed, including, but not limited to, any premium and markups, fees, commissions or other items which affect the profitability or risk of loss of a retail forex customer's transaction.

(b) *Disclosure of retail forex transactions.* No FDIC-supervised insured depository institution engaging in retail forex transactions may disclose that an order of another person is being held by the FDIC-supervised insured depository institution, unless the disclosure is necessary to the effective execution of such order or the disclosure is made at the request of the FDIC.

(c) *Handling of retail forex accounts of related persons of retail forex counterparties.* No FDIC-supervised insured depository institution engaging in retail forex transactions shall knowingly handle the retail forex account of any related person of another retail forex counterparty unless it:

(1) Receives written authorization from a person designated by such other retail forex counterparty with responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section;

(2) Prepares immediately upon receipt of an order for such account a written record of such order, including the account identification and order number, and records thereon to the nearest minute, by time-stamp or other timing device, the date and time the order is received; and

(3) Transmits on a regular basis to such other retail forex counterparty copies of all statements for such account and of all written records prepared upon the receipt of orders for such account pursuant to paragraph (a)(2) of this section.

(d) *Related person of FDIC-supervised insured depository institution establishing account at another retail forex counterparty.* No related person of an FDIC-supervised insured depository institution engaging in retail forex transactions may have an account, directly or indirectly, with another retail forex counterparty unless:

(1) It receives written authorization to maintain such an account from a person designated by the FDIC-supervised

insured depository institution of which it is a related person with responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section; and

(2) Copies of all statements for such account and of all written records prepared by such other retail forex counterparty upon receipt of orders for such account pursuant to paragraph (c)(2) of this section are transmitted on a regular basis to the retail forex counterparty of which it is a related person.

(e) *Prohibited trading practices.* No FDIC-supervised insured depository institution engaging in retail forex transactions may:

(1) Enter into a retail forex transaction, to be executed pursuant to a market or limit order at a price that is not at or near the price at which other retail forex customers, during that same time period, have executed retail forex transactions with the FDIC-supervised insured depository institution;

(2) Adjust or alter prices for a retail forex transaction after the transaction has been confirmed to the retail forex customer;

(3) Provide a retail forex customer a new bid price for a retail forex transaction that is higher than its previous bid without providing a new asked price that is also higher than its previous asked price by a similar amount;

(4) Provide a retail forex customer a new bid price for a retail forex transaction that is lower than its previous bid without providing a new asked price that is also lower than its previous asked price by a similar amount; or

(5) Establish a new position for a retail forex customer (except one that offsets an existing position for that retail forex customer) where the FDIC-supervised insured depository institution holds outstanding orders of other retail forex customers for the same currency pair at a comparable price.

§ 349.14 Supervision.

(a) *Supervision by the FDIC-supervised insured depository institution.* An FDIC-supervised insured depository institution engaging in retail forex transactions shall diligently supervise the handling by its officers, employees, and agents (or persons occupying a similar status or performing a similar function) of all retail forex accounts carried, operated, or advised by at the FDIC-supervised insured depository institution and all activities of its officers, employees, and agents (or persons occupying a similar status or performing a similar function) relating to its retail forex business.

(b) *Supervision by officers, employees, or agents.* An officer, employee, or agent of an FDIC-supervised insured depository institution must diligently supervise his or her subordinates' handling of all retail forex accounts at the FDIC-supervised insured depository institution and all the subordinates' activities relating to the FDIC-supervised insured depository institution's retail forex business.

§ 349.15 Notice of transfers.

(a) *Prior notice generally required.* Except as provided in paragraph (b) of this section, an FDIC-supervised insured depository institution must provide a retail forex customer with 30 days' prior notice of any assignment of any position or transfer of any account of the retail forex customer. The notice must include a statement that the retail forex customer is not required to accept the proposed assignment or transfer and may direct the FDIC-supervised insured depository institution to liquidate the positions of the retail forex customer or transfer the account to a retail forex counterparty of the retail forex customer's selection.

(b) *Exceptions.* The requirements of paragraph (a) of this section shall not apply to transfers:

(1) Requested by the retail forex customer;

(2) Made by the Federal Deposit Insurance Corporation as receiver or conservator under the Federal Deposit Insurance Act; or

(3) Otherwise authorized by applicable law.

(c) *Obligations of transferee FDIC-supervised insured depository institution.* An FDIC-supervised insured depository institution to which retail forex accounts or positions are assigned or transferred under paragraph (a) of this section must provide to the affected retail forex customers the risk disclosure statements and forms of acknowledgment required by this part and receive the required signed acknowledgments within 60 days of such assignments or transfers. This requirement shall not apply if the FDIC-supervised insured depository institution has clear written evidence that the retail forex customer has received and acknowledged receipt of the required disclosure statements.

§ 349.16 Customer dispute resolution.

(a) *Prohibition on predispute arbitration agreements.* No FDIC-supervised insured depository institution shall enter into any agreement with a retail forex customer in which the parties agree to arbitrate any future dispute between them arising related to the customer's retail forex account.

(b) *Election of forum.* (1) Where the parties agree to arbitrate a dispute after it has arisen, within ten business days of the agreement, the FDIC-supervised insured depository institution must provide the customer with a list of persons qualified in dispute resolution.

(2) The customer shall, within 45 days after receipt of such list, notify the FDIC-supervised insured depository institution of the person selected. The customer's failure to provide such notice shall give the FDIC-supervised insured depository institution the right to select a person from the list.

(c) *Counterclaims.* An agreement to arbitrate a customer's claim against an FDIC-supervised insured depository institution after the claim has arisen may permit the submission of a counterclaim in the arbitration by a person against whom a claim or grievance is brought. Such a counterclaim may be permitted where it arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties, or third persons over which the settlement process lacks jurisdiction.

Dated at Washington, DC, this 10th of May 2011.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–11853 Filed 5–16–11; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0472; Directorate Identifier 2011–NM–005–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 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:

> [T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 Type Design in response to these regulations revealed that, under certain failure conditions, a short circuit may develop in the collector tank level float switch wiring. Such a short circuit may result in an ignition source in the tank vapour space.
>
> This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

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 July 1, 2011.

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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0) 252–627–350; fax +31 (0) 252–627–211; e-mail *technicalservices.fokkerservices @stork.com;* Internet *http://www.myfokkerfleet.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.

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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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–2011–0472; Directorate Identifier 2011–NM–005–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 2010–0194, dated September 29, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> [T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 Type Design in response to these regulations revealed that, under certain failure conditions, a short circuit may develop in the collector tank level float switch wiring. Such a short circuit may result in an ignition source in the tank vapour space.
>
> This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires the installation of a fuse packed in a jiffy junction [i.e., crimped wire in-line junction device] in the collector tank level float switch wiring.

The required actions also include revising the aircraft maintenance program by incorporating critical design configuration control limitations (CDCCLs). You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to

SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF28–28–049, dated June 23, 2010, including Fokker Drawing W57273, Sheet 002, Issue C, dated June 23, 2010, Fokker Drawing W58048, Sheet 1, dated April 29, 2010, and Fokker Manual Change Notification MCNM–F28–035, dated June 23, 2010. 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.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 4 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $825 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,000, or $1,250 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2011–0472; Directorate Identifier 2011–NM–005–AD.

Comments Due Date

(a) We must receive comments by July 1, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new Critical Design Configuration Control Limitations (CDCCLs). Compliance with these CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (j) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 Type Design in response to these regulations revealed that, under certain failure conditions, a short circuit may develop in the collector tank level float switch wiring. Such a short circuit may result in an ignition source in the tank vapour space.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 24 months after the effective date of this AD, install fuses packed in jiffy junctions [*i.e.,* crimped wire in-line junction device], in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–049, dated June 23, 2010, including Fokker Drawing W57273, Sheet 002, Issue C, dated June 23, 2010, Fokker Drawing W58048, Sheet 1, dated April 29, 2010, and Fokker Manual Change Notification MCNM–F28–035, dated June 23, 2010.

Maintenance Program Revision

(h) Before further flight after doing the modification required in paragraph (g) of this AD: Revise the maintenance program by incorporating the CDCCL specified in paragraph 1.L.(1)(c) of Fokker Services Service Bulletin SBF28–28–049, dated June 23, 2010, including Fokker Drawing W57273, Sheet 002, Issue C, dated June 23, 2010, Fokker Drawing W58048, Sheet 1, dated April 29, 2010, and Fokker Manual Change Notification MCNM–F28–035, dated June 23, 2010.

No Alternative Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the revision required by paragraph (h) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although EASA Airworthiness Directive 2010–0194, dated September 29, 2010, specifies both revising the maintenance program to include limitations, and maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2010–0194, dated September 29, 2010; and Fokker Services Service Bulletin SBF28–28–049, dated June 23, 2010, including Fokker Drawing W57273, Sheet 002, Issue C, dated June 23, 2010, Fokker Drawing W58048, Sheet 1, dated April 29, 2010, and Fokker Manual Change Notification MCNM–F28–035, dated June 23, 2010; for related information.

Issued in Renton, Washington, on May 6, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–12015 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0473; Directorate Identifier 2011–NM–019–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 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:

* * * [T]he Federal Aviation Administration (FAA) have published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) have published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 type design in response to these regulations revealed that, on certain aeroplanes, an interrupted shield contact may exist or develop between the housing of an in-tank Fuel Quantity Indication (FQI) cable plug and the cable shield of the shielded FQI system cables in the main and collector fuel tanks which can, under certain conditions, form a spark gap.

This condition, if not detected and corrected, may create an ignition source in the tank vapour space, possibly resulting in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

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 July 1, 2011.

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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.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.

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: Tom Rodriguez, Program Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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–2011–0473; Directorate Identifier 2011–NM–019–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 2010–0217, dated October 21, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> * * * [T]he Federal Aviation Administration (FAA) have published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) have published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 type design in response to these regulations revealed that, on certain aeroplanes, an interrupted shield contact may exist or develop between the housing of an in-tank Fuel Quantity Indication (FQI) cable plug and the cable shield of the shielded FQI system cables in the main and collector fuel tanks which can, under certain conditions, form a spark gap.
>
> This condition, if not detected and corrected, may create an ignition source in the tank vapour space, possibly resulting in a wing fuel tank explosion and consequent loss of the aeroplane.
>
> For the reasons described above, this AD requires, for certain aeroplanes, a one-time [general visual] inspection to check for the presence of a by-pass wire between the housing of each in-tank FQI cable plug and the cable shield and, depending on findings, the installation of a by-pass wire. In addition, this AD requires the implementation of a Critical Design Configuration Control Limitations (CDCCL) task to make certain that the by-pass wire remains installed.
>
> On later production aeroplanes, a different plug has been introduced, Souriau Part Number (P/N) 20P227–2. This plug has an improved shield connection to the housing of the plug, for which the installation of a by-pass wire is not necessary. For aeroplanes with the improved plug installed, this AD only requires the implementation of a CDCCL task to make certain that this type of plug remains installed.

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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010. 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.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,020, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing $308, for a cost of $903 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2011–0473; Directorate Identifier 2011–NM–019–AD.

Comments Due Date

(a) We must receive comments by July 1, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * [T]he Federal Aviation Administration (FAA) have published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) have published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 type design in response to these regulations revealed that, on certain aeroplanes, an interrupted shield contact may exist or develop between the housing of an in-tank Fuel Quantity Indication (FQI) cable plug and the cable shield of the shielded FQI system cables in the main and collector fuel tanks which can, under certain conditions, form a spark gap.

This condition, if not detected and corrected, may create an ignition source in the tank vapour space, possibly resulting in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Installation for Model F.28 Airplanes Serial Numbers 11003 Through 11041 and 11991 Through 11994

(g) For airplanes having serial numbers 11003 through 11041 inclusive and 11991 through 11994 inclusive: At a scheduled opening of the fuel tanks, but not later than 84 months after the effective date of this AD, do a general visual inspection for the presence of a by-pass wire between the housing of each in-tank fuel quantity indication (FQI) cable plug and the cable

shield, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010.

(h) If during the general visual inspection required by paragraph (g) of this AD, it is found that a by-pass wire is not installed, before the next flight: Install the by-pass wire between the housing of the in-tank FQI cable plug and the cable shield, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010.

Maintenance Program Revision To Add Fuel Airworthiness Limitation for Model F.28 Airplanes Serial Numbers 11003 Through 11041 and 11991 Through 11994

(i) For airplanes having serial numbers 11003 through 11041 inclusive and 11991 through 11994 inclusive: Concurrently with paragraph (g) of this AD, revise the airplane maintenance program by incorporating CDCCL–1 specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–053 Revision 1, dated September 20, 2010.

Maintenance Program Revision To Add Fuel Airworthiness Limitation for Model F.28 Airplanes Serial Numbers 11042 Through 11241

(j) For airplanes having serial numbers 11042 through 11241 inclusive: Within 3 months after the effective date of this AD, revise the airplane maintenance program by incorporating CDCCL–2 specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010.

No Alternative Actions, Intervals, and/or CDCCLs

(k) After accomplishing the revisions required by paragraphs (i) and (j) of this AD, no alternative actions (*e.g.,* inspection, interval) and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (m) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

Although European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0217, dated October 21, 2010, specifies both revising the maintenance program to include airworthiness limitations, and doing certain repetitive actions (e.g., inspections) and/or maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring individual repetitive actions and/or maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Repetitive actions and/or maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

(l) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Program Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(m) Refer to MCAI EASA Airworthiness Directive 2010–0217, dated October 21, 2010; and Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010; for related information.

Issued in Renton, Washington, on May 6, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–12016 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0376; Airspace Docket No. 10–AEA–11]

RIN 2120–AA66

Proposed Amendment and Establishment of Air Traffic Service Routes; Northeast United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend five Air Traffic Service (ATS) routes and establish four new ATS routes. The existing routes that would be amended are Q–42, J–60, V–16, V–229 and V–449. The proposed new routes are Q–62, Q–406, Q–448 and Q–480. The FAA is proposing this action to increase National Airspace System (NAS) efficiency, enhance safety and reduce delays within the New York Metropolitan area airspace.

DATES: Comments must be received on or before July 1, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2011–0376 and Airspace Docket No. 10–AEA–11 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0376 and Airspace Docket No. 10–AEA–11) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2011–0376 and Airspace Docket No.10–AEA–11." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the

public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Operations Support Group, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The New York/New Jersey/Philadelphia Metropolitan Area is served by four major airports: Newark Liberty International, John F. Kennedy International, La Guardia, and Philadelphia International, as well as numerous smaller airports generating significant air traffic operations. The close proximity of the airports, combined with high air traffic volume and a complex airspace structure, contribute to less efficient system operations and air traffic delays that can affect airports across the United States. The FAA has been working on various initiatives to increase the efficiency and reliability of the airspace structure in order to maintain safety, respond to increasing aviation operations and mitigate mounting air traffic delays. Key elements of these efforts include improving user access to the NAS, expediting arrivals and departures, and providing more flexible routing options. Other benefits include reduced ATC system complexity, balanced air traffic controller workload, reduced voice communications requirements and reduced aircraft fuel consumption. This notice proposes a number of ATS route changes to help address the above issues.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend jet route J–60, area navigation (RNAV) route Q–42, and VOR Federal airways V–16, V–229 and V–449. In addition, the FAA is proposing to establish four new RNAV routes designated as Q–62, Q–406, Q–448 and Q–480.

The proposed changes would facilitate the rerouting of westbound air traffic departing the New York metropolitan area and would also better sequence this departing traffic with en route overflight traffic. The current traffic flows would be split with new routes and navigation fixes added to reduce delays within the New York terminal airspace. The proposed new and revised ATS routes would mostly be used for departures but are also designed to more efficiently accommodate aircraft landing within the Potomac Terminal Radar Approach Control (TRACON) airspace. Potomac TRACON airspace includes, but is not limited to, Washington Dulles International Airport, Ronald Reagan Washington National Airport, Baltimore/Washington International Thurgood Marshall Airport, and their satellite airports. The proposed route changes would also help segregate the Potomac TRACON arrivals from the high altitude routes extending from the Boston Air Route Traffic Control Center (ARTCC) and New York ARTCC areas of responsibility.

This action proposes to modify the following existing routes: J–60, Q–42, V–16, V–229 and V–449. J–60 would be realigned at a point northwest of the East Texas, PA, VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME), by inserting a dogleg to the north of course, then bypassing the East Texas VOR/DME, and extending through a new westgate departure fix, NEWEL, to be added in the vicinity of the ELIOT fix. J–60 would then resume course to the Sparta, NJ, VORTAC. This realignment would help reduce congestion and converging en route aircraft flows and mitigate a choke point over the existing ELIOT departure fix.

RNAV route Q–42 would be amended by deleting the current segments between the BRNAN, PA, waypoint (WP) and ELIOT, PA, WP and replacing them with segments extending from BRNAN WP to new WPs HOTEE, PA; BTRIX, PA; SPOTZ, PA, and terminating at a new waypoint ZIMMZ, NJ. This change would also help reduce converging flows and reduce congestion.

VOR Federal airways V–16 and V–229 would be amended by inserting a dogleg north of their present courses by following the Kennedy VOR/DME 052° (magnetic) radial northeast of Kennedy VOR/DME. V–16 would then turn east bound, bypassing the Deer Park VOR/DME, then proceeding to the Calverton VOR/DME and resuming its current course. V–229 would also be modified along the Kennedy VOR/DME 052° radial, then turning eastbound to re-intercept its current course toward the Bridgeport, CT, VOR/DME. The V–16 and V–229 changes are intended to free up airspace to accommodate a climb corridor for John F. Kennedy International Airport departures.

V–449 currently extends between the Lake Henry, PA, VORTAC and the Albany, NY, VORTAC. This route would be lengthened westward by adding a new segment that extends between the Selinsgrove, PA, VORTAC and the Lake Henry VORTAC via the Milton, PA, VORTAC. This change would facilitate routing for arrivals into La Guardia Airport.

Four new RNAV routes are being proposed and would be designated as Q–62, Q–406, Q–448 and Q–480. Q–62 would enhance westward flows, reduce congestion and provide flexibility for aircraft entering the Cleveland ARTCC area and routings toward Chicago.

Q–406, Q–448 and Q–480, along with the amended Q–42, would reduce current converging en route flows that result from dependency on ground-based navigation aids. The new Q-route segments would permit some alignment with the, to be established, New York departure fixes NEWEL, CANDR and ZIMMZ. These new fixes would be used for departures from the New York metropolitan area airports to transition and merge aircraft from the terminal structure into the high altitude en route structure and vice versa. In addition, the new routes would relieve congestion by providing alternate routings for aircraft landing at airports outside the New York Metropolitan area.

For the full descriptions of these proposed route changes, see The Proposed Amendment section, below. Radials in the VOR Federal airway descriptions below are stated in True degrees, except for the proposed amended airway segments, which include both True and Magnetic values. In a final rule, only True degrees would be stated.

Jet routes are published in paragraph 2004, high altitude RNAV routes are published in paragraph 2006, and VOR Federal airways are published in

paragraph 6010, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The jet routes, high altitude RNAV routes and VOR Federal airways listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as required to preserve the safe and efficient flow of air traffic in the northeast United States.

Environmental Review

This proposed action qualifies for a categorical exclusion in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, Paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, Dated August 18, 2010 and effective September 15, 2010, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–60 [Amended]

From Los Angeles, CA; via Paradise, CA; Hector, CA; Boulder City, NV; Bryce Canyon, UT; Hanksville, UT; Red Table, CO; Mile High, CO; Hayes Center, NE; Lincoln, NE; Iowa City, IA; Joliet, IL; Goshen, IN; DRYER, OH; Philipsburg, PA; INT Philipsburg 100° (110° M) and Ravine, PA 071° (082° M) radials; INT Sparta, NJ, 253° (264° M) and Broadway, NJ, 295° (306° M) radials; to Sparta, NJ.

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q42 Kirksville, MO (IRK) to ZIMMZ, NJ [Amended]

Kirksville, MO (IRK)	VORTAC	(Lat. 40°08′06″ N., long. 92°35′30″ W.)
STRUK, IL	WP	(Lat. 40°14′04″ N., long. 90°18′22″ W.)
Danville, IL (DNV)	VORTAC	(Lat. 40°17′38″ N., long. 87°33′26″ W.)
Muncie, IN (MIE)	VOR/DME	(Lat. 40°14′14″ N., long. 85°23′39″ W.)
HIDON, OH	WP	(Lat. 40°10′00″ N., long. 81°37′27″ W.)
BUBAA, OH	WP	(Lat. 40°10′27″ N., long. 80°58′17″ W.)
PSYKO, PA	WP	(Lat. 40°08′37″ N., long. 79°09′13″ W.)
BRNAN, PA	WP	(Lat. 40°08′07″ N., long. 77°50′07″ W.)
HOTEE, PA	WP	(Lat. 40°20′36″ N., long. 76°29′37″ W.)
BTRIX, PA	WP	(Lat. 40°36′06″ N., long. 75°49′11″ W.)
SPOTZ, PA	WP	(Lat. 40°45′55″ N., long. 75°22′59″ W.)
ZIMMZ, NJ	WP	(Lat. 40°48′11″ N., long. 75°07′25″ W.)

* * * * * * *

Q62 NOLNN, OH to SARAA, PA [New]

NOLNN, OH	WP	(Lat. 41°14′04″ N., long. 84°38′12″ W.)
WEEVR, OH	WP	(Lat. 41°13′21″ N., long. 84°13′04″ W.)
PSKUR, OH	WP	(Lat. 41°09′16″ N., long. 82°42′57″ W.)
FAALS, OH	WP	(Lat. 41°02′51″ N., long. 80°52′40″ W.)
ALEEE, OH	WP	(Lat. 41°00′28″ N., long. 80°31′54″ W.)
QUARM, PA	WP	(Lat. 40°49′45″ N., long. 79°04′39″ W.)
BURNI, PA	FIX	(Lat. 40°39′25″ N., long. 77°48′14″ W.)
MCMAN, PA	FIX	(Lat. 40°38′16″ N., long. 77°34′14″ W.)
VALLO, PA	FIX	(Lat. 40°37′37″ N., long. 77°26′18″ W.)
Ravine, PA	(RAV) VORTAC	(Lat. 40°33′12″ N., long. 76°35′58″ W.)
SUZIE, PA	FIX	(Lat. 40°27′12″ N., long. 75°58′22″ W.)
SARAA, PA	FIX	(Lat. 40°26′22″ N., long. 75°53′16″ W.)

Q406 Broadway, NJ (BWZ) to Barnes, MA (BAF) [New]

Broadway, NJ (BWZ)	VOR/DME	(Lat. 40°47′54″ N., long. 74°49′19″ W.)
JEETR, NY	WP	(Lat. 41°08′30″ N., long. 74°05′46″ W.)
BASYE, NY	FIX	(Lat. 41°20′37″ N., long. 73°47′55″ W.)

TRIBS, CT	WP	(Lat. 41°39′29″ N., long. 73°19′03″ W.)
BIGGO, CT	FIX.	(Lat. 41°57′21″ N., long. 73°04′05″ W.)
Barnes, MA (BAF)	VORTAC	(Lat. 42°09′43″ N., long. 72°42′58″ W.)

Q448 Pottstown, PA (PTW) to Barnes, MA (BAF) [New]

Pottstown, PA (PTW)	VORTAC	(Lat. 40°13′20″ N., long. 75°33′37″ W.)
LANNA, NJ	FIX	(Lat. 40°33′35″ N., long. 75°01′40″ W.)
JEETR, NY	WP	(Lat. 41°08′30″ N., long. 74°05′46″ W.)
BASYE, NY	FIX	(Lat. 41°20′37″ N., long. 73°47′55″ W.)
TRIBS, CT	WP	(Lat. 41°39′29″ N., long. 73°19′03″ W.)
BIGGO, CT	FIX.	(Lat. 41°57′21″ N., long. 73°04′05″ W.)
Barnes, MA (BAF)	VORTAC	(Lat. 42°09′43″ N., long. 72°42′58″ W.)

Q480 ZANDR, OH to Kennebunk, ME (ENE) [New]

ZANDR, OH	FIX	(Lat. 40°00′19″ N., long. 81°31′58″ W.)
Bellaire, OH (AIR)	VOR/DME	(Lat. 40°01′01″ N., long. 80°49′02″ W.)
LEJOY, PA	FIX	(Lat. 40°00′12″ N., long. 79°24′54″ W.)
VINSE, PA	FIX	(Lat. 39°58′16″ N., long. 77°57′21″ W.)
BEETS, PA	WP	(Lat. 39°57′20″ N., long. 77°26′59″ W.)
HOTEE, PA	WP	(Lat. 40°20′36″ N., long. 76°29′37″ W.)
BTRIX, PA	WP	(Lat. 40°36′06″ N., long. 75°49′11″ W.)
SPOTZ, PA	WP	(Lat. 40°45′55″ N., long. 75°22′59″ W.)
CANDR, NJ	WP	(Lat. 40°58′02″ N., long. 74°57′30″ W.)
JEFFF, NJ	WP	(Lat. 41°14′46″ N., long. 74°27′43″ W.)
Kingston, NY (IGN)	VOR/DME	(Lat. 41°39′56″ N., long. 73°49′20″ W.)
LESWL, CT	WP	(Lat. 41°53′31″ N., long. 73°19′20″ W.)
Barnes, MA (BAF)	VORTAC	(Lat. 42°09′43″ N., long. 72°42′58″ W.)
Kennebunk, ME (ENE)	VORTAC	(Lat. 43°25′32″ N., long. 70°36′49″ W.)

* * * * * * *

Paragraph 6010 VOR Federal Airways.

V–16 [Amended]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; Cochise, AZ; Columbus, NM; El Paso, TX; Salt Flat, TX; Wink, TX; INT Wink 066° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; Pine Bluff, AR; Marvell, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; INT Kennedy 040° (052° M) and Calverton, NY, 261° (274°M) radials; Calverton; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

V–229 [Amended]

From Patuxent, MD; INT Patuxent 036° and Atlantic City, NJ, 236° radials; Atlantic City; INT Atlantic City 055° and Colts Neck, NJ, 181° radials; INT Colts Neck 181° and Kennedy, NY, 209° radials; Kennedy; INT Kennedy 040° (052° M) and Calverton, NY, 261° (274° M) radials; INT Calverton 261° (274°) and Kennedy 053° (065° M) radials; INT Kennedy 053° and Bridgeport, CT, 200° radials; Bridgeport; Hartford, CT; INT Hartford 040° and Gardner, MA, 195° radials; Gardner; Keene, NH; INT Keene 336° and Burlington, VT, 160° radials; to Burlington. The airspace within R–5002B is excluded during times of use. The airspace below 2,000 feet MSL outside the United States is excluded.

V–449 [Amended]

From Selinsgrove, PA; Milton, PA; INT Milton 064° (073° M) and Williamsport, PA 109° (118° M) radials; Lake Henry, PA; DeLancey, NY; Albany, NY.

Issued in Washington, DC, on May 10, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations & ATC Procedures Group.

[FR Doc. 2011–12002 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0184; Airspace Docket No. 11–ANM–4]

Proposed Establishment of Class E Airspace; Nephi, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Nephi Municipal Airport, Nephi, UT. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Nephi Municipal Airport, Nephi, UT. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before July 1, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0184; Airspace Docket No. 11–ANM–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–0184 and Airspace Docket No. 11–ANM–4) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2011–0184 and Airspace Docket No. 11–ANM–4". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Nephi Municipal Airport, Nephi, UT. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at the airport, and would enhance the safety and management of aircraft operations.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Nephi Municipal Airport, Nephi, UT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Nephi, UT [New]

Nephi Municipal Airport, Nephi, UT
(Lat. 39°44′12″ N., long. 111°52′12″ W.)

That airspace extending from 700 feet above the surface within a 9.7-mile radius of the Nephi Municipal Airport; that airspace extending upward from 1,200 feet above the surface within an area bonded by a line beginning at lat. 40°03′00″ N., long. 112°19′00″ W.; lat. 39°56′00″ N., long. 111°23′00″ W.; lat. 39°23′00″ N., long. 111°27′00″ W.; lat. 39°29′00″ N., long. 112°21′00″ W.; lat. 39°49′00″ N., long. 112°23′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on May 10, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–11998 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA–2009–0044]

RIN 1218–AC45

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of limited reopening of rulemaking record.

SUMMARY: OSHA is reopening the rulemaking record to allow interested persons, particularly small businesses, to comment on the information gathered and on issues raised during the small business teleconferences that the Agency and the Small Business Administration's Office of Advocacy (SBA Office of Advocacy) co-sponsored on April 11–12, 2011. The purpose of the teleconferences was to gather information from small businesses about their experiences recording work-related musculoskeletal disorders (MSDs) and how they believe they would be impacted by OSHA's proposed rule to revise its Recordkeeping regulations to restore a column on the OSHA 300 Log that employers would have to check if a case they already are required to record is an MSD. The record will remain open for 30 days for comment on these limited issues.

DATES: Comments must be submitted (postmarked, sent, received) by June 16, 2011.

ADDRESSES: You may submit comments using one of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the on-line instructions for submitting comments electronically;

Fax: If your comments, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648; or

Mail, hand delivery, express mail, messenger or courier: You may submit your comments and attachments to the OSHA Docket Office, Docket Number OSHA–2009–0044, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2525 (TTY number (887) 889–5627). Deliveries (hand, express mail, messenger, courier) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the docket number (Docket No. OSHA–2009–0044) or RIN number (RIN No. 1218–AC45) for this rulemaking. Because of security-related procedures, submitting comments by regular mail may result in significant delay. Please contact the OSHA Docket Office for information about security procedures for submitting comments by hand delivery, express delivery, messenger or courier service.

OSHA places all comments, including any personal information you provide, in the public docket without change and the comments may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Diana Petterson, Office of Public Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1898; e-mail *petterson.diana@dol.gov.*

For general and technical information: Dorothy Dougherty, Director, OSHA, Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

References and Exhibits

This notice references documents in the public docket of this rulemaking (Docket No. OSHA–2009–0044). They are available on the Internet at *http://www.regulations.gov,* the Federal eRulemaking Portal. The referenced documents are identified as "Ex." followed by the document number. The document number is the last sequence of numbers in the Document ID Number on *http://www.regulations.gov.* For example, the proposed rule, which is Document ID Number OSHA–2009–0044–0001 at *http://www.regulations.gov,* is Ex. 1.

Background

On January 29, 2010, OSHA proposed to revise its Occupational Injury and Illness Recording and Reporting (Recordkeeping) regulation to restore a column to the OSHA 300 Log that employers would have to check if a case they already are required to record under the existing Recordkeeping rule is an MSD (Ex. 1; 75 FR 4728 (1/29/2010)). The proposed rule would not change the existing Recordkeeping requirements about when and under what circumstances employers must record work-related injuries and illnesses. Under the existing Recordkeeping rule (66 FR 5916 (1/19/2001)) employers already must determine whether a case is recordable; that is, whether the case meets the definition of "injury or illness," is a new case, is work-related, and meets at least one of the recording criteria (*e.g.,* involves days away from work, restricted work, or medical treatment beyond first aid). The only additional requirement the proposed rule would impose is for employers to mark the MSD column box on the OSHA 300 Log if a case they have already recorded meets the definition of an MSD. The proposed rule would define an MSD, for recordkeeping purposes only, as a disorder of the of the muscles, nerves, tendons, ligaments, joints, cartilage or spinal discs that was not caused by a slip, trip, fall, motor vehicle accident or similar accident (Proposed § 1904.12(b)(1); Ex. 1; 75 FR 4740).

OSHA's revised 2001 Recordkeeping rule included an MSD column, but that provision never became effective and was deleted in 2003 (68 FR 38601 (6/30/2003)). In proposing to restore the MSD column, OSHA explained:

> After further consideration and analysis, OSHA believes that the MSD column would provide valuable information for maintaining complete and accurate national occupational injury and illness statistics; assist OSHA in targeting its inspection, outreach, guidance, and enforcement efforts to address MSDs; and provide easily identifiable information at the establishment level that will be useful for both employers and employees (75 FR 4731).

In the proposed rule, OSHA estimated that 1.505 million recordable MSDs were expected to occur annually among the 1.542 million affected establishments. Therefore, the economic impact of the proposed rule on any affected establishment would be quite small (75 FR 4737). OSHA estimated the annualized costs of the proposed rule would be $1.379 million per year for all affected establishments combined ($4 per establishment the first year and 67 cents in future years). The costs represent the time that establishments would need to become familiar with the rule (5 minutes per establishment the first year) and to determine if the recordable case meets the MSD definition and check the MSD column (1 minute per MSD annually).

OSHA provided 60 days for stakeholders to submit comments on the proposed rule (75 FR 10738 (3/9/2010)), consistent with Executive Orders 12866 and 13563 (58 FR 51735; 76 FR 3821). OSHA also held a public meeting on March 9, 2010, to allow stakeholders to make oral presentations and question the Agency about the proposed rule. The transcript of the public meeting is in the public docket of this rulemaking (Ex. 56).

See the notice of proposed rulemaking (OSHA–2009–0044–0001) for additional information on the events leading to this rulemaking and the history of the 2001 Recordkeeping rulemaking as well as a detailed explanation of the proposed

MSD column provision, OSHA's reasons for proposing to restore the MSD column and the estimated economic impacts (Ex. 1; 75 FR 4728).

Small Business Teleconferences

On January 25, 2011, OSHA announced that the Agency had decided to seek additional input from small businesses on the impact of the proposal through outreach in partnership with the SBA Office of Advocacy and, therefore, was temporarily withdrawing the proposed rule from review by the Office of Management and Budget. On March 23, 2011, OSHA announced that, together with the SBA Office of Advocacy, the Agency would hold three teleconferences on April 11–12, 2011 to reach out to small businesses. The purpose of the teleconferences was to gather information from small businesses about their current recordkeeping practices, including their experiences recording work-related MSDs, and the impact they believe the proposal would have on them. OSHA also provided the following information about the teleconferences:

- OSHA and the SBA Office of Advocacy would select the small business participants for the teleconferences;
- The public would be invited to listen to the teleconferences, but only selected small businesses could participate;
- In advance of the teleconferences, OSHA would provide participants with background information on the proposed rule and a list of questions and issues for discussion;
- The teleconferences would not be electronically recorded or transcribed;
- OSHA staff would take notes during the teleconferences and prepare a summary report that would not identify the source of specific comments;
- Small business participants also could send written comments following the teleconferences; and
- After the teleconferences, OSHA would reopen the rulemaking record for the limited purpose of allowing interested persons, particularly small business, to comment on the teleconferences and the issues raised by the participants (Summary of Comments from the Small Business Teleconferences on OSHA's Proposed Rule on MSD Recordkeeping Requirements, Ex. 0139).

Sixteen small businesses, with employment ranging from about 10 to more than 400 employees, participated in the three teleconferences (Summary of Comments from the Small Business Teleconferences on OSHA's Proposed Rule on MSD Recordkeeping Requirements, Appendix A, Ex. 0139). In addition, dozens of interested persons listened to the teleconferences in person or by telephone.

OSHA has prepared a summary of the participants' comments during the teleconferences and has placed the summary in the public docket for this rulemaking (Summary of Comments from the Small Business Teleconferences on OSHA's Proposed Rule on MSD Recordkeeping Requirements, Ex. 0139). The document summarizes the topics the participants discussed, including their current recordkeeping practices, how they determine the work-relatedness of MSDs, how the participants believe the proposed rule would change their recordkeeping practices, benefits of the proposed rule, and other issues the participants raised. The summary document also includes the list of teleconference participants (Summary of Comments from the Small Business Teleconferences on OSHA's Proposed Rule on MSD Recordkeeping Requirements Appendix A, Ex. 0139) and the background materials and list of discussion issues that OSHA provided to the small business participants (Summary of Comments from the Small Business Teleconferences on OSHA's Proposed Rule on MSD Recordkeeping Requirements, Appendix B, Ex. 0139). The background materials contain information on the proposed and existing recordkeeping requirements, the need for the proposed rule, updated cost estimates of the proposed rule and economic impacts on small businesses, and OSHA's existing recordkeeping forms. Interested persons may read and download the summary and appendices at Docket Number OSHA–2009–0044 at *http://www.regulations.gov.* The summary and appendices also are available on OSHA's Web page at *http://www.osha.gov.*

Public Participation

OSHA invites comment, particularly from small businesses, on the small business teleconferences by the participants. Interested persons must submit comments by June 16, 2011.

You may submit comments and attachments by one of the following methods: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by fax; or (3) by hard copy. All submissions must identify the Agency name and the OSHA docket number (Docket No. OSHA–2009–0044) or RIN number (RIN No. 1218–AC45) for this rulemaking. You may supplement electronic comments by uploading attachments electronically. If, instead, you wish to submit a hard copy of the attachments, you must submit those materials to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic comments by name, date, and docket number, so OSHA can attach them to your submission.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Access to Docket

Comments in response to this **Federal Register** notice are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions individuals about submitting personal information such as social security numbers and birthdates. Exhibits referenced in this **Federal Register** notice also are posted at *http://www.regulations.gov.* Although all rulemaking documents are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that Web page. All comments and exhibits, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information about using *http://www.regulations.gov* to submit comments and access the rulemaking docket is available on that Web page. Contact the OSHA Docket Office for information about materials not available through that Web page and for assistance in using the Internet to locate docket documents in the rulemaking docket.

Electronic copies of this **Federal Register** notice and the proposed rule are available at *http://www.regulations.gov.* This notice, the summary of the small business teleconferences, the proposed rule, news releases and other relevant information also are available at OSHA's Web page at *http://www.osha.gov.* For specific information about OSHA's Recordkeeping rule, go the Recordkeeping page on OSHA's Web page.

OSHA will carefully review and evaluate the comments, information, and data received in during this limited reopening as well as all other information in the rulemaking record, to determine how to proceed.

Authority and Signature

This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Sections 8 and 24 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 673), the Administrative Procedures Act (5 U.S.C. 553), and Secretary of Labor's Order No. 4–2010 (75 FR 55355 (9/10/2010)).

Signed at Washington, DC, on May 11, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–11965 Filed 5–16–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1016]

RIN 1625–AA00

Safety Zone: Ohio River Mile 355.5 to 356.5 Portsmouth, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in the Ohio Valley Captain of the Port Zone on the Ohio River in Portsmouth, OH. This safety zone is proposed to begin at mile 355.5 and end at mile 356.5, extending the entire width of the river. This Safety Zone is intended to protect persons and vessels from the potential safety hazards associated with the Civic Forum Fireworks Display, which occurs annually. This safety zone is proposed to become a permanent final rule.

DATES: Comments and related material must be received by the Coast Guard on or before June 16, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1016 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Marceli Rogoza, Marine Safety Unit Huntington Coast Guard; telephone 304–733–0198 extension 2137, e-mail *Marceli.A.Rogoza@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1016), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–1016" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–1016" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before March 27, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Petty Officer Marceli Rogoza at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

The Civic Forum is sponsoring a fireworks display on the 4th of July. Fireworks will be launched from the left descending bank on the Ohio River at mile 356. A hazardous situation could exist for vessels, mariners and spectators in the vicinity of the fireworks display. A safety zone is needed to protect those vessels, mariners and spectators from the hazards associated with this fireworks display.

Discussion of Proposed Rule

The Captain of the Port Ohio Valley proposes to establish a safety zone for the waters of the Ohio River beginning at mile 355.5 and ending at mile 356.5. The term "participating vessel" includes all vessels registered with the fireworks event officials to work in the event. With the exception of participating vessels and those mariners operating participating vessels, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative. The Captain of the Port Ohio Valley may be contacted on VHF–FM Channels 13 or 16, or by telephone at 800–253–7465. The proposed safety zone will be enforced on the 4th of July each year beginning in 2011. The Captain of the Port Ohio Valley will inform the public through broadcast notice to mariners of the enforcement period for the safety zone.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal, rendering a full regulatory evaluation unnecessary. The basis of this finding is that the safety zone will only be in effect for a limited time period on one day each year and notifications to the marine community will be made through broadcast notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Ohio River beginning at mile 355.5 and ending at mile 356.5 on the 4th of July each year. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for limited time period on one day each year during Civic Forum Fireworks Display.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Marceli Rogoza. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves regulations establishing, disestablishing, or changing Regulated navigation areas and security or safety zones. The rule fits this category because the Coast Guard proposes to establish a safety zone from mile 355.5 to mile 356.5 on the Ohio River. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08–1016 is added to read as follows:

§ 165.T018–1016 Safety Zone; Ohio River Mile 355.5 to Mile 356.5 Portsmouth, OH.

(a) *Location.* The waters of the Ohio River beginning at mile 355.5 and ending at mile 356.5, extending the entire width of the river.

(b) *Effective date.* This section of this rule is effective on the 4th of July each year beginning in 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Ohio Valley.

(2) Persons or vessels requiring entry into or passage through this zone must request permission from the Captain of the Port Ohio Valley, or a designated representative. They may be contacted on VHF–FM Channels 13 or 16, or by telephone at (800) 253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated on-scene U.S. Coast Guard patrol personnel.

(4) On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: March 15, 2011.

L.W. Hewett,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2011–12005 Filed 5–16–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD80

Special Regulations, Areas of the National Park System, Mammoth Cave National Park

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to designate four bicycle routes within Mammoth Cave National Park. This proposed rule is necessary to implement portions of the park's Comprehensive Trail Management Plan and the requirements of the NPS general regulations require that a special regulation be promulgated in order to allow off-road bicycle use on routes outside of developed park areas. Authorizing routes for bicycling will address the significant interest of the visiting public for bicycling in the park. This proposed rule would allow bicycle use on a new Connector Trail in the vicinity of Maple Springs; the Big Hollow Trail, a new bike trail in the hilly country of the park north of the Green River; the nine-mile Mammoth Cave Railroad Bike & Hike Trail; and the White Oak Trail.

DATES: Comments must be received by July 18, 2011.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number, (RIN) 1024–AD80 by any of the following methods:

Federal rulemaking portal: http://www.regulations.gov—Follow the instructions for submitting comments.

Mail or hand delivery to Superintendent, Mammoth Cave National Park, P.O. Box 7, Mammoth Cave, Kentucky 42259.

FOR FURTHER INFORMATION CONTACT: A.J. North, Regulations Coordinator, National Park Service, 1849 C Street, NW., Room 2355, Washington, DC 20240. Phone: (202) 208–5268. E-mail: *AJ_North@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

Mammoth Cave National Park is the core of the largest, most complex, and best known karst area in the world. Karst is a geologic term which refers to areas of irregular limestone in which erosion has produced features such as fissures, sinkholes, underground streams, sinking springs, and caverns. The many types of geologic features present within the extensive cave

system are the product of a unique set of conditions found nowhere else. The 365 miles of passageways that have been surveyed and mapped define Mammoth Cave as the longest cave system in the world.

The mission of Mammoth Cave National Park is to protect and preserve the extensive limestone caverns and associated karst topography, scenic river-ways, original forests, other biological resources, and evidence of past and contemporary ways of life. Mammoth Cave National Park also strives to provide for public education and enrichment through scientific study and to provide for the development and sustainable use of recreation resources and opportunities.

Legislation and Purpose of the Park

As early as 1905, Members of the Kentucky Congressional delegation suggested Mammoth Cave as a national park.

In its April 18, 1926 report to the Secretary of the Interior, the Southern Appalachian National Park Commission recommended national park status for the Mammoth Cave region for, among other reasons, the:

> * * * beautiful and wonderful formations * * * great underground labyrinth * * * of remarkable geological and recreational interest perhaps unparalleled elsewhere * * * thousands of curious sinkholes of varying sizes through which much of the drainage is carried to underground streams, there being few surface brooks or creeks;

The Commission also recommended lands above ground in the region of the cave for inclusion in the national park because of the:

> * * * exceptional opportunity for developing a great national recreational park of outstanding service in the very heart of our Nation's densest population and at a time when the need is increasingly urgent and most inadequately provided for.

The Congress of the United States saw the value of including surface lands as part of the park. Language in Senate, Committee on Public Lands and Surveys, Report No. 823, May 10, 1926, and the House of Representatives, Committee on the Public Lands, Report No. 1178, May 12, 1926, on the bill to authorize Mammoth Cave National Park said the park would:

> * * * insure a great recreational ground * * * where * * * thousands of our people may find * * * the most delightful outdoor recreation in * * * traversing the picturesque and rugged hills and valleys and great forests of the region included in the proposed park area.

On May 25, 1926, Congress authorized the establishment of Mammoth Cave National Park (44 Stat. 635), and on July 1, 1941, Mammoth Cave was declared a national park. Subsequently, the Great Onyx Cave and Crystal Cave properties were purchased and added to the park on April 7, 1961. The park now comprises 52,830 acres.

History of Trail Development

The interest in outdoor recreation for the Mammoth Cave area identified in the 1926 Southern Appalachian Report has not diminished. Through the years, park managers have responded to changing trends in recreation: The Wild Cave tour began in 1969; a system of backcountry trails was initiated in the 1970s; in the 1980s, a horse livery on the park boundary began offering guided rides on park trails, and canoe and kayak liveries began shuttle services on the Green and Nolin rivers. In 2005, the Mammoth Cave Railroad Bike & Hike Trail was completed, connecting the heart of the park with one of the gateway communities (two other gateway communities have expressed interest in constructing similar trails); and the 2007 Comprehensive Trail Management Plan calls for bicycle use on certain trails in the park.

The Park has approximately 85 miles of open trails. While all trails are open to hiking, approximately 44.5 miles of trail are open to horses, approximately 22.5 miles of trail are open to bicycles, and 5.5 miles of trail accommodate both horses and bicycles.

Over the years, trails were improved and expanded into a series of loops which compose the first 6.5 miles of the front-country trail system in the vicinity of the park's visitor center and nearby Green River. Other trails, including trails at Sloans Pond, Turnhole Bend, Sand Cave, and Cedar Sink, were developed as short hikes to park features.

In the early 1970s, the park planned a series of trails in the more than 20,000 acres of backcountry area on the north side of the Green River. In 1974, those trails were officially opened to hiking and horseback riding. The main trails of that 55-mile system followed old and pre-existing dirt roads, with the remaining trails built as connections between those dirt roads to create loops.

In 1999, a local biking club asked park management about the possibility of permitting bicycling on one or more trails in the park. After further consideration, approximately 13 miles of trails were opened to bicycling on an experimental basis, while continuing to allow hiking and horseback riding on the same trails.

In February 2005, park officials organized the first Backcountry Summit meeting between Mammoth Cave National Park, the Bowling Green League of Bicyclists, the Sierra Club, and the Mammoth Cave Equestrian Trail Riders Association. The purpose of this meeting was to provide an avenue of communication between park officials and all user groups regarding improving and maintaining backcountry trails and other backcountry issues.

Comprehensive Trail Management Plan

To address increasing demands for trail use, the Park developed a Comprehensive Trail Management Plan and Environmental Assessment (EA) in 2007 to insure protection of park resources while providing for public use of the trails.

The purpose of the trail plan was to develop and implement objectives and strategies for the protection, management, and use of trails park-wide for a period of 10 years. The plan identifies designated trails and access points as well as the type of activity (hiking, biking, horseback riding, or a combination of those activities) for which each trail could be used.

The park staff utilized NPS Management Policies 2006 and the purposes for which the park was established by Congress to develop objectives and ensure the appropriateness of designating trails and the uses allowed for each trail within Mammoth Cave National Park.

One of the most important concepts incorporated into the trail plan was sustainability. Under the plan, the park will use sustainable material and techniques for trail maintenance and future trail design and construction projects. The park will use techniques such as maximum grade limits, water bars, and large dips in the trail called grade reversals to minimize or slow erosion from water and use. The park will build bridges and utilize materials such as gravel, landscape timbers, and geotextile to create a more durable trail surface and protect potentially vulnerable trail features.

The park trail plan proposed actions that could have environmental consequences, such as constructing trails or changing trail alignments, so NPS was required by the National Environmental Policy Act (NEPA) to evaluate the potential environmental impacts of those actions. The associated EA evaluated several alternative proposed actions or variations for a trail plan, including a "no action" alternative that would not change the way the trails were currently managed.

The draft plan and accompanying EA were prepared after a public meeting on June 29, 2006, and after a public scoping

period from June 29 to July 14, 2006. After the draft plan and accompanying EA were prepared and published, NPS held a second public meeting on February 7, 2008 in conjunction with a 60-day comment period from January 24, 2008 to March 24, 2008.

Selected Alternative

On November 14, 2008, the park selected Alternative 4. A finding of no significant impact (FONSI) for the Comprehensive Trail Management Plan was approved on December 18, 2008. Public comment was overwhelmingly in support of Alternative 4 and opposed to the park's proposed preferred alternative, Alternative 5. The primary difference between the two alternatives is that under Alternative 4, NPS would construct a new trail primarily for bicycle use whereas Alternative 5 called for removal of horses from the existing First Creek Trail, in order to allow bicycles on that trail.

The NPS has determined bicycle use to be appropriate for certain trails in Mammoth Cave National Park, with the incorporation of sustainable design, construction, and maintenance standards and materials. Minimizing trail damage and deterioration and the accompanying environmental impacts is an essential element of Alternative 4. This alternative also separates horse and bicycle use in response to public concerns about user conflict or significant changes in or effect on visitor use due to conflict. To address these concerns, bicycle use will be eliminated on the Sal Hollow, Buffalo, and Turnhole Bend Trails, and the Big Hollow Trail will be constructed for bicycle use.

The Plan, EA and Finding of No Significant Impact, (FONSI), are available online at: *http://www.nps.gov/maca/parkmgmt/planning*.

Connector Trail

Subject to the results of this rulemaking, a new connector trail will be designed and constructed for the purpose of connecting access points and areas with trails, including the Maple Springs Group Campground, Maple Springs Trailhead, Mammoth Cave International Center for Science and Learning, Big Hollow Trailhead, and the Raymer Hollow Trailhead. This connector would run from the Maple Springs Trailhead to the Raymer Hollow Trailhead, and would be a wide, hardened-gravel trail to facilitate heavy use and two-way traffic of hikers, bicyclists, and horseback riders. The section of the connector trail between Maple Springs Trailhead and the Big Hollow Trailhead would be designated as multiple-use, and the section from the Big Hollow Trailhead to the Raymer Hollow would be restricted to hikers and horses. As part of the connector trail development, a new parking area would be constructed along the Green River Ferry Road at the Big Hollow Trailhead.

The new parking area along the Green River Ferry Road would allow bicyclists, hikers, and equestrians access to the horse and hiking trails or Big Hollow Trail without using the multiple-use part of the connector. The lot adds parking capacity to the trail system, as well as allowing visitors to separate themselves from other user groups. When the connector trail is complete, the trailhead and trails at the Good Spring Baptist Church will be eliminated, as access will no longer be needed to the Raymer Hollow Trail. Further, elimination of the trails and trailhead would greatly reduce the impact on and degradation of the Good Springs Baptist Church cultural site.

Currently, the only way for equestrians, bicyclists, and hikers to access trailheads is by using the Maple Springs Loop Road and the Good Spring Church Road, which can be congested with large pickup trucks, horse trailers, and other passenger vehicles. Use of those roadways creates a potential hazard from traffic for trail users. The connector trail will provide an alternative to using the roads, and increase public safety by getting these trail users away from the roads and the potential for collision with vehicles.

Big Hollow Bicycle Trail

The selected alternative includes a six-mile single track mountain-bike-type loop, named the Big Hollow Trail, which is being constructed east of the Green River Ferry Road-North and on the ridge west of Big Hollow. Bicycling and hiking would be allowed, but the trail would be closed to horse use. Public comment on the EA was substantially in support of construction of this trail for bicycle use.

This new trail increases opportunities for bicycle use without reducing the trails accessible to horse use, while maintaining separation of horse and bicycle users. Separation of these activities should improve the recreational experience for user groups and offer bicyclists access to backcountry scenery.

Since the trail would be new construction, the selected alternative will have more impact on park resources than other alternatives, but we concluded will still not have a significant effect on the environment. Vegetation will be removed on the trail surface, and cleared along the trail margins, but sustainable materials and construction techniques will be used to build the trail which will help control and minimize surface degradation, erosion and other adverse effects on surrounding park resources. This trail will not pass through floodplains, cross streams, or be located near wetlands, and therefore is expected to have no new impacts on water resources.

Vegetation and tree removal identified in this alternative would be completed in accordance with the "Biological Opinion for the Effects of the Hazard Tree Removal and Vegetation Management Program to the Indiana Bat at Mammoth Cave National Park, Kentucky" to ensure the activities would be considered "not likely to adversely affect" the species.

To minimize any effect on archeological resources, the park will survey areas where ground disturbance would take place and adjust trail alignment to avoid adverse impacts. This trail will not pass through or near cultural sites.

Mammoth Cave Railroad Bike & Hike Trail

An environmental assessment for the Mammoth Cave Railroad Bike & Hike Trail was completed in 1999, and amended in 2004. Between 2004 and 2007, the National Park Service constructed a nine-mile, graveled hiking and biking trail. The Mammoth Cave Railroad Bike & Hike Trail follows the general route of a historic railroad bed leading from the visitor center to the park boundary at Park City and receives significant daily use. The trail passes close enough to the campground area to provide hiking and bicycling opportunities for those camping at the park. The trail continues past the campground, through low wetlands and higher elevations on the ridge-tops, providing the user with a varied ecological view of the park. Several wayside exhibits along the trail recount historic facts regarding the old railroad route, including past events and structures that played a significant role in the history of the area. The Bike and Hike trail was designed and constructed utilizing modern technology and sustainable design. The eight-foot wide graveled surface was designed to offer a comparatively easy, family-style bicycle trail as opposed to the single-track, mountain-bike-type Big Hollow Trail.

The Bike and Hike trail will connect to historic Bell's Tavern upon completion of Park City's bike trail. The park has recently received expressions of interest from the communities of Cave City and Brownsville to construct

similar bike trails that could connect with the Mammoth Cave Railroad Bike and Hike Trail. These improvements would provide opportunities for the use of the park and contribute to the 'Connecting People to Parks' initiative of the NPS and the President's America's Great Outdoors initiative.

White Oak Trail

The Comprehensive Trail Management Plan also identified the White Oak Trail as a multiple-use trail, and this proposed rule would designate it as a trail for bicycles in addition to hiking and horseback riding. The trail is on an old roadbed and is wide, fairly level, and currently has a relatively low level of use. The flat and wide nature of the trail provides conditions that would tend to minimize user conflicts and support the multiple-use designation. The NPS would continue to occasional use this trail for administrative vehicle access to backcountry sites for emergency response and to conduct maintenance and monitoring activities.

Effect of This Proposed Rule

The purpose of this proposed rule is to authorize bicycle use on the Connector, Big Hollow, Mammoth Cave Railroad Bike and Hike, and White Oak trails. NPS regulations require a special regulation for such use, since the trails do not fall within developed areas of the park, and they are not park roads. Without such a special rule, bicycling could not be authorizes on these trails, and the full park-wide trails management plan could not be implemented.

Compliance With Other Laws and Executive Orders

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

1. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. It is anticipated that establishment of these trails will generate positive benefits and no costs to visitors, businesses, or local communities. This conclusion is based on the results of an NPS economic analysis of the effects of the rule, dated November 17, 2009, which is available on *http://www.regulations.gov*.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

3. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

4. This rule does not raise novel legal or policy issues. The rule implements the special regulation required by NPS general regulations, to allow bicycle use on four trails designated as bicycle routes, within Mammoth Cave National Park.

Regulatory Flexibility Act (RFA)

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the results of an NPS economic analysis of the effects of the rule, dated November 17, 2009, available for review at: *http://www.nps.gov/maca/parkmgmt/planning,* which incorporated a regulatory flexibility threshold analysis. The rule would reasonably increase park visitation and thereby generate benefits for businesses, including small entities, through increased visitor spending. Consequently, the rule will not impose a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. There are no businesses in the surrounding area economically dependent on continued bicycle use on these trails. The November 2009 NPS economic analysis estimated that the rule would add a benefit to local business in the form of new visitors attracted to the area to use the trails, and not have an effect of $100 million on the economy.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The rule will not impose restrictions on local businesses in the form of fees, training, record keeping, or other measures that would increase costs.

The economic analysis projected a net benefit for the Federal government and a consumer surplus of $27.02/day for new visitors and $12.01/day for current visitors.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises. The rule is internal to National Park Service operations, and has been determined through economic analysis not to have adverse effects.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State local or Tribal governments or the private sector. This rulemaking addresses only actions that will be taken by the National Park Service. It will not require any state, local or Tribal government to take any action that is not funded; it is an agency specific rule and imposes no requirements on small governments.

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. A taking implication assessment is not required. This rule designates park trails inside the park, and though the trails may connect with trails external to the park, the rule does not require the taking of land for trail outside the park.

Federalism (Executive Order 13132).

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only effects use of NPS administered lands. It has no effect on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on Federally recognized Indian Tribes. The question was considered as part of the environmental assessment, and trails were configured to avoid areas identified as archeological sites, specifically any with known burials. In addition to the EA, past consultation with the Tribes has been important in the identification of concerns or issues of cultural interest.

Paperwork Reduction Act (PRA)

This rule does not contain information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required.

National Environmental Policy Act (NEPA)

The NPS prepared environmental assessments to determine whether the actions taken through this rule would have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969.

A Comprehensive Trail Management Plan and Environmental Assessment for the management of trails were completed and a finding of no significant impact (FONSI) approved in December 2008. A separate plan and EA was prepared for the Mammoth Cave Railroad Bike and Hike Trail in 2004. These documents may be reviewed at: *http://www.nps.gov/maca/parkmgmt/planning.* The Department has determined that further compliance under this Act is not required for any of these proposed actions.

Information Quality Act (IQA)

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Drafting Information

The principle contributors to this proposed rulemaking are: Patrick H. Reed, Superintendent, L. W. Johnson, Natural Resources Specialist, Ken Kern, Management Assistant, Wayne Elliot, Chief Ranger, Vickie T. Carson, Public Information Officer, and Philip A. Selleck, Associate Regional Director for Operations and Education, NCR, Washington, DC.

Public Participation

All submissions received must include the agency name and docket number or Regulation Identifer Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and enter "1024–AD80" in the "Keyword or ID" search box.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460q, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, DC Code 10–137 (2001) and DC Code 50–2201.07 (2001).

2. In § 7.36, add paragraph (c) to read as follows:

§ 7.36 Mammoth Cave National Park.

* * * * *

(c) *Bicycles.* (1) The following trails are designated as routes open to bicycle use:

(i) Connector Trail from the Big Hollow Trailhead to the Maple Springs Trailhead;

(ii) Big Hollow Trail;

(iii) Mammoth Cave Railroad Bike & Hike Trail; and

(iv) White Oak Trail.

(2) The following are prohibited:

(i) Possession of a bicycle on routes or trails not designated as open to bicycle use;

(ii) Operating a bicycle on designated bicycle routes between sunset and sunrise without exhibiting on the bicycle, or on the operator, an activated white light that is visible from a distance of at least 500 feet to the front and a red light or reflector visible from at least 200 feet to the rear;

(iii) Operating a bicycle in excess of 15 miles per hour on designated routes; and

(iv) Failing to yield the right of way to pedestrians or hikers.

(3) The Superintendent may open or close designated bicycle routes, or portions thereof, pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter.

Dated: May 4, 2011.

Will Shafroth,

Acting Assistant Secretary Fish and Wildlife and Parks.

[FR Doc. 2011–12038 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–T3–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0393; FRL–9307–2]

Proposed Approval of Air Quality Implementation Plan; Ohio and West Virginia; Determinations of Attainment of the 1997 Annual Fine Particle Standard for Four Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations regarding the fine particle ($PM_{2.5}$) nonattainment areas of Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton (hereafter referred to as "Areas"). First, EPA is proposing to determine that these Areas have attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) under the Clean Air Act (CAA). This proposed determination of attainment is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 period showing that the areas have monitored attainment of the annual $PM_{2.5}$ NAAQS. EPA also evaluated incomplete data from this period from other monitors in the Cleveland-Akron area, as well as complete preliminary quality-assured data available to date for 2010. EPA believes these data support the determination that the Areas have attained the 1997 annual $PM_{2.5}$ NAAQS. If this proposed determination is made final, the requirements for these Areas to submit an attainment demonstration, associated reasonably available control measures (RACM) to include reasonably available control technology (RACT), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS shall be suspended for so long as the Areas continue to attain the 1997 annual $PM_{2.5}$ NAAQS. Second, EPA is also proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that these Areas have attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

DATES: Comments must be received on or before June 16, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0393, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0393. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon, Environmental Engineer, at (312) 353–8290, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Region 5, Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.* Region 3, Irene Shandruk, Office of Air Program Planning (3AP30), U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–2166, *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

This supplementary information section is arranged as follows:

I. What actions is EPA proposing?
II. What is the background of these actions?
III. What is EPA's analysis of the relevant air quality data?
IV. What are the effects of these actions?
V. Statutory and Executive Order Reviews

I. What actions Is EPA proposing?

In accordance with section 179(c) of the CAA, 42 U.S.C. 7509(c) and 40 CFR 51.1004(c), EPA is proposing to determine that three Ohio nonattainment areas (the Cleveland-Akron, the Columbus, and the Dayton-Springfield areas) and one Ohio-West Virginia bi-state area (the Steubenville-Weirton area) have attained the 1997 annual $PM_{2.5}$ NAAQS. This proposed determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show these Areas have monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. Complete

preliminary quality-assured data sets available for 2010 are consistent with continued attainment, as well as data from sites in the Cleveland-Akron area that were not considered complete, but that support attainment. EPA is also proposing to determine, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that these Areas have attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

II. What is the background for these actions?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a three-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour standard of 65 μg/m³. (Today's action does not address the 24-hour standard.) See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The three areas in Ohio and the one bi-state area in Ohio and West Virginia were designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. See 40 CFR 81.336 (Ohio) and 40 CFR 81.349 (West Virginia).

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a three-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 μg/m³ based on a three-year average of the 98th percentile of 24-hour concentrations.

In response to legal challenges to the annual standards promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded these standards to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standards would also indicate attainment of the remanded 2006 annual standards.

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and Tribal plans to implement the 1997 $PM_{2.5}$ standards. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the standards, as discussed later.

III. What is EPA's analysis of the relevant air quality data?

Today's rulemaking assesses whether (1) the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton areas have attained the 1997 annual $PM_{2.5}$ standard, based on the most recent three years of quality-assured data, and (2) whether the Areas attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

Under EPA's regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50, appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the area.

EPA has reviewed the ambient air quality monitoring data in the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton areas for $PM_{2.5}$, consistent with the requirements contained at 40 CFR part 50. EPA's review focused on data recorded in the EPA Air Quality System (AQS) database for the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton areas $PM_{2.5}$ nonattainment area from 2007 to 2009, and considered supplemental data sets that were incomplete due to the low capture rates as well as complete, quality assured but not certified data for 2010.

The Cleveland-Akron area had eleven monitors located in Cuyahoga, Lorain, Medina, Summit, and Portage Counties that reported design values from 2007–2009 for $PM_{2.5}$ that ranged from 11.4 to 14.4 μg/m³.

The Columbus area had three monitors all located in Franklin County that reported a design value range of 11.7 to 13.0 μg/m³ for the 2007–2009 time period.

The Dayton-Springfield area has three monitors, with one monitor in each of Clark, Greene, and Montgomery Counties. These monitors measured a range of 2007–2009 design values from 12.1 to 13.7 μg/m³ with Montgomery reporting the highest $PM_{2.5}$ design value.

The Steubenville-Weirton area, in Ohio and West Virginia, has five monitoring stations, including two in Jefferson County, OH, two in Brooke County, West Virginia, and one in Hancock County, West Virginia. The range of design values for the Steubenville-Weirton area for 2007–2009 was 13.6 to 14.4 μg/m³, below the current annual $PM_{2.5}$ standard. We have examined data from the entire area, including monitored data from both Ohio and West Virginia.

Table 1 shows the 2007 to 2009 design values (i.e., the three-year average of annual mean $PM_{2.5}$ concentrations) for the 1997 annual $PM_{2.5}$ NAAQS for the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton areas for monitors with complete data for that period. Additionally, design values for the 2008–2010 period, using complete and quality-assured but not certified data for 2010, are also shown in Table 1, as supplementary information solely for the purposes of showing that all four areas are maintaining the current standard. All data values are expressed in micrograms per meter cubed.

TABLE 1—ANNUAL $PM_{2.5}$ DESIGN VALUES FOR OHIO (CLEVELAND-AKRON, COLUMBUS, DAYTON-SPRINGFIELD, AND STEUBENVILLE-WEIRTON) AREA MONITORS WITH COMPLETE DATA FOR 2007 TO 2009 IN μG/M³

State	County	Monitor	Annual design value 2007–2009 (μg/m³)	Preliminary annual design value 2008–2010 (μg/m³)
		Cleveland-Akron		
OH	Cuyahoga	39–035–0034	11.6	10.7
		39–035–0038	14.4	13.6
		39–035–0045	13.6	12.9
		39–035–0060	14.1	13.4
		39–035–0065	14.3	13.4
		39–035–1002	12.1	11.4
	Lorain	39–093–3002	11.4	10.6

TABLE 1—ANNUAL $PM_{2.5}$ DESIGN VALUES FOR OHIO (CLEVELAND-AKRON, COLUMBUS, DAYTON-SPRINGFIELD, AND STEUBENVILLE-WEIRTON) AREA MONITORS WITH COMPLETE DATA FOR 2007 TO 2009 IN μG/M³—Continued

State	County	Monitor	Annual design value 2007–2009 (μg/m³)	Preliminary annual design value 2008–2010 (μg/m³)
	Medina	39–103–0003	11.8	11.1
	Portage	39–133–0002	12.3	11.5
	Summit	39–153–0017	13.7	13.2
		39–153–0023	12.7	12.3
Columbus				
OH	Franklin	39–049–0024	13.0	12.5
		39–049–0025	12.9	12.1
		39–049–0081	11.7	11.2
Dayton-Springfield				
OH	Clark	39–023–0005	13.2	.....
	Greene	39–057–0005	12.1	12.1
	Montgomery	39–113–0032	13.7	13.2
Steubenville-Weirton				
OH	Jefferson	39–081–0017	14.2	13.0
		39–081–1001	13.6	12.7
WV	Brooke	54–009–0005	14.4	13.7
		54–009–0011	14.0	13.1
	Hancock	59–029–1004	13.4	12.4

As Table 1 shows, across the four areas, there were twenty-one monitoring sites with complete data for 2007 to 2009. Data are considered to be sufficient for comparison to the NAAQS if three consecutive complete years of data exist. A complete year of air quality data comprises four calendar quarters, with each quarter containing data from at least 75% capture of the scheduled sampling days. Data that does not meet the 75% capture has been analyzed by EPA with substitution of conservative values to determine that some sites not meeting capture rates are still sufficient to show attainment. Ohio has also submitted similar data substitutions to demonstrate that sites with less than 75% capture rates are still attaining even with the highest concentration from that specific monitor substituted for missing data. See 40 CFR Part 58, appendix D for network design criteria. EPA has approved the monitoring networks for these four areas as adequate to evaluate the air quality of these areas, and so these twenty-one monitoring sites with complete data provide an adequate basis for EPA to determine whether the areas have attained the NAAQS. EPA concludes that the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton areas have attained the 1997 annual $PM_{2.5}$ NAAQS based on its evaluation of complete quality-assured data from the relevant monitoring sites for the 2007–2009 monitoring period.

Incomplete data from additional monitoring sites in the Cleveland-Akron area also support EPA's determination that the area attains the 1997 annual $PM_{2.5}$ NAAQS. Two monitors located in Lake County did not record complete data for the three-year 2007–2009 monitoring period. Pertinent data from these sites are shown in Table 2. One monitor (39–085–3002) was closed at the end of 2008 due to demolition at the site, and the other monitor (39–085–0007) then began operation at the beginning of 2009. Since both monitors were not capturing data for the entire span of 2007–2009, their data sets were considered incomplete. As shown in this table, although site 39–085–3002 did not have complete data for 2007 to 2009, the site's design value calculated from 2006–2008 was attaining, and the average concentration from 2007 to 2008 support the conclusion that this location is attaining. Table 2 also includes site 39–085–0007 that started operation only recently; this site did not measure concentrations before 2009, but the average concentration for 2009 was 10.4 μg/m³, and the average concentration for 2010 was 10.5 μg/m³.

TABLE 2—$PM_{2.5}$ DESIGN VALUES FOR LAKE COUNTY AREA SITES WITH INCOMPLETE DATA IN 2007 TO 2009

State	County	Monitor	Average concentration for 2007–2009 (μg/m³)	Dates of operation	Most recent complete design value (μg/m³)	
					Value	Years
OH	Lake	39–085–0007	10.4	1/1/2009–present	.....	.....
		39–085–3002	12.7	1/11/2006–12/31/2008	12.3	2006–2008

Data handling conventions and computations necessary for determining whether areas have met the $PM_{2.5}$ NAAQS, including requirements for data completeness, are specified in appendix N of 40 CFR part 50. The use

of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence and nearby concentrations in determining whether to use such data as set forth at 40 CFR part 50, appendix N § 4.1(c). The monitors listed in Table 2 do not have complete data for the 2007–2009 monitoring period. However, the historical certified data recorded at the monitors that were discontinued during this period and recent certified data recorded at monitors that started operation during the period provide additional support for EPA's proposed determination that the Cleveland-Akron area has attained the 1997 annual $PM_{2.5}$ NAAQS. EPA is also approving the use of these data for consideration in this determination because it finds that Ohio has exercised diligence in monitoring in the Cleveland-Akron area, and has worked cooperatively with EPA in evaluating and seeking approval for monitor closures and moves, and because these data provide useful additional evidence as to whether this area is attaining the standard.

EPA's review of monitoring data from the 2007–2009 monitoring period supports EPA's determinations that the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas have: (1) Monitored attainment of the $PM_{2.5}$ NAAQS for such period; and (2) attained the $PM_{2.5}$ NAAQS by the attainment date of April 5, 2010. Additionally, the preliminary 2008–2010 monitoring data supports a finding that these Areas continue to meet the 1997 annual $PM_{2.5}$ NAAQS.

IV. What are the effects of these actions?

If EPA's proposed determination of attainment, based on the most recent three years of quality-assured data, is made final, under the provisions of the $PM_{2.5}$ Implementation Rule (40 CFR 51.1004(c)) the requirements for the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas to submit attainment demonstration, RACM (including RACT), an RFP plan, contingency measures, and other planning SIP revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS shall be suspended for so long as the Areas continue to attain the 1997 annual $PM_{2.5}$ NAAQS.

As discussed further, the proposed determination of attainment for the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas would, if finalized, (1) suspend the states' obligation for Ohio and West Virginia to submit the requirements listed above; (2) continue such suspension until such time, if any, that EPA subsequently determines that any monitor in the area has violated the 1997 annual $PM_{2.5}$ NAAQS; and (3) be separate from any future designation determination or requirements for the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas based on the 2006 $PM_{2.5}$ NAAQS or future $PM_{2.5}$ NAAQ revision.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that any of the Areas have violated the 1997 annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR section 51.1004(c), would no longer exist, and the States of Ohio and West Virginia (if applicable) would thereafter have to address the pertinent requirements.

This proposed action is limited to the determinations that the air quality data show that the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas have monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS, and have attained the $PM_{2.5}$ NAAQS by the attainment date of April 5, 2010; neither determination would result in a redesignation of the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas to the status of attainment of the 1997 annual $PM_{2.5}$ NAAQS.

This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3) of the CAA because EPA is not proposing to take action pursuant to CAA section 107(d)(3) and the statutory prerequisites set forth in CAA section 107(d)(3) have not yet been met. For example, EPA has not yet approved a maintenance plan for the areas as required under CAA section 175A, nor proposed a determination that the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas have met the other requirements for redesignation under the CAA.

The designation status of the portions of the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton $PM_{2.5}$ nonattainment areas will remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA takes final rulemaking action to determine that such portions meet the CAA requirements for redesignation to attainment.

In addition, if EPA's separate and independent proposed determination that these Areas have attained the 1997 annual $PM_{2.5}$ standard by the applicable attainment date (April 5, 2010), is finalized, EPA will have met its requirement pursuant to section 179(c)(1) of the CAA to make a determination based on the Areas' air quality data as of the attainment date whether the Areas attained the standard by that date.

These two actions described above are proposed determinations regarding the Cleveland-Akron, Columbus, Dayton-Springfield, and Steubenville-Weirton areas' attainment only with respect to the 1997 annual $PM_{2.5}$ NAAQS. Today's actions do not address the 24-hour $PM_{2.5}$ NAAQS.

EPA is soliciting comment on the issues discussed in this document. These comments will be considered before EPA takes final action. Please note that if EPA receives adverse comment on either of the proposed determinations described above and if that determination may be severed from the remainder of the final agency action, EPA may adopt as final those provisions of the final agency action that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

This action proposes to make attainment determinations based on air quality data and would, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these proposed $PM_{2.5}$ NAAQS attainment determinations do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 3, 2011.

Susan Hedman,

Regional Administrator, Region 5.

Dated: May 5, 2011.

W.C. Early,

Acting Regional Administrator, Region 3.

[FR Doc. 2011–12061 Filed 5–16–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WC Docket No. 11–59; FCC 11–51]

Acceleration of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: In this document, the Federal Communications Commission seeks to work with stakeholders including state and local governments, other Federal agencies, Tribal governments, consumer advocates, and the private sector to identify means of improving rights of way policies and wireless facilities siting requirements. Policies for managing rights of way and siting wireless facilities, including the procedures and costs for acquiring permission to build, affect how long it takes and how much it costs to deploy broadband. By working together with other interested parties on these issues, the Commission can reduce the costs and time required for broadband deployment, both fixed and mobile, which will help unleash private investment in infrastructure, increase efficient use of scarce public resources (including spectrum) and increase broadband adoption.

DATES: Comments are due July 18, 2011 and reply comments are due August 30, 2011.

ADDRESSES: You may submit comments, identified by WC Docket No. 11–59, by any of the following methods:

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

• *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the supplementary information section of this document.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Wireline Competition Bureau, Competition Policy Division, 202–418–1595.

SUPPLEMENTARY INFORMATION:

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 18, 2011 and reply comments on or before August 30, 2011. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Below is a synopsis of the Commission's Notice of Inquiry in WC Docket No. 11–59, adopted and released April 7, 2011.

Synopsis of Notice of Inquiry

I. Introduction

1. This Notice of Inquiry (Notice) concerns key challenges and best practices in expanding the reach and reducing the cost of broadband deployment by improving government policies for access to rights of way and wireless facilities siting. In this proceeding we seek to work with stakeholders including state and local governments, other Federal agencies, Tribal governments, consumer advocates, and the private sector to identify means of improving rights of way policies and wireless facilities siting requirements. By working together on these issues, we can reduce the costs and time required for broadband deployment, both fixed and mobile, which will help unleash private investment in infrastructure, increase efficient use of scarce public resources (including spectrum), and increase broadband adoption.

2. Providing broadband service requires the deployment and use of varied and physically dispersed communications infrastructure that is placed in public and private rights of way and on towers and building roof tops. Access to public rights of way, tower sites, and buildings is governed by Federal, state, local, or Tribal requirements depending on the location. Obtaining access to rights of way on fair and reasonable terms, and through a predictable process, is critical for all infrastructure providers.

3. This Notice is intended to update our understanding of current rights of way and wireless facilities siting policies, assess the extent and impact of challenges related to these matters, and develop a record on potential solutions to these challenges. This inquiry is a necessary step towards determining whether there is a need for coordinated national action to improve rights of way and wireless facilities siting policies, and, if so, what role the Commission should play in conjunction with other stakeholders. We seek a detailed record of the nature and scope of broadband deployment issues, including both best practices that have promoted deployment and matters that have resulted in delays.

4. The Commission is most interested in systemic practices rather than individual or anecdotal situations, which are less suited for Federal policies. So that we might have a factual basis upon which to determine the nature and extent of any problems, we ask commenters to provide us with information on their experiences, both positive and negative, related to broadband deployment. In the case of comments that name any state or local government or Tribal or Federal entity as an example of barriers to broadband deployment, we strongly encourage the party submitting the comments to name the specific government entity it is referring to, and describe the actions that are specifically cited as an example of a barrier to broadband deployment, as this is the best way to ensure that all affected parties—the relevant governmental entity, citizens and consumer groups, and other private parties that have sought access in the area—are able to respond to specific examples or criticisms. Identifying with specificity particular examples or concerns will ensure that the Commission has a complete understanding of the practices and can obtain additional background if appropriate. In turn, we ask government entities to explain the policy goals underlying their current practices and charges regarding rights of way and wireless facilities siting. We seek to identify best practices, systemic challenges and fully consider possible steps the Commission can take, in partnership with Federal, state, local, and Tribal governments—with input from consumer groups and industry—to foster improvements in these areas.

5. The Commission may move forward in other contexts to act on individual issues raised here, as appropriate, without awaiting completion of this proceeding.

II. Rights of Way and Wireless Facilities Siting Issues

6. In this section, we describe the various types of possible issues regarding rights of way governance and wireless facilities siting requirements, and we seek input in order to obtain a more complete understanding of these areas. We seek to develop a complete record of how rights of way and wireless facilities siting decisions influence build out and adoption of broadband and other communications services. We believe that rights of way and wireless facilities siting issues can generally be broken into several broad categories: (1) Timeliness and ease of the permitting process; (2) the reasonableness of charges; (3) the extent to which ordinances or statutes have been updated to reflect current communications technologies or innovative deployment practices; (4) consistent or discriminatory/differential treatment; (5) presence or absence of uniformity due to inconsistent or varying practices and rates in different jurisdictions or areas; (6) other rights of way concerns including "third tier" regulation or requirements that cover matters not directly related to rights of way use or wireless facilities siting. We ask commenters to describe the specific kinds of public rights of way and wireless facilities siting issues that exist in each of these areas. Do some of these issues particularly affect various categories of rights of way owners, wireless facilities siting authorities, network users, or network functions? We also ask interested parties to describe best practices in each of these areas.

A. Timeliness and Ease of the Permitting Process

7. The Commission recently addressed the timeliness of state and local permitting processes for tower siting in the *Shot Clock Ruling,* 74 FR 67871 Dec. 21, 2009, which set a timeline for action on collocation and other tower siting applications. We seek comment on the application of the *Shot Clock Ruling,* and its efficacy in reducing delays in the local zoning process. In particular, has the *Shot Clock Ruling* reduced the number of collocations pending before state and local government authorities for periods of longer than 90 days, and the number of applications other than collocations pending for longer than 150 days? Has this approached proved satisfactory from the perspective of the communities in resolving actions for collocation? Have individual cases been taken to district courts for zoning authorities' failure to act, and if so, how did the courts apply the *Shot Clock Ruling*? Do parties believe that adoption of the *Shot Clock Ruling* has resulted in faster rulings from state and local government authorities? In answering these questions, parties should provide as much specificity as possible.

8. We also seek updated information on the timeliness and ease of permit processing for rights of way and siting of wireless facilities. Are application processes defined with sufficient clarity? Is information on all necessary application procedures, forms, substantive requirements, and charges readily accessible? How do rights of way holders and wireless facilities siting authorities handle new or novel requests for access to rights of way or tower and antenna sites? Are there processes in place for addressing situations in which it is difficult to identify the rights of way holder? How could the application process be streamlined in certain situations, such as where an infrastructure provider seeks to collocate new facilities on an existing tower? Is the process for obtaining permits for accessing rights of

way or siting wireless facilities timely? To the extent applications are not processed in a timely fashion, what factors are responsible for delays? Are there types of errors, omissions, or substantive requirements in applications that frequently lead to rejection, dismissal, or return of the applications? What application processing timeframes are reasonable? Are there particular practices that can improve processing time frames?

9. We also ask commenters to provide data about their experiences and situations. We ask commenters to submit data related to processing intervals for permit approval, both targeted and actual, for all relevant providers (data submitted by rights holders) and communities (data submitted by infrastructure providers). We ask that any submitted data be broken out in as disaggregated a fashion as possible. For example, we encourage commenters to include for each application the name of the provider; name of the location or community; type of project, including whether a project is wholly new or an augmentation of an existing facility (*e.g.,* wireless collocation on existing structure); whether the community is subject to comprehensive state franchising or rights of way laws; and total time to process applications. To the extent that certain activities during a particular approval took an unusual length of time, we encourage participants to provide any relevant details, such as pre-processing time devoted to obtaining a complete-as-filed application, time spent negotiating, or time spent waiting for events external to the application process. Commenters also should include any other relevant categories of data or explanations that will make their submissions more informative.

B. Reasonableness of Charges

10. To what extent and in what circumstances are rights of way or wireless facilities siting charges reasonable? Is it possible to identify rights of way or wireless facilities siting charges that all stakeholders agree are reasonable? If not, are there rate levels that most infrastructure providers agree are reasonable, and different rate levels that most government entities agree are reasonable? Are there instances and circumstances in which rights of way or facilities siting charges are unreasonable? What are appropriate criteria for determining the reasonableness of such charges? For example, are permitting or application fees unreasonable to the extent they exceed amounts that would recover administrative and other specifically identifiable costs? Are "market based" rates for use of public rights of way or publicly-owned wireless facilities sites reasonable? In particular, how are market-based rates or other non-cost based rates for public rights of way determined when, in many situations, there does not appear to be a competitive market for public rights of way? Are market-based rates substantially higher than cost-based rates?

11. We ask commenters to provide factual data to help the Commission understand existing charges and practices. We seek data on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees. In presenting these data, we ask commenters to identify such information as the type of facilities for which such charges are assessed; how such charges are structured (*e.g.,* per foot or percent of revenue in the case of rights of way fees); whether the community is subject to comprehensive state franchising or rights of way laws; whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and the value of any in-kind contributions required for access or permit approval. We also request commenters to include information that enables us to determine the extent to which such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways. We recognize that certain information may disclose competitively sensitive information and we understand the need to aggregate such data across multiple communities or providers, or otherwise present it in a way that does not disclose any competitively sensitive data.

12. We also seek information on how a market-based charge is calculated in the context of various types of fees. For example, do per-foot fees and other usage fees vary depending on the number of providers that need access to the rights of way and the amount of fiber or other facilities each such provider places in the rights of way (a measure of demand)? To what extent do entities vary such fees based on other market factors, for example, the available supply, such as the remaining usable space within a conduit system in the rights of way, or the amount of land available to accommodate a new system? We also are interested in understanding how the levels of percent-of-revenue fees are set in order to achieve a market-based rate.

13. We also invite comment on whether there are specific circumstances in which rights of way or wireless facilities siting charges are more likely to be unreasonable. For example, once an infrastructure provider has placed facilities in a public right of way, incurring sunk costs, is the public rights of way holder frequently in a position to exercise market power in establishing subsequent charges, such as on renewals of long-term contracts or requests to make changes to a vitally important network facility? Are there specific situations where such market power has been exercised? How can instances of the exercise of market power be identified? What situations are most likely to cause wireless facilities siting charges to be unreasonable? Do rights of way or wireless facilities site administrative and/or usage fees vary by the demographics of the customer base? For example, do holders of public rights of way, government owners of tower or antenna sites, and/or government entities regulating wireless facilities sites located in dense, urban, and/or suburban high-income areas tend to impose higher fees than government entities in other areas, and are such differences reasonable?

14. We also request comment on the ways in which rights of way or wireless facilities site processing or usage charges affect broadband subscribers. Are such charges imposed on a broadband provider ultimately passed on to that provider's customers? What fraction of a broadband provider's costs do public rights of way and governmental wireless facilities site or administrative fees typically represent? Insofar as broadband providers charge geographically averaged rates, high rights of way and wireless facilities siting charges will be recovered by providers in part from consumers in other jurisdictions rather than recovered directly from consumers within the jurisdiction imposing the high charges. To what extent should this affect the analysis of rights of way and wireless facilities siting charges? For example, should we be concerned about excessive charges if they are transparent and recovered solely from residents of the jurisdiction imposing the charge?

C. Qualitative Information

15. We also seek qualitative information that describes how the prices for rights of way and wireless facilities siting and the target timeframe for approval of infrastructure providers' applications are set, and that describe

the process of receiving approval to access rights of way or site wireless facilities, particularly for broadband. How are we to distinguish and evaluate different policies and practices? To help create a record of existing and best practices, we ask infrastructure providers, localities, and other interested parties to submit examples of model, typical, and problematic franchising or access agreements.

16. Certain qualitative information we seek is best provided by states and localities. For instance, we request information on the policy goals and other objectives underlying practices and charges related to access to rights of way and approval of wireless facilities. To what extent are local requirements designed to achieve public interest goals, such as ensuring public safety, avoiding disruption of traffic, or maintaining roadways? What role do other civic goals play in guiding local rights of way and wireless governance decisions? For example, how do localities weigh such issues as preventing the public disruption and damage to roads that accompanies street cuts, or satisfying aesthetic, environmental, or historic preservation concerns, with goals of greater fixed and mobile broadband deployment and adoption through timely processing of permits, nondiscrimination, transparency, and reasonable charges?

17. Certain other information we seek may be best provided by infrastructure providers. For example, we seek information about how rights of way issues influence the deployment decisions of infrastructure providers. In this regard, we request information on both specific instances in which a provider chose not to build out broadband facilities due to rights of way concerns and comprehensive data or analysis that might demonstrate the extent to which rights of way concerns are impeding broadband infrastructure investment and broadband adoption. As providers prioritize capital investments, to what extent do rights of way and wireless siting governance issues have an effect? How do providers take into account any uncertainty with regard to cost or timing? In areas where processes have been standardized, we ask providers to provide evidence of how this has affected their deployment decisions and quantify any benefits. Are there situations in which localities believe that infrastructure providers have unreasonably refused to build out broadband facilities despite best efforts on the part of the locality to encourage deployment through rights of way or wireless facility siting policies?

D. Extent to Which Ordinances or Statutes Have Been Updated To Reflect Current Communications Technologies or Innovative Deployment Practices

18. We ask interested parties whether state statutes or local ordinances have been updated to reflect current developments in the communications industry or recent changes in communications technologies that require access to public rights of way. Where such updates have not occurred, do providers experience problems or issues with application processing or delays? For example, do existing ordinances or other requirements successfully address the placement of small antennas on existing facilities in rights of way? In particular, we seek comment on any challenges that may apply to the deployment of microcells, picocells, femtocells, and Distributed Antenna Systems (DAS). What, if anything, do states and localities require in order to permit the attachment of microcells, picocells, femtocells, and DAS antennas to existing infrastructure that is different from attaching any other antenna to a given structure? Do any states or localities allow all of the proposed DAS antennas within a DAS network to be combined in a single permit application, and is this or would this be helpful for DAS deployment? Are there any other ways in which microcells, picocells, femtocells, and DAS antennas are treated uniquely, and are there any ways in which states, localities, or wireless service providers think they should be treated differently? To what extent are these facilities treated as public utilities? To what extent are they subject to local zoning processes? To what extent should existing ordinances or statutes be revised to reflect changes in the communications industry and technology?

19. We also seek comment on how different jurisdictions treat the use of existing infrastructure for wireless services, both in and out of rights of way. Is there disparate treatment between a pole attachment, *i.e.,* the attachment of a wireless antenna to an existing public utility pole, and a collocation, where a wireless antenna is attached to some other existing structure? Are different or additional considerations required for some types of rights of way, such as those used for transportation, as compared to other types? Are there instances in which conflicting laws may apply to the attachment of a wireless antenna to an existing structure? What is the overall effect of these considerations on the ability and the likelihood that existing infrastructure can be effectively used to deploy wireless services? Do some regulations and policies encourage resource sharing, while others discourage it? Do states and localities show any preference for collocated antennas or for the placement of wireless facilities on public property? Are there particular approaches that facilitate wireless deployment, including DAS? Why do they work well?

E. Consistent or Discriminatory/ Differential Treatment

20. How have ordinances addressed differences in rights of way users and wireless facilities siting applicants, the different uses they make of rights of way and sites, and the different equipment they seek to deploy? Are differing rights of way or wireless facilities siting practices or charges reasonable? Do they involve unreasonable or discriminatory differential treatment of various types of rights of way users or facilities siting applicants? What are appropriate methods to determine whether a practice or charge is unreasonable or discriminatory? For example, do publicly available fee schedules for various categories of rights of way use tend to be nondiscriminatory? Are zoning requirements for wireless facilities siting nondiscriminatory? Are there other criteria that can and should be used to determine whether charges or practices are discriminatory without fact-intensive and burdensome administrative or court proceedings?

F. Presence or Absence of Uniformity Due to Inconsistent or Varying Practices and Rates in Different Jurisdictions or Areas

21. In a given metropolitan area, the main city and various surrounding towns, villages, and counties may have differing practices and charges for rights of way usage and wireless facilities siting. To what extent do these practices and charges differ within a particular state? Does inconsistent treatment of infrastructure providers among states and localities make the deployment of broadband more difficult or time-consuming, or is inconsistency among states and/or localities not problematic as long as infrastructure providers have a clear path to follow within each jurisdiction? To what extent does the need to file multiple applications cause problems for infrastructure providers, regardless of the similarity or differences in the practices and charges involved?

22. To what extent do rights of way governance and wireless facilities siting requirements vary between different

Federal government agencies? Do different agencies require varying types of information or do different agencies require similar information to be presented in different formats? To what extent do any differences among agencies make it more difficult to obtain permits and build out broadband networks on Federally controlled properties? Have there been efforts to increase uniformity? How successful have they been?

G. Other Issues

23. *Other Rights of Way or Wireless Facilities Siting Issues:* We ask interested persons to identify and describe any other rights of way or wireless facilities siting issues that have an impact on broadband deployment and adoption. We also ask interested parties to identify any other practices or approaches that have been particularly beneficial to facilitating broadband deployment. Do government rights of way owners or wireless facilities siting authorities impose requirements that are not directly relevant to intended use? For example, in some cases in the past, localities owning rights of way have required that infrastructure providers supply information of the type usually required for a certificate of operating authority from the state. Is this an ongoing requirement for applicants seeking rights of way or siting permits? Are there other examples of such requirements? What are the policy reasons for such requirements? Are there adjustments that could be made to ensure that localities obtain necessary information and address legitimate concerns?

24. *Private Rights of Way and Tower Sites:* We ask interested persons to provide information on issues that arise in the context of private rights of way or tower sites to the extent such information might be helpful to the Commission in achieving a complete understanding of potential public rights of way issues or issues concerning tower siting on public lands.

25. *General Scope of Concerns:* We seek comment on whether specific rights of way and wireless facilities siting concerns are widespread or generally limited to particular Federal agencies, states, Tribes, and localities. Are rights of way and wireless facilities siting concerns generally less widespread in states that have adopted comprehensive rights of way laws than in other states? Are rights of way and wireless facilities siting concerns more common in certain types of areas, such as cities and surrounding suburbs, and less common in rural areas? We also ask interested persons to comment on the extent to which rights of way and wireless facilities siting concerns are likely to increase or decrease in the near future. For example in other contexts, it appears that many long-term rights of way contracts will expire in the next few years. Is this likely to cause a spike in rights of way disputes? Will the need for new facilities to provide next generation wireless services increase concerns regarding facilities siting?

26. *Additional Data Gathering:* We seek input on whether the Commission should take any additional steps to gather information on issues relevant to this proceeding, including workshops, surveys, and/or mandatory data collections. Are there any existing sources of relevant data the Commission could rely on for purposes of this proceeding?

27. We seek input on the costs and benefits of each of these approaches and whether any of these approaches should be pursued in this proceeding. Are there any other approaches that would yield better results with similar or smaller investments of time and effort?

III. Solutions

A. Prior Efforts To Resolve Concerns

28. We seek information on what interested parties have already done to address rights of way and wireless facilities siting concerns. Have the Federal government, states, localities, Tribes, and/or the organizations representing them developed best practices for rights of way and wireless facilities siting governance? We also seek comment on best practices proposed by private sector entities. Are there existing compendia of rights of way and wireless facilities siting best practices? Aside from state statutes, have there been efforts to develop consolidated rights of way application processes that cover multiple jurisdictions and reduce or eliminate the need to file multiple applications? Have other approaches to improving rights of way and wireless facilities siting governance been attempted? We request comment on the effects of previous efforts to address rights of way and wireless facilities siting governance. Have state statutes governing rights of way helped increase uniformity and reduce costs? We encourage states that have adopted such legislation to describe the approach adopted as well as the benefits and drawbacks. In addition, we ask interested persons to submit information on instances in which government entities and industry have worked together in a positive manner to foster broadband deployment, and describe the factors or circumstances that led to such constructive collaboration.

B. Options—Possible Actions To Address Current Areas of Concern

29. In this section, we ask interested persons to comment on a number of actions the Commission might take to foster broadband deployment by addressing rights of way and wireless facilities siting concerns. For analytical purposes we have broken the options into two groups: One focused primarily on possible voluntary programs and educational activities coordinated or facilitated by the Commission, and the other involving the exercise of Commission rulemaking or adjudicatory authority. These sets of options are not mutually exclusive. We ask interested parties to comment on the benefits and costs of each of these potential actions, and to quantify those benefits and costs to the extent possible. We also ask interested parties to comment on the extent of the Commission's authority to take the various actions discussed below, particularly the Commission's authority to engage in rulemaking and/or adjudication. We also ask whether there are other effective options to foster broadband deployment through improvements in rights of way or wireless facilities siting governance.

1. Voluntary Programs and Educational Activities

30. *Commission Educational Efforts and Voluntary Activities:* Should the Commission address rights of way and wireless facilities siting concerns through educational efforts and voluntary activities? We ask interested parties to focus on the substantive scope of such educational voluntary activities described below.

31. *Best/Worst Practices:* Should the Commission compile a set of best practices for public rights of way and wireless facilities siting policies that are consistent with facilitating broadband deployment? If so, how should this be done? Should this effort focus on a limited set of problematic issues, or should we instead try to develop a comprehensive set of best practices?

32. *Increased Uniformity:* Closely related to the issue of best practices, although emphasized somewhat differently, is the issue of increased uniformity. Should the Commission work to increase uniformity in rights of way and wireless facilities siting governance among localities and/or within the Federal government? Could the Commission, in partnership with affected stakeholders, develop a model application processes or other procedures or practices, to lower costs

and streamline processes across multiple jurisdictions?

33. With respect to uniformity in practices and procedures within the Federal government, what if any steps should the Commission take to help streamline the process of siting facilities on Federal lands? Should the Commission, for example, recommend convening or participating in an inter-agency task force to inventory current procedures and identify benchmarks for best practices?

34. *Competitions and Awards:* We also ask interested parties to comment on whether the Commission should encourage best practices and increased uniformity by initiating a "race to the top" type of competition. The Commission could promote streamlined processes that provide timely access to rights of way and wireless facilities siting by recognizing individual localities for their outstanding efforts on these issues. By doing so, the Commission would be encouraging more localities and states to implement rights of way or wireless facilities siting best practices and/or increase uniformity in these areas. What kinds of incentives would encourage participation by localities and states?

35. *Commission Sponsored Mediation:* Should the Commission establish a process for voluntary mediation of rights of way and wireless facilities siting disputes by selected state or local representatives working in conjunction with industry? How should such a process be structured, and how could participation be encouraged?

36. *Improved Facilities Deployment Practices in Rights of Way:* Should the Commission work to raise awareness about facilities deployment techniques that could reduce costs and speed deployment? For example, should the Commission promote micro trenching and deployment of Distributed Antenna System facilities on street light and traffic light poles where appropriate? We invite comment on other innovative rights of way or wireless facilities deployment practices that should be considered in this regard.

37. *Recommendations to Congress or the Administration:* The National Broadband Plan recommended that Congress consider allowing agencies to set fees for access to rights of way for broadband services based on direct cost recovery, especially in markets currently underserved or unserved by broadband. The Plan also recommended that the Executive Branch develop master contracts for all Federal property and buildings covering the placement of wireless towers. Are there additional specific actions that the Commission should recommend to the Administration or to Congress that would remove roadblocks and encourage further broadband build out on Federal properties? For example, should the Commission recommend that the Executive Branch formally permit wireless facility sites on Federal property, including postal service property? Should the Commission make recommendations to Congress or the Administration concerning rights of way or wireless facilities siting concerns? For example, is legislation needed to address certain concerns? Would Congressional action promote uniformity? Should the Commission make recommendations to the Administration? We invite suggestions for specific legislative language recommended for Congress.

2. Rulemaking and Adjudication

38. In this section we discuss possible rulemaking and adjudication options. We note that these options may work well as backstops to voluntary action and Commission educational efforts or in combination with such options.

39. *Adopt Policy Guidelines:* Should the Commission adopt policy guidelines addressing rights of way or wireless facilities siting issues? Such guidelines could set out the Commission's views on various issues, such as application processing time frames, but would not be enforceable as rules. We invite comment on the policy benefits and drawbacks of this option.

40. *Adopt Rules:* Should the Commission adopt rules designed to foster broadband deployment by addressing rights of way or wireless facilities siting problems?

41. *Substantive Scope of Policy Guidelines or Rules:* What subjects should be addressed by any policy guidelines or rules adopted by the Commission? For example, should the Commission address the issues described below? Are there other substantive issues in this proceeding that the Commission should address through policy guidelines or rules?

42. *Safe Harbors/Triggers:* Should the Commission adopt policy guidelines or rules establishing safe harbors for rights of way and wireless facilities siting procedures, practices, and charges; or triggers that would subject such procedures, practices, and charges to heightened scrutiny by the Commission or a court in particular circumstances? If so, what procedures, practices, and rates should be included in this approach?

43. *Billing Practices:* Should the Commission adopt guidelines or rules allowing or requiring infrastructure providers to impose separate line item fees to recover rights of way or wireless facilities siting charges directly from subscribers in the jurisdiction imposing such charges in order to increase transparency and accountability and minimize cross-subsidies?

44. *Interpretation of Sections 253 and 332:* Should the Commission adopt guidelines or rules interpreting the terms of these statutory provisions with respect to rights of way and wireless facilities siting requirements? If so, what provisions of each section should the Commission address and how should those provisions be interpreted?

45. *Adjudication:* Should the Commission address certain rights of way problems through adjudication under section 253? Would this approach be well suited to addressing problems that are not widespread, but may represent significant obstacles to broadband deployment in a particular locality or a small number of localities?

3. Other Proposals

46. We also invite interested parties to suggest other specific actions the Commission could take to improve policies regarding public rights of way and wireless facilities siting. In each case, we ask them to describe the problem or subject matter addressed and its effect on broadband deployment. We then ask them to explain their proposal. We also ask interested persons to describe the benefits of such proposals and to address potential drawbacks. In addition, we ask interested persons to identify proposals that can be implemented relatively quickly and those that would take longer to implement, along with suggested timelines.

IV. Legal Authority

47. We believe the Commission has authority to engage in educational activities to foster broadband deployment through improved policies regarding public rights of way and wireless facilities siting and to coordinate and participate in voluntary activities designed to achieve this goal. We also believe the Commission has authority to adopt policy guidelines and rules concerning these issues. We ask for comment on these views and on whether the Commission has authority to adjudicate rights of way cases under section 253. An analysis of these legal issues is set forth below. In this regard, we emphasize that the views described here do not represent final determinations on these issues and that our ultimate legal conclusions will reflect a careful consideration of the comments addressing these issues.

A. Background

48. We begin by reviewing the terms of the statutory provisions most relevant to this proceeding—section 706 of the 1996 Telecommunications Act and sections 253 and 332(c)(7) of the Communications Act. We also address a number of additional statutory provisions in this section.

49. Section 706(a) provides that the Commission is to encourage the deployment of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) on a reasonable and timely basis. In granting the Commission authority to fulfill this mandate, Congress specifically directed the Commission to use various regulatory methods, including those that remove barriers to infrastructure investment. In the *2010 Sixth Broadband Deployment Report,* the Commission concluded that broadband was not being deployed to all Americans in a reasonable and timely manner. When the Commission makes such a negative determination, section 706(b) requires that the agency take immediate action to accelerate broadband deployment of by removing barriers to infrastructure investment and promoting competition.

50. Section 253(a) bars state or local statutes, regulations, or other legal requirements that prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Section 253(b) contains a safe harbor preserving competitively neutral state requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Section 253(c) also preserves the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis. Section 253(d) expressly requires the Commission to preempt state or local government action in certain situations.

51. Section 332(c)(7) of the Act applies to rights of way issues concerning wireless services, It preserves state and local authority over decisions regarding the placement, construction, and modification of personal wireless service facilities subject to certain limitations. However, under section 332(c)(7), the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government must not prohibit or have the effect of prohibiting the provision of personal wireless services. The statute also requires the State or local government to act on any request to place, construct, or modify personal wireless service facilities within a reasonable period of time.

B. Authority for Educational Activities and Voluntary Programs

52. We believe the Commission has ample authority to engage in educational efforts to foster broadband deployment by encouraging improvements in policies regarding public rights of way and wireless facilities siting. We also think the Commission has ample authority to participate in or facilitate voluntary endeavors to achieve this goal. Section 706(a) specifically charges the Commission with encouraging the deployment of broadband through the use of methods that remove barriers to infrastructure investment. Section 1 of the Act also states that the Commission was created to ensure rapid, efficient communication services. In addition, section 4(i) gives the Commission broad authority to take whatever actions are necessary to the execution of its functions as long as they are not otherwise inconsistent with the Act. Education and involvement in voluntary programs would advance the goals of section 706 and section 1 and come within the broad flexibility accorded the Commission under section 4(i). We believe that such activities also further the goals of sections 253 and 332 by reducing the likelihood of state or local actions that have the effect of prohibiting the provision of a telecommunications service or personal wireless service in violation of those sections. We seek comment on these issues.

C. Authority for Rulemaking

53. We also believe that the Commission has authority to engage in rulemaking to improve rights of way and wireless facilities siting governance. Section 201(b) states that the Commission may prescribe rules and regulations necessary to carry out the provisions of the Act. Section 303(r) contains a similar grant of rulemaking authority, and section 4(i) authorizes the Commission to make rules and regulations, and issue orders necessary in the execution of its functions. Thus, we believe the Commission has broad general rulemaking authority that would allow it to issue rules interpreting sections 253 and 332. We seek comment on this view. Could the Commission, for example, adopt rules further defining when a state or local legal requirement constitutes an effective barrier to the provision of a telecommunications service under section 253(a) or defining what constitutes fair and reasonable compensation under section 253(c)? We also seek comment on our authority to adopt rules concerning matters in this proceeding pursuant to section 706.

D. Adjudication of Rights of Way Cases Under Section 253

54. We also invite comment on whether the Commission has authority to adjudicate rights of way disputes under section 253. The Commission has not taken action to resolve this issue and courts have taken differing approaches. Moreover, to the extent that the statutory language is ambiguous, the Commission is not bound by those courts' statutory interpretations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–11966 Filed 5–16–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 391

[Docket No. FMCSA–2008–0363]

RIN 2126–AA97

National Registry of Certified Medical Examiners

ACTION: Notice of availability of draft guidance; request for comments.

SUMMARY: FMCSA announces the availability for public review and comment draft guidance for the core curriculum specifications that could be used by training providers in implementing the National Registry of Certified Medical Examiners (National Registry) proposed rule. The National Registry is required by section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). On December 1, 2008, the Agency published a Notice of Proposed Rulemaking to implement the National Registry and the proposal included minimum training requirements for medical examiners. The draft guidance announced by this notice would provide core curriculum specifications as additional information for training organizations that may need such assistance in developing training

courses and materials consistent with the proposed minimum training requirements.

DATES: Comments and related material must be submitted on or before June 16, 2011.

ADDRESSES: You may submit comments identified by docket number FMCSA–2008–0363 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Gunnels at 202–366–4001 or via e-mail at *fmcsamedical@dot.gov.*

SUPPLEMENTARY INFORMATION: *Public Participation and Request for Comments:* We encourage you to submit comments and related material on the draft guidance for the core curriculum specifications. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (FMCSA–2008–0363) and provide a reason for each suggestion or recommendation. You may submit your comments and material online by fax, mail, or hand delivery but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Notices" and insert "FMCSA–20008–0363" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments: To view the comments, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "FMCSA–2008–0363" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's (DOT) Privacy Act system of records notice for DOT Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008 (73 FR 3316) at *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On December 1, 2008, FMCSA published a Notice of Proposed Rulemaking (NPRM) for the establishment of a National Registry of Certified Medical Examiners (National Registry), 73 FR 73129. The National Registry and requirements for medical examiner training are required by section 4116 of SAFETEA–LU, as codified in 49 U.S.C. 31136(a)(3), and 49 U.S.C. 31149(c) and (d).

One of the components proposed in the NPRM was a provision that medical examiners would be required to successfully complete certain training and testing prior to being listed on the National Registry. The training would be based on "core curriculum specifications" developed by FMCSA. In the NPRM, FMCSA stated that the core curriculum specifications would be based on the current physical qualifications regulations and advisory criteria for conducting commercial motor vehicle (CMV) driver medical examinations and that they would be periodically reviewed and updated by FMCSA. The Agency also said it would provide to private-sector training organizations guidance about the core curriculum specifications for use in delivering effective training to medical examiners about FMCSA's physical qualification standards. See 73 FR 73132–33. However, the Agency did not include for public comment the guidance about the core curriculum specifications that would be made available to assist training providers in developing courses and training materials.

Several comments submitted in response to the NPRM expressed concern that the Agency did not provide more information about the core curriculum in the proposed rule for public review and comment and questioned how guidance for training providers would be established and implemented. FMCSA acknowledges the commenters' concerns about the need for providing the public with an opportunity to review any draft guidance that would be provided for training providers about the core curriculum specifications. Therefore, FMCSA has completed draft guidance for the medical examiner training core curriculum specifications and posted the guidance on the National Registry Web site (*http://nrcme.fmcsa.dot.gov*) and in the public docket for the National Registry rulemaking and this notice (FMCSA–2008–0363).

FMCSA requests public comment on the draft guidance for the medical examiner proposed core curriculum specifications. Because the guidance is intended to be used as information to assist training providers in developing effective, up-to-date courses for medical examiners, it would be subject to periodic review and change based on any future amendments or revisions to the physical qualifications standards under 49 CFR part 391 issued by FMCSA, and changes in medical procedures and treatments incorporated into the Agency's advisory criteria. For that reason, the Agency does not intend to incorporate the core curriculum specifications into the regulatory text of the NRCME final rule that is expected to be issued later in 2011.

The Agency will consider including in the notice-and-comment rulemaking procedures that would be used to propose amendments or revisions to the actual physical qualifications standards any changes to the guidance for the core curriculum specifications. The Agency requests public comment on its preliminary decision.

Please follow the above instructions for submitting comments to the docket (FMCSA–2008–0363) commenting on the medical examiner draft training specifications. While FMCSA will consider all comments, FMCSA specifically requests that commenters focus on improving the clarity, and accuracy of the draft guidance to the proposed core curriculum specifications.

In addition to the draft guidance for the core curriculum specifications, FMCSA has posted a sample training module on the National Registry Web site (*http://nrcme.fmcsa.dot.gov*) to assist training providers in developing a curriculum that meets the training specifications.

Dated: May 11, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–11934 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 424

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226 and 424

[Docket No. FWS–R9–ES–2010–0073; Docket No. 110131071–1153–01; MO–92210–0–0009–B4]

RIN 1018–AX44; RIN 0648–BA77

Endangered and Threatened Wildlife and Plants; Revised Implementing Regulations for Requirements To Publish Textual Descriptions of Boundaries of Critical Habitat

AGENCY: United States Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: We (FWS and NMFS; also collectively referred to as the Services) propose to revise regulations related to publishing textual descriptions of proposed and final critical habitat boundaries in the **Federal Register** for codification in the Code of Federal Regulations. In the interest of making the process of designating critical habitat more user-friendly for affected parties, the public as a whole, and the Services, as well as more efficient and cost effective, we are proposing to maintain the publication of maps of proposed and final critical habitat designations, but make optional the inclusion of any textual description of the boundaries of the designation in the **Federal Register** for codification in the Code of Federal Regulations. The boundaries of critical habitat as mapped or otherwise described in the Regulation Promulgation section of a rulemaking that is published in the **Federal Register** will be the official delineation of the designation, and we will continue to provide the public with additional tools, such as interactive maps and additional descriptions, on the Services' Internet sites, Regulations.gov, and at local field offices that will represent the Service's interpretation of which areas are covered by the designation. We are undertaking this effort as part of the agencies' response to Executive Order 13563 (Jan. 18, 2011) directing agencies to review their existing regulations and, inter alia, to modify or streamline them in accordance with what has been learned.

DATES: We will accept comments from all interested parties until July 18, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads "Enter Keyword or ID," enter the Docket number for this proposed rule, which is FWS–R9–ES–2010–0073. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: [Docket No. FWS–R9–ES–2010–0073]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more information).

FOR FURTHER INFORMATION CONTACT: Nicole Alt, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 4401 N. Fairfax Drive, Suite 420; Arlington, VA 22203, telephone 703/358–2171; facsimile 703/358–1735 or Marta Nammack, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301–713–1401; facsimile 301–713–0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties. We seek information on the following:

1. What is the best way for us to share information about critical habitat designation boundaries with the public?
2. Could we improve the usefulness of the maps in the **Federal Register** and Code of Federal Regulations (CFR)? If so how?
3. Does publication of the textual descriptions of boundaries of critical habitat in the **Federal Register** and CFR provide any practical value?
4. What is the usefulness of the critical-habitat-boundary descriptions in latitude–longitude, Public Land Survey descriptions, or Universal Transverse Mercator (UTM) coordinates?
5. Besides the Internet, what other methods should we use to convey information regarding critical habitat boundaries?
6. Will the changes proposed make our critical habitat designations easier to understand? Are there other changes that are needed?

You may submit your information concerning this proposal by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* or by appointment during normal business

hours at the U.S. Fish and Wildlife Service, Endangered Species Program, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171 or National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910; telephone 301–713–1401 (see **FOR FURTHER INFORMATION CONTACT**).

Background

Before a plant or animal species can receive the protection provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), it must first be added to the Federal lists of threatened and endangered wildlife and plants. The List of Endangered and Threatened Wildlife (found in title 50 of the Code of Federal Regulations (CFR) in § 17.11) and the List of Endangered and Threatened Plants (found in 50 CFR 17.12) contain the names of all organisms that have been determined by the FWS and NMFS (jointly referred to as the Services) to qualify as "endangered species" or "threatened species." When a species is listed as endangered or threatened under the Act, the Services designate specific areas as "critical habitat."

Under section 4(b)(5)(A) of the Act, as amended (16 U.S.C. 1531 *et seq.*), and the implementing regulations contained within 50 CFR sections 17.94(b), 226.101, 424.12(c), 424. 16(b) and (c)(1)(ii), and 424.18(a), the Services are required, when designating or revising critical habitat for species listed under the Act, to publish the complete text of the regulation, maps, and descriptions of such habitat in the Regulation Promulgation section of a rulemaking published in the **Federal Register.** We have found over time that textual descriptions of critical habitat boundaries are often difficult to interpret and understand, and do not provide clarity regarding the areas being designated. Publishing these textual descriptions is also inefficient and costly. Below we discuss our current requirements and their limitations, and proposed regulation changes to address these issues.

NMFS' current practice is to publish maps in the **Federal Register** along with a textual description of the boundaries of the areas being designated as critical habitat in both their proposed and final rules. FWS publishes only the maps in the proposed critical habitat rule and then publishes the maps along with a textual description of the boundaries in the final critical habitat rule. We previously described the boundaries following a variety of methods including Public Land Survey System designations (which specify township, range, and section; sometimes referred to as the "rectangular survey system") and metes-and-bounds (a system of describing a parcel of land using the physical features of local geography, along with directions and distances, to define the boundaries). However, as GIS and specific geographic-based data have become more available, we have been using predominantly Universal Transverse Mercator (UTM) coordinate system (a grid-based system employing a series of 60 zones to specify locations on the surface of the Earth) and latitude–longitude. We adopted these practices because our current regulations at 50 CFR 424.12(c) state "Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area." Unfortunately, these descriptions are often difficult to interpret and understand, and do not provide clarity regarding which areas are being designated as critical habitat. Therefore, in addition to the maps and textual descriptions published in the **Federal Register**, over the last several years we have provided the public with interactive maps and additional descriptions, on the Services' Internet sites, Regulations.gov, and at local field offices. References to these Internet sites are cited throughout the proposed (NMFS only) and final (NMFS and FWS) rules and in our outreach materials for the specific action. In addition, we have provided maps and GIS coverages (data layers) to affected Federal agencies, States, counties, jurisdictions, and interested parties for use in their computer databases and to make available to their constituencies. The public's reliance on these latter materials in lieu of the textual descriptions published in the **Federal Register** and codified in the Code of Federal Regulations reinforces our view that the textual descriptions are of limited utility in informing the public as to which areas are designated critical habitat.

Given that the textual descriptions are of limited utility, we are proposing to revise the implementing regulations contained within 50 CFR 17.94(b), 226.101, 424.12(c), 424.16(b) and (c)(1)(ii), and 424.18(a), to eliminate the requirement to publish textual descriptions of proposed (NMFS only) and final (NMFS and FWS) critical habitat boundaries in the **Federal Register** and reprinting in the CFR, and instead provide that the map(s), as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a Critical Habitat. Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register**. The maps and brief textual descriptions that we plan to publish in the **Federal Register** after we finalize this proposed rule will be sufficient to inform the public as to where a particular critical habitat designation is located, and thus sufficient to provide notice to the public and give them an opportunity to comment. We will provide further information online on our web sites, but we do not think it is necessary for the public to have UTM or latitude–longitude coordinates in order to know where critical habitat is located. We believe these changes will be for the public good and make the process more user-friendly, without compromising the public involvement or the overall process.

Eliminating the need to publish detailed textual descriptions in the **Federal Register** and annually in the CFR will also result in significant financial savings, thereby saving Federal resources. In FWS's final designations, UTM coordinate pairs or other textual descriptions of the boundaries of areas often account for more than half of the document, resulting in significant **Federal Register** publication costs. For example, FWS spent approximately $764,523 in fiscal year 2008, $539,639 in fiscal year 2009, and $662,952 in fiscal year 2010 to publish critical habitat designations in the **Federal Register**, for a total of approximately $1,967,114 for the three fiscal years combined. If we estimate that 50 percent of those costs are spent on the publication of the textual descriptions of the boundaries, then publication of those descriptions will cost $983,557 for the three fiscal years, or approximately $327,852 per fiscal year.

In addition, the regulation portion of the rule, including the maps and textual descriptions of the boundaries, is reprinted annually in the CFR, resulting in a further expenditure of taxpayer resources. FWS has spent approximately $80,000 in fiscal year 2008, $92,400 in fiscal year 2009, and $83,160 in fiscal year 2010 to reprint critical habitat designations in the CFR. Based on a review of the current volume (*i.e.,* number of pages) of critical habitat designations represented in the CFR, we estimate that the textual descriptions account for approximately 75 percent of the volume and therefore 75 percent of the printing costs. Using the estimated 75 percent as the cost of reprinting the textual descriptions of the boundaries, publication of those descriptions will

cost $191,670 for the three fiscal years, or approximately $63,890 per fiscal year. Adding this to the **Federal Register** costs discussed above, we estimate that the annual cost for publishing textual descriptions of boundaries in the **Federal Register** and then reprinting them in the CFR will be nearly $391,742 for FWS alone. Thus, eliminating the need to publish latitude-longitude coordinates, UTM coordinate pairs or other detailed textual descriptions in the **Federal Register** and CFR would result in a significant cost savings to the Services and the public as a whole.

Finally, relying on maps and brief textual descriptions to identify areas designated as critical habitat is consistent with the ESA. Section 4(a)(3)(A) of the Act only requires that critical habitat be designated "by regulation." Moreover, section 4(b)(5)(A) of the Act indicates that the Secretary shall "not less than 90 days before the effective date of the regulation—(i) publish a general notice and the complete text of the proposed regulation in the **Federal Register**, and (ii) give actual notice of the proposed regulation (including the complete text of the regulation)." In the context of critical habitat designation, we interpret the mandate to publish the "complete text" of the proposed regulation as requiring that the regulation provide a sufficiently detailed description of the area included within the proposed designation, in the form of maps and any accompanying text, so as to provide all interested persons with a meaningful opportunity to comment. Due to the technical limitations on what can be published in the **Federal Register** (*i.e.,* map size and detail), we anticipate that information we make available to the public through our outreach efforts, Internet sites, and at local Services offices will also assist the Services in addressing day-to-day questions about the designation. To the extent that questions arise from the public as to the precise coverage of a proposed or final designation (*e.g.,* due to the scale at which the published maps are drawn), additional materials will be available on the Web site or at Service offices to provide the needed clarity.

In this regard, we note that the Services never maintained that requiring detailed textual descriptions was legally necessary. Instead, the first critical habitat regulations required only that critical habitat designations be "accompanied by maps and/or geographical descriptions." 43 FR 870, 876 (Jan. 4, 1978). Although the Services subsequently added the requirement that critical habitat designations include textual descriptions describing the specific boundary limits of the critical habitat, there is nothing in the preamble to that rule indicating that the Services did so because the ESA required it. Rather, it was in response to several commenters, who had opined that the proposed rule was not sufficiently clear in setting out the method by which critical habitat boundaries would be described. 45 FR 13009, 13015 (Feb. 27, 1980). With this change, the regulations would continue to be explicit as to the method by which critical habitat boundaries would be described; it would just do so by means that did not require detailed textual descriptions.

Regulation Changes

The following table shows the current and proposed CFR text. After Table 1, we provide explanations of why we are proposing to revise the text as indicated.

TABLE 1—CURRENT AND PROPOSED REGULATORY TEXT SETTING FORTH THE DESIGNATION OF CRITICAL HABITAT FOR SPECIES LISTED UNDER THE ENDANGERED SPECIES ACT

[16 U.S.C. 1531 *et seq.*]

Title 50 CFR section and paragraph	Current CFR text	Proposed CFR text
17.94(b)	(b) The map provided by the Director does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Such maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only.	(b)(1) For Critical Habitat designations published and effective after [EFFECTIVE DATE OF FINAL RULE], the map provided by the Secretary of the Interior, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a Critical Habitat. Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Service responsible for such designation. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the Critical Habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites within the mapped area. Unless otherwise indicated within the Critical Habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area.

TABLE 1—CURRENT AND PROPOSED REGULATORY TEXT SETTING FORTH THE DESIGNATION OF CRITICAL HABITAT FOR SPECIES LISTED UNDER THE ENDANGERED SPECIES ACT—Continued

[16 U.S.C. 1531 *et seq.*]

Title 50 CFR section and paragraph	Current CFR text	Proposed CFR text
		(b)(2) For Critical Habitat designations published and effective on or prior to [EFFECTIVE DATE OF FINAL RULE], the map provided by the Secretary of the Interior is for reference purposes to guide Federal Agencies and other interested parties in locating the general boundaries of the Critical Habitat. The map does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the critical habitat is located. Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only.
226.101 (last sentence).	Maps and charts identifying designated critical habitat that are not provided in this section may be obtained upon request to the Office of Protected Resources (see § 222.102, definition of "Office of Protected Resources").	Additional information regarding designated critical habitats that are not provided in this part may be obtained upon request to the Office of Protected Resources (see § 222.102, definition of "Office of Protected Resources").
424.12(c)	(c) Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for information only and do not constitute the boundaries of the area. Ephemeral reference points (*e.g.,* trees, sand bars) shall not be used in defining critical habitat.	(c) Each critical habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Service responsible for such designation. Textual information may be included for purposes of clarifying or refining the location and boundaries of each area or to explain the exclusion of sites (*e.g.,* paved roads, buildings) within the mapped area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area. Ephemeral reference points (*e.g.,* trees, sand bars) shall not be used in any textual description used to clarify or refine the boundaries of critical habitat.
424.16(b)	(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule, a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources), and shall show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary shall, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat shall also include a summary of factors affecting the species and/or critical habitat.	(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 will contain a detailed description of the proposed action and a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources) and will show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat will contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat will also include a summary of factors affecting the species or its designated critical habitat or both.
424.16(c)(1)(ii)	(ii) Give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;	(ii) Give actual notice of the proposed regulation to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

TABLE 1—CURRENT AND PROPOSED REGULATORY TEXT SETTING FORTH THE DESIGNATION OF CRITICAL HABITAT FOR SPECIES LISTED UNDER THE ENDANGERED SPECIES ACT—Continued

[16 U.S.C. 1531 *et seq.*]

Title 50 CFR section and paragraph	Current CFR text	Proposed CFR text
424.18(a)	(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the **Federal Register.** This publication will contain the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat shall also provide a summary of factors affecting the species. A rule designating or revising critical habitat will also contain a description of the boundaries and a map of such habitat and will, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversly [sic] modify such habitat or be affected by such designation.	(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the **Federal Register.** This publication will contain a detailed description of the action being finalized, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat will also provide a summary of factors affecting the species. For a rule designating or revising critical habitat, the detailed description of the action will include a map that delineates the official boundary of the designation. The official boundary may also be clarified or refined by rule text, or by the map as modified by rule text. The Service may also create additional explanatory text, information, or maps and include them in the preamble of the rulemaking document or make them available from the lead Service office responsible for the designation. The rule will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversely modify such habitat or be affected by such designation.

50 CFR 17.94(b)

The existing regulation states that the map provided by the Director does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat. In order to provide more clarity regarding the areas being designated, as well as be more efficient and cost-effective, we are proposing to change the wording of the first sentence to state "For critical habitat designations published and effective after [EFFECTIVE DATE OF FINAL RULE], the map(s) provided by the Secretary of DOI constitutes the definition of the boundaries of a critical habitat designation." We are replacing "the Director" with "the Secretary of DOI" since the authority to designate critical habitat under the Act lies with the Secretary due to the Secretarial discretion under section 4(b)(2) of the Act to exclude specific areas from final critical habitat, and this authority has not been delegated to the Director. For existing critical habitat designations, we also intend to remove the textual descriptions of final critical habitat boundaries set forth in the CFR, without changing the boundaries of those designations, in separate rulemakings in order to save the annual reprinting cost.

The second sentence of the existing regulation states "Such maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the Critical Habitat." We are proposing to revise this sentence to read "Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Service responsible for such designation." We believe this will provide greater clarity regarding the areas being designated, as well as be a more efficient and cost effective way to provide information to the public concerning areas designated as critical habitat. We acknowledge that what is printed in the **Federal Register** and subsequently in the CFR will be the legally binding delineation of critical habitat. However, should there be ambiguity with the scale of the map, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat.

We are proposing also to replace the third existing sentence "Critical habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located." The new wording would be "Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the Critical Habitat is located. General descriptions of the location and boundaries of each area may be provided for clarification purposes or to explain the exclusion of sites (*e.g.,* paved roads, buildings) within the mapped area." This change will relieve us of the regulatory and financial burden of publishing the textual descriptions of the boundaries of critical habitat in the regulations, which have shown to be of limited use to the general public.

50 CFR 226.101

This section addresses critical habitat designations made by the Secretary of Commerce. We are proposing to replace the "Maps and charts identifying designated critical habitat * * *" phrase in the beginning of the last sentence with "Additional information regarding designated critical habitat * * *." This new language will provide the flexibility needed to provide useful information to the public concerning areas designated as critical habitat.

50 CFR 424.12(c)

We are proposing to remove the references to defining critical habitat by specific limits using reference points and lines as found on standard topographic maps of the area. The proposed revision would read "Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Service responsible for such designation." This proposed revision would provide more clarity regarding the areas being designated, as well as relieve the regulatory and financial burden of both Services being required to print these reference points in the **Federal Register** and reprint them annually in the CFR. We acknowledge that what is printed in the **Federal Register** and subsequently in the CFR will be the legally binding delineation of critical habitat. However, should there be ambiguity with the scale of the map, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat. We also intend to remove the textual descriptions of final critical habitat boundaries set forth in the CFR for existing critical habitat designations in separate rulemakings in order to save the annual reprinting cost.

We are proposing to add the following sentence to this regulation: "General descriptions of the location and boundaries of each area may be provided for clarification purposes or to explain the exclusion of sites (*e.g.,* paved roads, buildings) within the mapped area."

50 CFR 424.16(b)

The proposed change to this section is in the first sentence where it currently states "A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule." We are proposing to change the wording "shall contain the complete text of the proposed rule" to "will contain a detailed description of the proposed action." Although we will in fact publish "the complete text of the proposed regulation," as required by 16 U.S.C 1533(b)(5)(A)(i), this change in wording, along with the other changes in this notice, will clarify how we interpret this mandate in the context of critical habitat designation. As discussed above, should there be ambiguity with the scale of the map, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat.

Because the regulation will be the legally binding description of the designation, we included the language "will contain a detailed description of the proposed action" to clarify that the regulation (in the form of maps and any accompanying text) must itself provide a sufficiently detailed description.

50 CFR 424.16(c)(1)(ii)

The proposed change to this section is removing the parenthetical phrase that states "(including the complete text of the regulation)." As stated above, this change in wording, along with the other changes proposed in this notice, will clarify how we interpret this mandate in the context of critical habitat designation. As discussed above, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat.

Because the regulation will be the legally binding description of the designation, we included the language "will contain a detailed description of the proposed action" to clarify that the regulation (in the form of maps and any accompanying text) must itself provide a sufficiently detailed description.

50 CFR 424.18(a)

This section addresses the final rule requirements. In the second sentence of the existing regulation, we are proposing to replace "the complete text of the rule" with "a detailed description of the action being finalized." As with the sections above that deal with the requirements for a proposed rule, changing the wording here, along with the other changes proposed in this notice, will clarify how we interpret this mandate in the context of critical habitat designation. As discussed above, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat. Because the regulation will be the legally binding description of the designation, we included the language "will contain a detailed description of the proposed action" to clarify that the regulation (in the form of maps and any accompanying text) must itself provide a sufficiently detailed description.

In the fourth sentence of the existing regulation, we are proposing to remove the references to the final rule containing a description of the boundaries of the critical habitat being designated. We are modifying this section and expanding the discussion on the requirement for a map. The new proposed section would read: "A rule designating or revising critical habitat will also include a map of the critical habitat area. The map itself constitutes the official boundary of the designation. The official boundary may also be delineated by rule text or by the map as modified by rule text. The Services may also create additional explanatory text, information, or maps and include them in the preamble of the rulemaking document or make them available from the lead Service office responsible for the designation." This change will provide more clarity regarding the areas being designated, as well as allow us to reduce our printing costs in both the **Federal Register** and for the annual reproductions of the CFR. Our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat. We believe this change will not increase the burden on the public.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities as defined under the RFA.

This proposed rule would revise the implementing regulations contained within 50 CFR 17.94(b), 226.101, 424.12(c), 424.16(b) and (c)(1)(ii), and 424.18(a), to eliminate the requirement to publish textual descriptions of proposed (NMFS only) and final (NMFS and FWS) critical habitat boundaries in the **Federal Register** and reprinting in the CFR, and instead provide that the map(s), as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a Critical Habitat. A full description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. The proposed rule does not duplicate, overlap, or conflict with other Federal rules.

This rulemaking amends the procedural requirements for NMFS and FWS when designating critical habitat. NMFS and FWS are the only entities that are directly impacted by this rule, and they are not considered to be small entities under SBA's size standards. No other entities are directly impacted by this rule.

The revisions to the implementing regulations proposed herein are not expected to impose any direct costs on regulated entities. The elimination of the procedural requirement to publish textual descriptions of proposed (NMFS only) and final (NMFS and FWS) critical habitat boundaries in the **Federal Register** and reprinting in the CFR is an administrative action, and it is intended to facilitate public understanding of the critical habitat designation process and make it easier for the public to determine if specific areas are within the critical habitat designation. In fact, this regulation would make the process more cost-effective for the agencies and the public as a whole and would potentially save the FWS alone an estimated $391,742 annually. Therefore, for the reasons above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Services make the following findings:

a. This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

b. We do not believe this rule will significantly or uniquely affect small governments, because the revisions to the implementing regulations proposed herein will facilitate public understanding of the critical habitat designation process, and the areas included within the critical habitat, and make the process more cost-effective for the agencies and the public as a whole by potentially saving the FWS alone an estimated $391,742 annually. As such, we do not believe that a Small Government Agency Plan is required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have evaluated the proposal to revise the implementing regulations for designating critical habitat and have determined that this proposed rule does not pose significant takings implications. The proposed revisions to the implementing regulations are intended to facilitate the public understanding of the rulemaking process for critical habitat.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. The revisions to the regulations addressed in this proposed rule are intended to facilitate the public understanding of the rulemaking process for critical habitat, and thus should not significantly affect or burden the authority of the States to govern themselves.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The revisions to the regulations addressed in this proposed rule are intended to facilitate the public understanding of the rulemaking process for critical habitat, and thus should not significantly affect or burden the judicial system.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA)

We determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register**.

Also, it is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

However, we have analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act. Since this proposal is administrative in nature (*i.e.,* we are making optional the inclusion of any textual description of the boundaries of the designation in the **Federal Register**), there is no effect to the quality of the human environment. This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," and the Department of the Interior Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Native American Tribes on a government-to-government basis. We have evaluated the potential effects on federally recognized Tribes from these proposed revisions to our implementing regulations for critical habitat. We have determined that there are no potential effects to federally recognized Tribes since the revisions to the implementing regulations are intended to facilitate the public understanding of critical habitat designations and save taxpayer monies. We will, however, continue to coordinate with Tribes as we promulgate critical habitat designations.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to revise the implementing regulations for designating critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise this rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Author(s)

The primary authors of this package are staff members from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

List of Subjects in 50 CFR Parts 17, 226, and 424

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend parts 17, 226, and 424, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.94, revise paragraph (b) as set forth below:

§ 17.94 Critical habitats.

* * * * *

(b)(1) For the Critical Habitat designations published and effective after [EFFECTIVE DATE OF FINAL RULE], the map provided by the Secretary of DOI, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a Critical Habitat. Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Service responsible for such designation. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the Critical Habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Unless otherwise indicated within the Critical Habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area.

(2) For Critical Habitat designations published and effective on or prior to [EFFECTIVE DATE OF FINAL RULE], the map provided by the Director is for reference purposes to guide Federal Agencies and other interested parties in locating the general boundaries of the Critical Habitat. The map does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located.

Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only.

* * * * *

PART 226—[AMENDED]

3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

4. Revise § 226.101 to read as follows:

§ 226.101 Purpose and scope.

The regulations contained in this part identify those habitats designated by the Secretary of Commerce as critical, under section 4 of the Act, for endangered and threatened species under the jurisdiction of the Secretary of Commerce. Those species are enumerated at § 223.102 of this chapter if threatened and at § 224.101 of this chapter if endangered. For regulations pertaining to the designation of critical habitat, see part 424 of this title; for regulations pertaining to prohibitions against the adverse modification or destruction of critical habitat, see part 402 of this title. Additional information regarding designated critical habitats that is not provided in this section may be obtained upon request to the Office of Protected Resources (*see* § 222.102, definition of "Office of Protected Resources").

PART 424—[AMENDED]

5. The authority citation for part 424 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); unless otherwise noted.

6. In § 424.12, revise paragraph (c) as set forth below:

§ 424.12 Criteria for designating critical habitat.

* * * * *

(c) Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Services responsible for such designation. Textual information may be included for purposes of clarifying or refining the location and boundaries of each area or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area. Ephemeral reference points (*e.g.,* trees, sand bars) shall not be used in any textual description used to clarify or refine the boundaries of critical habitat.

* * * * *

7. In § 424.16, revise paragraphs (b) and (c)(1)(ii) as set forth below:

§ 424.16 Proposed rules.

* * * * *

(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 will contain a detailed description of the proposed action and a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources) and will show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat will also include a summary of factors affecting the species and/or its designated critical habitat.

(c) * * *

(1) * * *

(ii) Give actual notice of the proposed regulation to the State agency in each State in which the species is believed to occur and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

* * * * *

8. In § 424.18, revise paragraph (a) to read as follows:

§ 424.18 Final rules—general.

(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the **Federal Register**. This publication will contain a detailed description of the action being finalized, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat will also provide a summary of factors affecting the species. For a rule designating or revising critical habitat, the detailed description of the action will include a map that delineates the official boundary of the designation. The official boundary may also be clarified or refined by rule text or by the map as modified by rule text. The Services may also create additional explanatory text, information, or maps and include them in the preamble of the rulemaking document or make them available from the lead office of the Service responsible for the designation. The rule will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversely modify such habitat or be affected by such designation.

* * * * *

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 11, 2011.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

Dated: May 4, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2011–11920 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–55–P; 3510–22–P

Notices

Federal Register
Vol. 76, No. 95
Tuesday, May 17, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Provincial Advisory Committees Charter Re-Establishment

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to re-establish the Provincial Advisory Committees.

SUMMARY: The Department of Agriculture, in consultation with the Department of the Interior, intends to re-establish the Provincial Advisory Committees (PACs) for the provinces in California, Oregon, and Washington. This re-establishment is in response to the continued need for the PACs to provide advice on coordinating the implementation of the Record of Decision (ROD) of April 13, 1994, for Management of Habitat for Late-Succession and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl. The PACs also provide advice and recommendations to promote integration and coordination of forest management activities between Federal and non-Federal entities.

ADDRESSES: Copies of the April 13, 1994, Record of Decision can be obtained electronically at *http://www.reo.gov/library/reports/newsandga.pdf*. Paper copies can be obtained from the Office of Strategic Planning, P.O. Box 3623, Portland, OR 97208.

FOR FURTHER INFORMATION CONTACT: Shandra L. Terry, Regional Public Involvement Coordinator, Office of Public and Legislative Affairs, Forest Service, USDA (503) 808–2242.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Department of Agriculture, in consultation with the Department of the Interior, intends to re-establish the Provincial Advisory Committees (PACs), which will advise the Provincial Interagency Executive Committee (PIEC). The purpose of the PIEC is to facilitate the coordinated implementation of the ROD of April 13, 1994, for Management of Habitat for Late-Succession and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl. The PIEC consists of representatives of the following Federal agencies: Forest Service, Natural Resources Conservation Service, Bureau of Indian Affairs, Bureau of Land Management, National Marine Fisheries Service, National Park Service, U.S. Fish and Wildlife Service, U.S. Geological Survey Biological Resources Division, Environmental Protection Agency, and U.S. Army Corps of Engineers.

Ecosystem management at the province level requires improved coordination among governmental entities responsible for land management decisions and the public those agencies serve. Each PAC will provide advice and recommendations regarding implementation to promote integration and coordination of forest management activities between Federal and non-Federal entities. Each PAC will provide advice regarding implementation of a comprehensive ecosystem management strategy for Federal land within a province (provinces are defined in the ROD at E19).

The chair of each PAC will alternate annually between representatives of the Forest Service and the Bureau of Land Management. When the Bureau of Land Management is not represented on the PIEC, the Forest Service representative will serve as chair. The chair, or a designated agency employee, will serve as the Designated Federal Officer under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App.). Any vacancies on the committee will be filled in the manner in which the original appointment was made.

A meeting notice will be published in the **Federal Register** within 15 to 45 days before a scheduled meeting date. All meetings are generally open to the public and may include a "public forum" that may offer 5–10 minutes for participants to present comments to the advisory committee. Alternates may choose not to be active during this session on the agenda. The chair of the given committee ultimately makes the decision whether to offer time on the agenda for the public to speak to the general body.

Re-establishment of the PACs does not require an amendment of Bureau of Land Management or Forest Service planning documents because the re-establishment does not affect the standards and guidelines or land allocations. The Bureau of Land Management and Forest Service will provide further notice, as needed, for additional actions or adjustments when implementing interagency coordination, public involvement, and other aspects of the ROD.

Equal opportunity practices will be followed in all appointments to the advisory committee. To ensure that the recommendations of the PACs have taken into account the needs of diverse groups served by the Departments, membership will, to the extent practicable, include individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: April 4, 2011.

Pearlie S. Reed.

Assistant Secretary for Administration.

[FR Doc. 2011–11987 Filed 5–16–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0008]

Notice of Request for Approval of an Information Collection; National Animal Health Monitoring System; Emergency Epidemiologic Investigations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate Emergency Epidemiologic Investigations, an information collection to support the National Animal Health Monitoring System.

DATES: We will consider all comments that we receive on or before July 18, 2011.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2011–0008* to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0008, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0008.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the Emergency Epidemiologic Investigations, contact Mr. Chris Quatrano, Industry Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E7, Fort Collins, CO 80526; (970) 494–7207. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Emergency Epidemiologic Investigations.

OMB Number: 0579–xxxx.

Type of Request: Approval of a new information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to protect the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In connection with this mission, APHIS is often asked by State and local animal health officials to carry out epidemiological investigations as diseases impact animal health populations. This activity will be used to collect information on:

• Outbreaks of animal diseases with unknown etiology and transmission, which are highly contagious, and which have high case fatality.

• Outbreaks of known animal diseases which are highly contagious, virulent, and have unknown source of infection or mode of transmission.

• Outbreaks of emerging, zoonotic, or foreign animal diseases within the United States.

• Any event with a substantial increase in the number of cases.

The investigations will normally consist of an on-farm questionnaire administered by APHIS-designated data collectors. The information collected through Emergency Epidemiologic Investigations will be analyzed and used to:

• Identify the scope of the problem.

• Define and describe the affected population and the susceptible population.

• Predict or detect trends in disease emergence and movement.

• Understand the risk factors for disease.

• Estimate the cost of disease control and develop intervention options.

• Make recommendations for disease control.

• Provide parameters for animal disease spread models.

• Provide lessons learned and guidance on the best ways to avoid future outbreaks based on thorough analysis of data from current outbreak(s).

• Identify areas for further research.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.725 hours per response.

Respondents: Livestock owners, State and local animal health officials.

Estimated annual number of respondents: 3,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 3,000.

Estimated total annual burden on respondents: 2,175 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12021 Filed 5–16–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will be meeting in Prather, California, June 29, 2011 and July 27, 2011. The purpose of these meetings will be to receive progress and monitoring reports from previously funded projects and accept and review project proposals for the next funding cycle.

DATES: The meetings will be held from 6 p.m. to 8:30 p.m.

ADDRESSES: The meetings will be held at the High Sierra Ranger District, 29688 Auberry Rd., Prather, CA. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource

Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Agenda items to be covered include: (1) Accept new project proposals and (2) Review progress and monitoring reports from previously funded projects.

Dated: May 9, 2011.

Ray Porter,

District Ranger.

[FR Doc. 2011–12008 Filed 5–16–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Manti-La Sal National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Manti-La Sal National Forest Resource Advisory Committee will meet in Price, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to consider Secure Rural Schools Act Title II project proposals.

DATES: The meeting will be held June 16, 2011, and will begin at 9 a.m.

ADDRESSES: The meeting will be held in the conference room of the Utah Division of Wildlife Resources, 319 North Carbonville Road, Price, Utah. Written comments should be sent to Rosann Fillmore, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Comments may also be sent via e-mail to *rdfillmore@fs.fed.us* or via facsimile to 435–637–4940.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Visitors are encouraged to call ahead to 435–636–3525 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rosann Fillmore, RAC Coordinator, USDA, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501; 435–636–3525; e-mail *rdfillmore@fs.fed.us*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Consideration of Project Funding Proposals. (2) Plans for Monitoring Projects (3) Other business (4) Public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 14, 2011 will have the opportunity to address the Committee at those sessions.

May 10, 2011.

Ann King,

Acting Forest Supervisor.

[FR Doc. 2011–12020 Filed 5–16–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince of Wales Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince of Wales Resource Advisory Committee will meet in Kasaan, Alaska, June 1, 2011. This meeting will take place of the May 16, 2011 Resource Advisory Committee Meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held June 1, 2011 from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Totem Trail Café in Kasaan, Alaska. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Craig Ranger District. Please call ahead to 907–826–3271 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Rebecca Sakraida, RAC Coordinator, 907–826–1601 or e-mail *rsakraida@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review of projects submitted for review. An agenda will be available at the Secure Rural Schools Web site, *https://wwwnotes.fs.fed.us/wo/secure_rural_schools.nsf.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 9, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Prince of Wales RAC c/o District Ranger P.O. Box 500 Craig, AK 99921, or by e-mail to *rsakraida@fs.fed.us,* or via facsimile to 907–826–2972

May 9, 2011.

Francisco B. Sanchez,

District Ranger.

[FR Doc. 2011–12086 Filed 5–16–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service

(NASS) to seek reinstatement of an information collection, the 2012 Census of Agriculture.

DATES: Comments on this notice must be received by July 18, 2011 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0226, *by any of the following methods:*

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail: Mail any paper, disk, or CD–ROM submissions to:* David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier: Hand deliver to:* David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: The 2012 Census of Agriculture.

OMB Control Number: 0535–0226.

Expiration Date of Previous Approval: July 31, 2009.

Type of Request: Intent to Seek Reinstatement of an Information Collection.

Abstract: The census of agriculture is the primary source of statistics concerning the nation's agricultural industry. It provides the only basis of consistent, comparable data for each county, county equivalent, and State in the United States and its outlying insular areas. The census is conducted every 5 years, the last one being for the reference year of 2007. The 2012 census of agriculture will again cover all agricultural operations in the 50 States, Puerto Rico, Guam, the U.S. Virgin Islands, the Commonwealth of Northern Mariana Islands (CNMI), and American Samoa which meet the census definition for a farm. For the 50 States, Guam, and CNMI, a farm is any place that produced and sold, or normally would produce and sell, $1,000 or more of agricultural products during the census reference year. For Puerto Rico and the U.S. Virgin Islands it is any place with $500 in production and sales. American Somoa is not limited by a threshold for production or sales and includes items grown for home consumption.

Data collection for the censuses of agriculture for the 50 States and Puerto Rico will be conducted primarily by mail-out/mail-back procedures, with phone and field enumeration for targeted non-respondents. Data collection for Guam, the U.S. Virgin Islands, and CNMI will be conducted using direct enumeration methods. For the 50 States, respondents will be contacted up to 3 times by mail, and additional telephone or personal interview follow-up for mail non-respondents. Questionnaires that are returned by the Post Office as non-deliverable will be removed from our target population and subsequent mailings. Respondents who contact one of our phone centers to notify NASS of their farming status or to complete a questionnaire will also be removed from any subsequent mailings.

NASS conducted a census form content test (OMB #5035–0243) during the winter of 2010–2011 to evaluate new content items, report form design and format, and processing procedures.

To minimize respondent burden, NASS limits the items asked on 75 percent of the report forms to the basic subjects asked in the previous census, such as land use and ownership, crop acreage and production, grain storage, livestock and poultry inventories, federal farm program payments, income from farm-related sources, and operator characteristics. The other 25 percent of report forms include additional questions on hired labor, production expenses, fertilizer and chemical usage, machinery and equipment, and market value of land and buildings. NASS is working to increase the speed and ease at which any respondent may fill out the form by incorporating improved screening questions at the beginning of each section of the form. This reduces overall respondent burden, particularly for small operations and operations specializing in only a few commodities. Report forms are tailored to various regions of the country to further reduce burden. A screening survey, conducted prior to the census, will enable NASS to eliminate non-farm operations from the census mail list and determine respondent eligibility for receiving the appropriate census mail package.

The census of agriculture is required by law under the "Census of Agriculture Act of 1997," Public Law 105–113, 7 U.S.C. 2204(g). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362. The law guarantees farm operators that their individual information will be kept confidential. NASS uses the information only for statistical purposes and publishes only tabulated total data. These data are used by Congress when developing or changing farm programs. Many national and state programs are designed or allocated based on census data, *i.e.,* soil conservation projects, funds for cooperative extension programs, and research funding. Private industry uses the data to provide more effective production and distribution systems for the agricultural community.

Estimate of Burden: Public reporting burden for this collection of information will be about 50 minutes per census form, 10 minutes per screening form, and 2 minutes per refusal from all sources.

Respondents: Farm and ranch operators.

Estimated Number of Respondents: 3,025,000.

Estimated Total Annual Burden on Respondents: 2,410,000 hours.

In 2007, the burden for the Census of Agriculture was calculated by assigning the average burden to the target population. The 2007 burden did not account for the multiple mailings of the questionnaires and instruction sheets to non-respondents. After adjusting the previous OMB submission to include the level of detail used this time, there are no significant changes in respondent burden or population size. The data collection procedures used in 2007 are relatively the same as what is being proposed for the 2012 Census of Agriculture.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 20, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–12100 Filed 5–16–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1757]

Approval for Manufacturing Authority, Foreign-Trade Zone 104; Mitsubishi Power Systems Americas, Inc., (Power Generation Turbine Components), Pooler, GA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order

Whereas, the Savannah Airport Commission, grantee of Foreign-Trade Zone 104, has requested manufacturing authority on behalf of Mitsubishi Power Systems Americas, Inc., within FTZ 104 in Pooler, Georgia (FTZ Docket 53–2010, filed 9–13–2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 56985, 9–17–2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 104 on behalf of Mitsubishi Power Systems Americas, Inc., as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 6th day of May 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–12096 Filed 5–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1759]

Reorganization of Foreign-Trade Zone 64 Under Alternative Site Framework; Jacksonville, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Jacksonville Port Authority, grantee of Foreign-Trade Zone 64, submitted an application to the Board (FTZ Docket 63–2010, filed 11/04/10) for authority to reorganize under the ASF with a service area of the Florida counties of Baker, Clay, Columbia, Duval and Nassau, in and adjacent to the Jacksonville Customs and Border Protection port of entry; FTZ 64's existing sites 2 and 5 would be removed; the non-contiguous parcel of Site 3 would be renumbered as Site 9; Sites 1, 3, 9, and 10 would be categorized as magnet sites; and, Sites 4, 7, and 8 would be categorized as usage-driven sites;

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 69048, 11/10/10) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 64 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1, 9, and 10 if not activated by May 31, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 4, 7, and 8 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by May 31, 2014.

Signed at Washington, DC, this 6th day of May, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–12091 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1760]

Voluntary Termination of Foreign-Trade Subzone 33C; Sony Corporation of America, Mt. Pleasant, PA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on September 27, 2001, the Foreign-Trade Zones Board issued a grant of authority to the Regional Industrial Development Corporation of Southwestern Pennsylvania, (grantee of FTZ 33) authorizing the establishment of Foreign-Trade Subzone 33C at the Sony Corporation of America plant in Mt. Pleasant, Pennsylvania (Board Order 1196, 66 FR 52741, 10/17/01);

Whereas, the Regional Industrial Development Corporation of Southwestern Pennsylvania has advised that zone procedures are no longer needed at the facility and requested voluntary termination of Subzone 33C (FTZ Docket 26–2011);

Whereas, the request has been reviewed by the FTZ Staff and Customs and Border Protection officials, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 33C, effective this date.

Signed at Washington, DC, this 6th day of May 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–12090 Filed 5–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone (202) 482–4161.

Background

On January 29, 2010, the Department published a notice of initiation of the antidumping duty administrative review of certain hot-rolled carbon steel flat products from India for the period December 1, 2008, through November 30, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Initiation of Administrative Review,* 75 FR 4770 (January 29, 2010). On September 14, 2010, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the deadline for the preliminary results by 120 days. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review,* 75 FR 55742 (September 14, 2010). On January 13, 2011, the Department published in the **Federal Register**, the *Preliminary Results* of this review. *See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 2344 (January 13, 2011) (*Preliminary Results*). The final results of this review are currently due no later than May 13, 2011.

Extension of Time Limit of the Final Results

Section 751(a)(3)(A) of the Act, requires the Department to issue the final results of a review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days. *See* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the original time limit because the Department needs additional time to evaluate information on the record and arguments raised by parties with respect to Tata Steel Limited's single entry of subject merchandise. Therefore, the Department is fully extending the time limit for the final results to July 12, 2011, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 10, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–12069 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Persulfates From the People's Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 11, 2011, the Department of Commerce ("Department") published its *Preliminary Results* for the administrative review of the antidumping duty order on persulfates from the People's Republic of China ("PRC") covering the period July 1, 2009, through June 30, 2010.[1] We invited interested parties to comment on our *Preliminary Results.* FMC Corporation ("FMC"), a domestic producer of persulfates and an interested party in this review, commented that it fully supports our *Preliminary Results.* No other party submitted comments. Therefore, the *Preliminary Results* are hereby adopted as the final results.

DATES: *Effective Date:* May 17, 2011.

FOR FURTHER INFORMATION CONTACT: Brandon Petelin or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8173 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2011, the Department published its *Preliminary Results* for the administrative review of the antidumping duty order on persulfates from the PRC covering the July 1, 2009, through June 30, 2010, period of review ("POR"). For the *Preliminary Results,* because United Initiators (Shanghai) Co., Ltd. ("United Initiators") did not respond to the Department's questionnaire, we were unable to determine if United Initiators was eligible for a separate rate.[2] United Initiators did not rebut the Department's presumption of government control and was, therefore, presumed to be part of the PRC-wide entity. Further, in accordance with sections 776(a)(2)(A) and (B) of the Tariff Act of 1930, as amended ("Act"), because the PRC-wide entity (including United Initiators) failed to cooperate to the best of its ability by not responding to our questionnaire, we found it appropriate to use adverse facts available.[3] On March 21, 2011, FMC submitted comments stating that it fully supports the Department's *Preliminary Results.* No other party submitted comments.

Scope of the Order

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States*

[1] *See Persulfates From the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review,* 76 FR 13358 (March 11, 2011) ("*Preliminary Results*").

[2] On October 8, 2010, the Department confirmed that United Initiators signed for and received our mailing of the antidumping duty questionnaire. United Initiators did not respond to the Department's antidumping duty questionnaire. On January 3, 2011, the Department placed on the record of this administrative review the UPS International Air Waybill receipt and delivery confirmation for the questionnaire issued to United Initiators to confirm that we mailed, and United Initiators received and signed for, the questionnaire.

[3] *See Preliminary Results.*

("HTSUS"). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Analysis of Comments Received

On March 21, 2011, FMC submitted comments stating that it fully supports our *Preliminary Results.* Because no other party commented on the *Preliminary Results,* we have adopted the *Preliminary Results* as the final results, including the margin determined therein.[4]

Final Results of Review

We find that the following weighted-average dumping margin exists for the July 1, 2009, through June 30, 2010, POR:

Manufacturer/Exporter	Margin (percent)
PRC–Wide Entity *	119.02

* The PRC-wide entity includes United Initiators.

Assessment Rates

The Department has determined, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) For the PRC-wide entity (which includes United Initiators), the cash deposit rate will be the PRC-wide rate established in these final results of review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice of the final results of this administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 10, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–12093 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Full Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the preliminary results of the administrative review of certain polyester staple fiber from the People's Republic of China ("PRC"). This review covers the period June 1, 2009, through May 31, 2010.

DATES: *Effective Date:* May 17, 2011.

FOR FURTHER INFORMATION CONTACT: Jerry Huang or Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4047 or (202) 482–0116, respectively.

Background

On July 28, 2010, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on certain polyester staple fiber from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 75 FR 44224 (July 28, 2010). The preliminary results of this review are currently due no later than May 31, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month. Although we previously extended the 245-day period by 90 days for completion of the review, we have determined that completion of the preliminary results of this review within the extended 335-day period is not practicable because the Department needs additional time to complete verification reports.

Because it is not practicable to complete this review within the extended 335-day time period, we are fully extending the time limit for completion of the preliminary results of this administrative review by 30 days. The preliminary results will now be due no later than June 30, 2011. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 10, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–12065 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Recreational Fisheries Statistics Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 18, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Rob Andrews, NOAA, National Marine Fisheries Service, Fisheries Statistics Division, *Phone:* (301) 713–2328 or *Rob.Andrews@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision of a current information collection.

Marine recreational anglers are surveyed for catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are currently collected through a combination of telephone surveys and on-site intercept surveys with recreational anglers. Recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require the development of an improved data collection program for recreational fisheries. To meet the requirements of MSA, NOAA Fisheries is developing pilot studies to test alternative approaches for surveying recreational anglers. Studies will test the effectiveness of alternative sample frames and data collection methods for contacting anglers and collecting recreational fishing data. The goal of these studies is to develop more efficient and accurate methods for estimating marine recreational fishing catch and effort.

II. Method of Collection

Information will be collected through telephone and mail interviews.

III. Data

OMB Control Number: 0648–0052.

Form Number: None.

Type of Review: Regular submission (revision of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 970,105 (44,524 net increase).

Estimated Time per Response: 5 minutes for mail survey screening interviews, 6 minutes for telephone surveys of anglers, and 10 minutes for mail surveys of anglers.

Estimated Total Annual Burden Hours: 55,834 (6,194 net increase).

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 11, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–11961 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA386

Marine Mammals; File No. 15646

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Rebecca Dickhut, Ph.D., Virginia Institute of Marine Science, P.O. Box 1346, Route 1208 Greate Road, Gloucester Point, VA 23062, has applied in due form for a permit to import marine mammal parts for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 16, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15646 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018; and Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 15646 in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Laura Morse, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The objective of the proposed research is to use chemical signals to provide insight into the dietary preferences and feeding ecology of Antarctic marine mammals by analyzing seal and whale samples for persistent organic pollutants, mercury, and stable isotopes. The following archived samples will be imported from the Swedish Museum of Natural History: fur, blood, and fat biopsies from up to 300 crabeater seals (*Lobodon carcinophaga*), 200 Weddell seals (*Leptonychotes weddellii*), 50 Ross seals (*Ommatophoca Rossii*), 25 leopard seals (*Hydrurga leptonyx*), and 20 killer whales (Orcinus orca) that were collected in Antarctica in 1987–1988, 2008–2009, and 2010–2011. The requested duration of the import permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 11, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–12056 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX57

Fisheries of the Pacific Region; Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of determination of overfishing or an overfished condition.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that Pacific bluefin tuna, (*Thunnus orientalis*) which is jointly managed by the Pacific Fishery Management Council (Pacific Council) and the Western Pacific Fishery Management Council (Western Pacific Council), is subject to overfishing.

NMFS notifies the appropriate fishery management council (Council) whenever it determines that; overfishing is occurring, a stock is in an overfished condition, or a stock is approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: Mark Nelson, (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS, on behalf of the Secretary, notifies Councils whenever it determines; a stock or stock complex is approaching an overfished condition, a stock or stock complex is overfished, or existing action taken to prevent previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress. NMFS also notifies Councils when it determines a stock or stock complex is subject to overfishing.

On April 7, 2011, NMFS informed both the Pacific Council and the Western Pacific Council that the Southwest Fisheries Science Center had found that overfishing is occurring on Pacific bluefin tuna. However, their analysis found that the stock was not in an overfished condition.

Pacific bluefin tuna is considered to be a single North Pacific-wide stock. Its conservation and management are the responsibility of the Western and Central Pacific Fisheries Commission and the Inter-American Tropical Tuna Commission. The United States is a member of both regional fishery management organizations. Although both regional fisheries management organizations have internationally agreed upon management measures in place for bluefin tuna, these measures are inadequate to end overfishing for the purposes of the MSA and its implementing regulations. Therefore, the Councils are not required to prepare an FMP amendment to end overfishing, but must undertake action under MSA section 304(i)(2). This section requires the Council, or the Secretary, to develop domestic regulations to address the relative impact or the domestic fishing fleet; and to develop recommendations for the Secretary of State, and to Congress, to address international actions to end overfishing.

Dated: May 11, 2011.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–12054 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA384

Marine Mammals; File No. 16053

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Paul E. Nachtigall, PhD, Marine Mammal Research Program Hawaii Institute of Marine Biology, P.O. Box 1106, Kailua, Hawaii 96734, has applied in due form for a permit to conduct scientific research on cetaceans stranded or in rehabilitation facilities in the U.S.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 16, 2011.

ADDRESSES: The application and related documents are available upon written request or by appointment in the offices listed at the end of the **SUPPLEMENTARY INFORMATION**.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed in the **SUPPLEMENTARY INFORMATION** below. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.*

Please include File No. 16053 in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed in the supplementary information. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to conduct auditory measurements and recordings of stranded and rehabilitating cetaceans to provide insight into the nature of strandings including those that may be caused by man-made sounds. The research techniques are also useful as a medical diagnostic tool to determine the hearing capabilities of stranded cetaceans that may aid in decisions regarding release to the wild. Researchers propose to use evoked auditory potential recordings with non-invasive suction cup sensors on up to 15 individuals each of certain species of cetaceans and make passive recordings of the sounds produced by the animals using hydrophones. Research will occur in waters or on beaches in the U.S. and in rehabilitation facilities in the U.S. over a five-year period. No non-target species would be affected.

Proposed target species include: Bryde's whale (*Balaenoptera edeni*), minke whale (*B. acutorostrata*), humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*K. sima*), beaked whales (*Mesoplodon* spp.), Cuvier's beaked whale (*Ziphius cavirostrus*), bottlenose whales (*Hyperoodon* spp.), giant bottlenose whales (*Berardius* spp.), Sheperd's beaked whale (*Tasmacetus shepherdi*), killer whale (*Orcinus orca*), pygmy killer whale (*Feresa attenuata*), pilot whales (*Globicephala* spp.), false killer whale (*Pseudorca crassidens*), rough-toothed dolphin (*Steno bredanensis*), beluga whale (*Delphinapterus leucas*), narwhal (*Monodon monoceros*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Atlantic white-sided dolphin (*L. acutus*), white-beaked dolphin (*L. albirostris*), hourglass dolphin (*L. cruciger*), dusky dolphin (*L. obscurus*), Fraser's dolphin (*L. hosei*), bottlenose dolphins (*Tursiops* spp.), Risso's dolphin (*Grampus griseus*), common dolphins (*Delphinus* spp.), harbor porpoise (*Phocoena phocoena*), melon-headed whale (*Peponocephala electra*), spotted dolphins (*Stenella* spp.), spinner dolphin (*S. longirostrus*), striped dolphin (*S. coeruleoalba*), right whale dolphins (*Lissodelphis* spp.), humpback dolphins (*Sousa* spp.), Commerson's and related dolphins (*Cephalorhynchus* spp.), finless porpoise (*Neophocaena phocaenoides*), and Dall's porpoise (*Phocoenoides dalli*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Room 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

Dated: May 11, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–12066 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA150

Marine Mammals; File No. 14259

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that The Burke Museum of Natural History and Culture (Julie Stein, Responsible Party), University of Washington, Box 353010, 17th Ave., NE at NE 45th Street, Seattle, WA 98195, has been issued a permit to import, export, receive, possess, analyze, and archive marine mammal parts for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On January 20, 2011, notice was published in the **Federal Register** (76 FR 3615) that a request for a permit to import, export, receive, possess, analyze, and archive marine mammal parts for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*),

the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes the import, export, receipt, possession, analysis and archival of marine mammal and endangered species parts of all marine mammals under NMFS. Please refer to the following Web site for the list of species: *http://www.nmfs.noaa.gov/pr/species/mammals/*. No live animal takes are authorized and no incidental harassment of animals would occur. Parts would be archived by the Burke Museum and used to support research studies and incidental education. A five-year permit is requested.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 10, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–12055 Filed 5–16–11; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 19 May 2011, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by e-mailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: 9 May 2011 in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2011–12009 Filed 5–16–11; 8:45 am]

BILLING CODE 6330–01–M

Committee for Purchase From People Who Are Blind or Severely Disabled

Notice of Renewal of AbilityOne Nonprofit Agency Recordkeeping Requirements

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of Recordkeeping Requirements Renewal.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (The Committee) has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. This notice solicits comments on that collection of information.

DATES: Submit your written comments on the information collection on or before July 11, 2011.

ADDRESSES: Mail your comments on the requirement to Louis Bartalot, Director of Compliance, Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA 22202–3259; fax (703) 603–0655; or e-mail *rulescomment@abilityone.gov.*

FOR FURTHER INFORMATION CONTACT: Louis Bartalot, Director of Compliance, Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA 22202–3259; phone (703) 603–2124; fax (703) 603–0655; or e-mail *rulescomment@abilityone.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) Regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The Committee plans to submit a request to OMB to renew its approval of the collection of information for nonprofit agency responsibilities related to recordkeeping. The Committee is requesting a 3-year term of approval for this information collection activity.

Federal agencies 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. The OMB control number for this collection of information is 3037–0005.

The Javits-Wagner-O'Day (JWOD) Act of 1971 (41 U.S.C. 46–48c) is the authorizing legislation for the AbilityOne Program. The AbilityOne Program creates jobs and training opportunities for people who are blind or who have other severe disabilities. Its primary means of doing so is by requiring Government agencies to purchase selected products and services from nonprofit agencies employing such individuals. The AbilityOne Program is administered by the Committee. Two national, independent organizations, National Industries for the Blind (NIB) and NISH, help state and private nonprofit agencies participate in the AbilityOne Program.

The implementing regulations for the JWOD Act, which are located at 41 CFR Chapter 51, detail the recordkeeping requirements imposed on nonprofit agencies participating in the AbilityOne Program. Section 51–2.4 of the regulations describes the criteria that the Committee must consider when adding a product or service to its Procurement List. One of these criteria is that a proposed addition must demonstrate a potential to generate employment for people who are blind or severely disabled. The Committee decided that evidence that employment will be generated for those individuals consists of recordkeeping that tracks direct labor and revenues for products or services sold through an AbilityOne Program contract. This recordkeeping can be done on each individual AbilityOne project or by product or service family.

In addition, Section 51–4.3 of the regulations requires that nonprofit agencies keep records on direct labor hours performed by each worker and keep an individual record or file for each individual who is blind or severely disabled, documenting that individual's disability and capabilities for competitive employment. The records that nonprofit agencies must keep in accordance with Section 51–4.3 of the regulations constitute the bulk of the hour burden associated with this OMB control number.

This information collection renewal request seeks approval for the Committee to continue to ensure compliance with recordkeeping

requirements established by the authority of the JWOD Act and set forth in the Act's implementing regulations and to ensure that the Committee has the ability to confirm the suitability of products and services on its Procurement List. The recordkeeping requirements described in this document are the same as those currently imposed on nonprofit agencies participating in the AbilityOne Program.

Title: Nonprofit Agency Responsibilities, 41 CFR 51–2.4 and 51–4.3.

OMB Control Number: 3037–0005.

Description of Collection: Recordkeeping.

Description of Respondents: Nonprofit agencies participating in the AbilityOne Program.

Annual Number of Respondents: About 625 nonprofit agencies will annually participate in recordkeeping.

Total Annual Burden Hours: The recordkeeping burden is estimated to average 567 hours per respondent. Total annual burden is 354,375 hours.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our agency's functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: May 5, 2011.

Patricia Briscoe,

Deputy Director Business Operations, Pricing and Information Management.

[FR Doc. 2011–11980 Filed 5–16–11; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday June 24, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–12176 Filed 5–13–11; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday June 10, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–12180 Filed 5–13–11; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday June 3, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–12178 Filed 5–13–11; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday June 17, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–12184 Filed 5–13–11; 11:15 am]

BILLING CODE 6351–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, and as authorized by 42 U.S.C. 2286b, notice is hereby given of a two-part public meeting and hearing to be held by the Defense Nuclear Facilities Safety Board in Augusta, Georgia. Interested persons or groups may present comments, technical information, or data concerning safety issues related to the matters to be considered.

DATE AND TIME OF MEETING: June 16, 2011. Session I: 1 p.m.–5 p.m.; Session II: 7 p.m.–9 p.m.

PLACE: The Bell Auditorium at the Augusta Entertainment Complex, 712 Telfair Street, Augusta, GA 30901–2327.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The Board wishes to further investigate safety matters and gather other information related to public health and safety, including that of the workers, at the Savannah River Site, particularly with respect to liquid waste processing, emergency preparedness, and nuclear materials disposition.

During Session I, the Board will receive testimony regarding liquid waste processing. The Board seeks to further understand what the Department of Energy (DOE) is currently doing to stabilize high-level waste as well as what has already been done to reduce risk in the tank farms. The Board will examine the state of emergency preparedness at the Site and will receive testimony concerning how well DOE and its contractors are prepared for events at the Site and how well the different organizations have integrated their preparations.

During Session II, the Board will receive testimony regarding nuclear materials disposition. The Board is concerned about how DOE will dispose of nuclear materials in light of the potential termination of chemical processing at H-Canyon and HB-Line. The Board will explore uncertainties in the new disposition plans and whether

extended storage of nuclear materials may cause safety problems.

CONTACT PERSON FOR MORE INFORMATION: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Public participation in the meeting and hearing is invited. The Board is setting aside approximately thirty minutes at the end of each session for presentations and comments from the public. Requests to speak may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on June 10, 2011, will be scheduled to speak at the session of the meeting and hearing most relevant to their oral presentations. At the beginning of Session I, the Board will post a schedule of speakers at the entrance to the meeting and hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting and hearing or may be sent to the Board's Washington, DC, office.

The Board will hold the record open until July 18, 2011, for the receipt of additional materials. A transcript of the meeting and hearing will be made available by the Board for inspection by the public at the Board's Washington, DC, office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: May 13, 2011.

Peter S. Winokur,

Chairman.

[FR Doc. 2011–12245 Filed 5–13–11; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.129 B, L, P, Q]

Withdrawal of Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011; Rehabilitation Training: Rehabilitation Long-Term Training

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education

ACTION: Notice.

SUMMARY: On April 20, 2011, the Department published in the **Federal Register** a notice inviting applications for new awards under the Rehabilitation Long-Term Training program for FY 2011. Since that time, the Department has determined that, as a result of final Congressional action on FY 2011 appropriations, there are not sufficient funds available in 2011 to make new awards. As such, the Department withdraws this notice inviting applications for new awards for FY 2011 under this program.

FOR FURTHER INFORMATION CONTACT: Tom Finch, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., room 5147, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7343 or by e-mail: *Tom.Finch@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Program Authority: 29 U.S.C. 772.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1—800—877—8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 12, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–12072 Filed 5–16–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Assistive Technology Act of 1998, as Amended (AT Act)—National Activities—Data Collection and Reporting Assistance

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: AT Act—National Activities—Data Collection and Reporting Assistance

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.224B

Dates:

Applications Available: May 17, 2011.

Deadline for Transmittal of Applications: July 1, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under section 6 of the AT Act, the Secretary is authorized to provide grants to support national activities to improve the administration of the AT Act. According to section 3(15) of the AT Act, the term "State AT program" means a program authorized under section 4 of the AT Act. State AT programs are required to collect data and report on the activities they conduct to determine whether those activities are conducted appropriately and successfully and to assess the outcomes of those activities. Section 6(b)(5) of the AT Act authorizes support to assist State AT Programs with this data collection and reporting.

Statutory Requirements—Assistive Technology Act Data Collection and Reporting Assistance. Under section 6(b)(5) of the Act, the Secretary supports entities to assist the Assistive Technology State grant program grantees in their development and implementation of effective data-collection and reporting systems that—

(a) Focus on quantitative and qualitative data elements;

(b) Measure the outcomes of the required activities described in section 4 of the AT Act that are implemented by the States and the progress of the States toward achieving the measurable goals related to—

(1) Education, including goals involving the provision of assistive technology to individuals with disabilities who receive services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*);

(2) Employment, including goals involving the State vocational rehabilitation program carried out under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*);

(3) Telecommunication and information technology; and

(4) Community living; and

(c) Provide States with the necessary information required under the AT Act or by the Secretary for reports described in section 4(f)(2) of the AT Act. Such information must document the following activities carried out by the grantee under section 4 of the AT Act—

(1) The type of State financing activities described in section 4(e)(2)(A) of the AT Act used by the State;

(2) The amount and type of assistance given to consumers of the State financing activities described in section 4(e)(2)(A) of the AT Act (who shall be classified by type of assistive technology device or assistive technology service financed through the State financing activities, and geographic distribution within the State), including—

(i) The number of applications for assistance received;

(ii) The number of applications approved and rejected;

(iii) The default rate for the financing activities;

(iv) The range and average interest rate for the financing activities;

(v) The range and average income of approved applicants for the financing activities; and

(vi) The types and dollar amounts of assistive technology financed;

(3) The number, type, and length of time of loans of assistive technology devices provided to individuals with disabilities, employers, public agencies, or public accommodations through the device loan program described in section 4(e)(2)(C), and an analysis of the individuals with disabilities who have benefited from the device loan program;

(4) The number, type, estimated value, and scope of assistive technology devices exchanged, repaired, recycled, or reutilized (including redistributed through device sales, loans, rentals, or donations) through the device reutilization program described in section 4(e)(2)(B) of the AT Act, and an analysis of the individuals with disabilities that have benefited from the device reutilization program;

(5) The number and type of device demonstrations and referrals provided under section 4(e)(2)(D) of the AT Act, and an analysis of individuals with disabilities who have benefited from the demonstrations and referrals;

(6)(i) The number and general characteristics of individuals who participated in training under section 4(e)(3)(B)(i) of the AT Act (such as individuals with disabilities, parents, educators, employers, providers of employment services, health care workers, counselors, other service providers, or vendors) and the topics of such training; and

(ii) To the extent practicable, the geographic distribution of individuals who participated in the training;

(7) The frequency of provision and nature of technical assistance provided to State and local agencies and other entities;

(8) The number of individuals assisted through the public-awareness activities and statewide information and referral system described in section 4(e)(3)(B)(ii) of the Act;

(9) The outcomes of any improvement initiatives carried out by the State as a result of activities funded under this section, including a description of any written policies, practices, and procedures that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices, and assistive technology services, in the contexts of education, health care, employment, community living, and information technology and telecommunications, including e-government;

(10) The source of leveraged funding or other contributed resources, including resources provided through subcontracts or other collaborative resource-sharing agreements, from and with public and private entities to carry out State activities described in section 4(e)(3)(B)(iii) of the AT Act, the number of individuals served with the contributed resources for which information is not reported under paragraphs (1) through (9) or paragraph (11) or paragraph (12), and other outcomes accomplished as a result of such activities carried out with the contributed resources; and

(11) The level of customer satisfaction with the services provided; and

(d) Help measure the accrued benefits of the activities to individuals who need assistive technology.

Program Authority: 29 U.S.C. 3001, *et seq.*

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $250,000.

Estimated Number of Awards: 1.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Public or private nonprofit or for-profit organizations, including institutions of higher education, that have personnel with—

(a) Documented experience and expertise in administering State AT programs;

(b) Experience in collecting and analyzing data associated with implementing required and discretionary activities;

(c) Expertise necessary to identify additional data elements needed to provide comprehensive reporting of State activities and outcomes; and

(d) Experience in utilizing data to provide annual reports to State policymakers.

Note: An eligible entity can demonstrate its experience and expertise with its own personnel or through proposed subcontracts with other entities that have personnel with the relevant experience and expertise.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/*

grantapps/index.html. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, *toll free:* 1–877–433–7827. *FAX:* (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, *toll free:* 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA Number 84.224B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to the equivalent of no more than 24 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance; Part IV, the assurances and certifications; or the one-page abstract, the eligibility statement, the curriculum vitae, the bibliography, the letters of recommendation, or the information on the protection of human subjects. However, the page limit does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 17, 2011.

Deadline for Transmittal of Applications: July 1, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the National Activities program, CFDA Number 84.224B, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the National Activities program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your

search (e.g., search for 84.224, not 84.224B).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Brian Bard, U.S. Department of Education, 400 Maryland Avenue, SW., room 5019, Potomac Center Plaza (PCP), Washington, DC 20202–2800. *FAX:* (202) 245–7590.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.224B), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.224B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goals of Assistive Technology Act Data Collection and Reporting Assistance program are to provide States with technical assistance and guidance on how assistive technology programs can develop and implement effective data-collection and reporting systems and to provide the Department with data on the activities carried out under the AT Act.

In order to assist the Department in evaluating the success of this program in meeting these goals, it assesses the data provided on an annual performance report from this grantee. This report must include a description of—

(a) State-specific and national technical assistance provided to State AT programs to support their data collection and reporting infrastructure, and the outcomes of that technical assistance as evidenced by improvement in those infrastructures;

(b) State-specific and national data analyses performed and how, in collaboration with the National Assistive Technology Training and Technical Assistance Program, these analyses were used for planning, management, and improvement of State AT programs; and

(c) Technical assistance and guidance in the development, and continuous improvement of RSA's data collection system, the Management Information System (MIS), as well as assistance to States for the input of valid data into the system.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application."

This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Brian Bard, U.S. Department of Education, 400 Maryland Avenue, SW., room 5019, PCP, Washington, DC 20202–2800. *Telephone:* (202) 245–7345 or by *e-mail: brian.bard@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 12, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–12073 Filed 5–16–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The Equity and Excellence Commission

AGENCY: Office for Civil Rights. U.S. Department of Education.

ACTION: Notice of open meeting. (amended)

SUMMARY: On May 10, 2011 the Assistant Secretary for Civil Rights at the U.S. Department of Education published in the **Federal Register** (76 FR 27034) a notice of open meeting for the Equity and Excellence Commission. This notice amends the May 10, 2011 notice by providing notice of a closed session on the afternoon of May 23, 2011 and amending the start time of the meeting on May 24, 2011.

This notice sets forth the schedule and proposed agenda of an upcoming open meeting with a closed session of The Equity and Excellence Commission. The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend. This amended notice is appearing in the **Federal Register** less than 15 days before the meeting due to the need to add a closed session to the agenda.

DATES: Monday, May 23, 2011 and Tuesday, May 24, 2011.

Time: May 23, 2011: noon to 5:30 p.m.; May 24, 2011: 9:30 a.m. to noon. Closed session will begin at 2:30–5:30 p.m. on May 23, 2011.

ADDRESSES: The Commission will meet at the U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC. Lyndon Baines Johnson Auditorium.

FOR FURTHER INFORMATION CONTACT: Stephen Chen, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. E-mail: *equitycommission@ed.gov.* Telephone: (202) 453–6624.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's second meeting will include a discussion of the best framework for the report and the finalizing of outlines for each section of the report. The meeting will include a report of outreach activities conducted by the Commission in April and May. The Commission will also meet in closed session at 2:30 on May 23, 2011 to discuss financial matters relevant to the Department's budget and matters that could interfere with proposed agency action with regard to competitive grant programs if discussed publicly and therefore is protected under 5 U.S.C. 552b(c)(9)(B). Due to time constraints, there will not be a public comment period at this meeting, but, individuals wishing to comment may contact the Equity Commission via e-mail at *equitycommission@ed.gov.*

Individuals interested in attending the meeting must register in advance because seating may be limited. Please contact Kimberly Watkins-Foote at (202) 260–8197 or by e-mail at *equitycommission@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Watkins-Foote at (202) 260–8197 no later than May 16, 2011. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202 from the hours of 9 a.m. to 5 p.m. E.S.T.

Russlynn Ali,

Assistant Secretary, Office for Civil Rights, U.S. Department of Education.

[FR Doc. 2011–11950 Filed 5–16–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2923–001.
Applicants: Sunbury Generation LP.
Description: Notice of Non-Material Change in Status.
Filed Date: 05/09/2011.
Accession Number: 20110509–5143.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: ER10–3149–002.
Applicants: Galt Power, Inc.
Description: Galt Power, Inc. submits tariff filing per 35: Galt Power Inc. Baseline Filing to be effective 5/6/2011.
Filed Date: 05/09/2011.
Accession Number: 20110509–5027.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: ER10–3150–002.
Applicants: Sunoco Power Generation LLC.
Description: Sunoco Power Generation LLC submits tariff filing per 35: Sunoco Power Generation Baseline Filing to be effective 5/6/2011.
Filed Date: 05/09/2011.
Accession Number: 20110509–5029.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: ER11–2880–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.19a(b): Service Agreement No. 310 Refund Report to be effective N/A.
Filed Date: 05/06/2011.
Accession Number: 20110506–5141.
Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–2842–001.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35: NYISO Compliance Filing Study Cost-Class Year 2011 and later to be effective 3/1/2011.
Filed Date: 05/09/2011.
Accession Number: 20110509–5126.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: ER11–3536–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per 35.13(a)(2)(iii): Osage City, Wholesale Power Sales Service to be effective 6/15/2011.
Filed Date: 05/09/2011.
Accession Number: 20110509–5003.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: ER11–3538–000.
Applicants: CPV Milford, LLC.
Description: CPV Milford, LLC submits tariff filing per 35.15: Notice of Cancellation of Market-Based Rate Tariff to be effective 5/10/2011.
Filed Date: 05/09/2011.
Accession Number: 20110509–5111.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: ER11–3539–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii): Cleco 5th revised to be effective 5/1/2011.
Filed Date: 05/09/2011.
Accession Number: 20110509–5142.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protests do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 10, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–12012 Filed 5–16–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–57–000.
Applicants: Morgan Stanley Capital Group Inc., Mitsubishi UFJ Financial Group, Inc.
Description: Amended Joint Application of Morgan Stanley Capital Group Inc. and Mitsubishi UFJ Financial Group, Inc.
Filed Date: 05/06/2011.
Accession Number: 20110506–5181.
Comment Date: 5 p.m. Eastern Time on Monday, May 23, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3540–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing

per 35.13(a)(2)(iii: Letter Agreement for Pacific Wind, LLC for Pacific Wind Project to be effective 4/27/2011.

Filed Date: 05/10/2011.

Accession Number: 20110510–5001.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: ER11–3541–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii: 2011–5–10_PSCo In-Kind Losses to be effective 7/1/2011.

Filed Date: 05/10/2011.

Accession Number: 20110510–5066.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 10, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–12013 Filed 5–16–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[D–WVA–2011–0001; FRL–9305–7]

Delegation of Authority to the State of West Virginia To Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On January 5, 2011, EPA sent West Virginia a letter acknowledging that West Virginia's delegation of authority to implement and enforce NESHAP and NSPS had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public of West Virginia's updated delegation of authority to implement and enforce NESHAP and NSPS, EPA is making available a copy of EPA's letter to West Virginia through this notice.

DATES: On January 5, 2011, EPA sent West Virginia a letter acknowledging that West Virginia's delegation of authority to implement and enforce NESHAP and NSPS had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Copies of West Virginia's submittal are also available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304. Copies of West Virginia's notice to EPA that West Virginia has updated its incorporation by reference of federal NESHAP and NSPS, and of EPA's response, may also be found posted on EPA Region III's Web site at: *http://www.epa.gov/reg3artd/airregulations/delegate/wvdelegation.htm.*

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814–2061, or by e-mail at *chalmers.ray@epa.gov.*

SUPPLEMENTARY INFORMATION: West Virginia notified EPA that West Virginia has updated its incorporation by reference of federal NESHAP and NSPS to include many such standards, to the extent referenced in 40 CFR Parts 60, 61 and 63, effective June 1, 2009. EPA responded by sending West Virginia a letter acknowledging that West Virginia now has the authority to implement and enforce the NESHAP and NSPS as specified by West Virginia in its notice to EPA, as provided for under the previously approved automatic delegation mechanisms. To inform regulated facilities and the public of West Virginia's updated delegation of authority to implement and enforce NESHAP and NSPS, EPA is making available a copy of EPA's letter to West Virginia through this notice. All notifications, applications, reports and other correspondence required pursuant to the newly delegated standards must be submitted to both the U.S. EPA Region III and to the West Virginia Department of Environmental Protection. A copy of EPA's letter to West Virginia follows:

John Benedict, Director, Division of Air Quality, West Virginia Department of Environmental Protection, 601 57th Street, Charleston, WV 25304.

Dear Mr. Benedict: The Environmental Protection Agency (EPA) has previously delegated to the State of West Virginia (West Virginia) the authority to implement and enforce various federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS), which are found at 40 CFR

Parts 60, 61 and 63.[1] In those actions EPA also delegated to West Virginia the authority to implement and enforce any future EPA NESHAP or NSPS on the condition that West Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated April 6, 2010, West Virginia informed the EPA that West Virginia had updated its incorporation by reference of federal NESHAP and NSPS to include many such standards, to the extent referenced in 40 CFR Parts 60, 61, and 63, effective June 1, 2009. West Virginia noted that it understood that it was automatically delegated the authority to implement these standards. West Virginia committed to enforcing the standards in conformance with the terms of EPA's previous delegations of authority. West Virginia made only allowed wording changes.

West Virginia provided copies of the revised West Virginia Legislative Rules which specify the NESHAP and NSPS which West Virginia has adopted by reference. These revised Legislative Rules are entitled 45 CSR 34—"Emission Standards for Hazardous Air Pollutants," and 45 CSR 16—"Standards of Performance for New Stationary Sources." These revised Rules have an effective date of June 1, 2010.

Accordingly, EPA acknowledges that West Virginia now has the authority, as provided for under the terms of EPA's previous delegation actions, to implement and enforce the NESHAP and NSPS standards which West Virginia has adopted by reference in West Virginia's revised Legislative Rules 45 CSR 34 and 45 CSR 16, both effective on June 1, 2010.

Please note that on December 19, 2008, in *Sierra Club* v. *EPA,*[2] the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued the mandate vacating these SSM exemption provisions, which are found at 40 CFR 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed the SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because West Virginia incorporated 40 CFR Part 63 by reference, West Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court's ruling in Sierra Club vs. EPA.

EPA appreciates West Virginia's continuing NESHAP and NSPS enforcement efforts, and also West Virginia's decision to take automatic delegation of additional and more recent NESHAP and NSPS by adopting them by reference.

Sincerely,
Diana Esher,
Director, Air Protection Division.

This notice acknowledges the update of West Virginia's delegation of authority to implement and enforce NESHAP and NSPS.

Dated: April 26, 2011.

Diana Esher,

Director, Air Protection Division, Region III.

[FR Doc. 2011–11826 Filed 5–16–11; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA has posted copies of these actions at: *http://www.epa.gov/reg3artd/airregulations/delegate/wvdelegation.htm.*

[2] *Sierra Club* v. *EPA,* 551 F.3rd 1019 (DC Cir. 2008).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9306–3]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Toeroek Associates Inc., and Their Subcontractor, Science Applications International Corp.

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comment.

SUMMARY: The U. S. Environmental Protection Agency ("EPA") hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose confidential business information ("CBI") submitted to EPA Region 9 pursuant to CERCLA to EPA contractor Toeroek Associates Inc., of Lakewood, CO and their subcontractor, Science Applications International Corp**.,** of San Diego, CA.

DATES: Comments may be submitted by May 31, 2011.

ADDRESSES: Comments should be sent to: Keith Olinger, Environmental Protection Agency, Region 9, SFD–7–5, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3125.

FOR FURTHER INFORMATION CONTACT: Keith Olinger, Superfund Division, Environmental Protection Agency, Region 9, SFD–7–5, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3125.

Notice of Required Determinations, Contract Provisions and Opportunity To Comment: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended (commonly known as "Superfund"'), requires completion of enforcement activities at Superfund sites in concert with other site events. EPA has entered into a contract with Toeroek Associates Inc., Contract No EP–BPA–11–W–0001, for enforcement support in relation to Region 9 Superfund sites. Enforcement support services will be provided to EPA by Toeroek Associates Inc., and their subcontractor, Science Applications International Corp. EPA has determined that disclosure of CBI to Toeroek Associates Inc., and Science Applications International Corp, and its employees, is necessary in order for the company to carry out its work for EPA under its contract. The information EPA intends to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at Region 9 Superfund sites. The information would be disclosed to the above-named EPA contractors, for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The contract complies with all requirements of 40 CFR 2.310(h)(2). EPA Region 9 will require that each of the contractor's and subcontractor's employees with access to CBI sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) will refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) will return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by the contractor for performance of the work required by the contract or upon completion of the contract.

Dated: May 5, 2011.

Nancy Lindsay,

Acting Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 2011–12059 Filed 5–16–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standard 40, Definitional Changes Related to Deferred Maintenance and Repairs: Amending Statement of Federal Financial Accounting Standard 6, Accounting for Property, Plant, and Equipment

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory

Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standard 40, *Definitional Changes Related to Deferred Maintenance and Repairs:* Amending Statement of Federal Financial Accounting Standard 6, Accounting for Property, Plant, and Equipment.

The Standard is available on the FASAB home page *http://www.fasab.gov/standards.html.*

Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: May 11, 2011.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2011–11975 Filed 5–16–11; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Brian P. Short,* St. Paul, Minnesota; Carolyn P. Short, Flourtown, Pennsylvania; and Marianne D. Short, St. Paul, Minnesota; individually and as trustees of fourteen Short family trusts, to retain 25 percent or more of the voting shares and thereby control of 215 Holding Company, Minneapolis, Minnesota. Kevin J. Short, Mahtomedi, Minnesota; Elizabeth J. Short, University Heights, Ohio; Colleen V. Short, Edina, Minnesota; and the trustees (Marion D. Short, Edina, Minnesota; Brian P. Short; Carolyn P. Short; and Marianne D. Short) on behalf of one or more of seventeen Short family trusts to join the Short Family Group, which controls 25 percent or more of the voting shares of 215 Holding Company, and thereby indirectly retain control of First Farmers & Merchants National Bank, Luverne, Minnesota; First Farmers & Merchants National Bank, Fairmont, Minnesota; First Farmers & Merchants State Bank, Brownsdale, Minnesota; First Farmers & Merchants State Bank, Grand Meadow, Minnesota; First Farmers & Merchants National Bank, Le Sueur, Minnesota; and White Rock Bank, Cannon Falls, Minnesota.

Board of Governors of the Federal Reserve System, May 12, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–12051 Filed 5–16–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 2011.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Viewpoint Financial Group, Inc.,* Plano, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of ViewPoint Bank, National Association, Plano, Texas.

Board of Governors of the Federal Reserve System, May 12, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–12052 Filed 5–16–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Vitro Manufacturing facility in Canonsburg, Pennsylvania, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 29, 2011, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at Vitro Manufacturing in Canonsburg, Pennsylvania, from January 1, 1958 through December 31, 1959, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on May 29, 2011, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support,

NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–12077 Filed 5–16–11; 8:45 am]

BILLING CODE 4164–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Wah Chang facility in Albany, Oregon, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 29, 2011, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked in any building at the Wah Chang facility in Albany, Oregon, for the operational period from January 1, 1971 through December 31, 1972, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on May 29, 2011, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–12082 Filed 5–16–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Grand Junction Operations Office in Grand Junction, Colorado, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 29, 2011, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the Grand Junction Operations Office from March 23, 1943 through January 31, 1975, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation will become effective on May 29, 2011, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *dcas@cdc.gov.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–12085 Filed 5–16–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Norton Co. (or any subsequent owner) in Worcester, Massachusetts, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 29, 2011, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All atomic weapons employees who worked in any building or area at the facility owned by the Norton Co. (or a subsequent owner) in Worcester, Massachusetts, during the period from January 1, 1958 through October 10, 1962, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on May 29, 2011, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MSC–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–12079 Filed 5–16–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Project (SIP): Initial Review

The meeting announced below concerns "Case Control Study of Chlamydia and Infertility among Women Assessed for Tubal Disease or Treated by Assisted Reproductive Technology, SIP11–048, Panel F," initial review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., June 22, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Case Control Study of Chlamydia and Infertility among Women Assessed for Tubal Disease or Treated by Assisted Reproductive Technology, SIP11–048, Panel F," initial review.

Contact Person for More Information: Brenda Colley Gilbert, PhD, MPH, Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–92, *BJC4@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–12075 Filed 5–16–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Projects (SIPs): Initial Review

The meeting announced below concerns "Systematic Review of Effective Community-based Interventions of Clinical Preventive Services for Older Adults SIP11–045, and Measuring Impact of Multi-Component Interventions to Prevent Older Adult Falls and Assessing Sustainability and Scalability, SIP 11–046, Panel D," initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., June 16, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Systematic Review of Effective Community-based Interventions of Clinical Preventive Services for Older Adults SIP11–045, and Measuring Impact of Multi-Component Interventions to Prevent Older Adult Falls and Assessing Sustainability and Scalability, SIP 11–046, Panel D", initial review.

Contact Person for More Information: Brenda Colley Gilbert, PhD, M.P.H., Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–92, *BJC4@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for isease Control and Prevention.

[FR Doc. 2011–12071 Filed 5–16–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Project (SIP): Initial Review

The meeting announced below concerns "Patient Preferences and Needs in Ovarian Cancer Care, SIP11–042 Panel C," initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., June 14, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Patient Preferences and Needs in Ovarian Cancer Care, SIP11–042, Panel C," initial review.

Contact Person for More Information: Brenda Colley Gilbert, PhD, M.P.H., Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–92, *BJC4@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–12083 Filed 5–16–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Project (SIP): Initial Review

The meeting announced below concerns "Validation of Self-Reported Sleep Surveillance Measures, SIP11–047, Panel E," initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., June 21, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Validation of Self-Reported Sleep Surveillance Measures, SIP11–047, Panel E," initial review.

Contact Person for More Information: Brenda Colley Gilbert, PhD, MPH, Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–92, *BJC4@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–12080 Filed 5–16–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns "Affordable Care Act (ACA): Childhood Obesity Research Funding Opportunity Announcement (FOA) DP11–007, Panel B," initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., June 15, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Affordable Care Act (ACA): Childhood Obesity Research Funding Opportunity Announcement (FOA) DP11–007, Panel B," initial review.

Contact Person for More Information: Brenda Colley Gilbert, PhD, M.S.P.H., Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K92, Atlanta, Georgia 30333, Telephone: (770) 488–5118.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–12078 Filed 5–16–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors (BSC), National Center for Injury Prevention and Control (NCIPC)

The meeting announced below concerns RFA CE10–004, the National Academic Centers of Excellence in Youth Violence Prevention (U01), secondary review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 10 a.m.–12 p.m., June 14, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting involves the secondary review and discussion of proprietary information provided in competitive applications following the initial review of applications received in response to RFA CE10–004, The National Academic Centers of Excellence in Youth Violence Prevention (U01).

Contact Person for More Information: Gwendolyn Haile Cattledge, PhD, M.S.E.H., F.A.C.E., Deputy Associate Director for Science, CDC, 4770 Buford Highway, Atlanta, Georgia 30341, *Telephone:* (404) 488–1430.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–12076 Filed 5–16–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Statewide Automated Child Welfare Information System (SACWIS) Assessment Review Guide (SARG).

OMB No.: 0970–0159.

Description: For HHS to fulfill its obligation to effectively serve the nation's Adoption and Foster Care populations, and to report meaningful and reliable information to Congress about the extent of problems facing these children and the effectiveness of assistance provided to this population, the agency must have access to timely and accurate information about child welfare service populations and child welfare services. Section 476(b) of the Social Security Act requires that States submit statistical reports for child welfare populations, and Section 479 of the Act details State responsibilities to report specific information related to child abuse and neglect. CFR 1355.52 provides funding authority for statewide automated child welfare information systems (SACWIS) that meet Federal requirements for child welfare data collection. If a State chooses to implement a SACWIS, that system serves as the primary data source for Federal reporting.

Currently, States use their SACWIS to support their efforts to meet the following Federal reporting requirements related to child welfare: The Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act; the National Child Abuse and Neglect Data System (NCANDS); Child Abuse Prevention and Treatment Act (CAPTA); and the Chafee Independent Living Program's National Youth in Transition Database (NYTD). These systems also support State efforts to provide the information to conduct the Child and Family Service Reviews. Currently, forty-two States and the

District of Columbia have developed, or are developing, a SACWIS with Federal financial participation.

45 CFR 1355.55 provides for continuing review, assessment and inspection of SACWIS. The purpose of this review is to determine whether the system, as described in the approved Advance Planning Document has been adequately completed and conforms to applicable regulations and policies.

To initiate a review, States complete and submit the SACWIS Assessment Review Guide (SARG) and other system documentation when they have completed system development and the system is operational statewide. The SARG template provides a format for State description of system functionality, operation, and outputs such as reports. The additional materials submitted as part of this process, such as system design documentation, are typically readily available to the State as a result of good project management practices.

The information collected in the SACWIS Assessment Review Guide will allow Federal reviewers to determine if the State's SACWIS meets the requirements for title IV–E Federal Financial Participation (FFP) defined at 45 CFR 1355.50, and that systems meet the goals and objectives of the approved Advance Planning Documents (APD) and conforms to the schedule, budget, and other conditions of their approved APDs. Additionally, other States may be able to use the documentation provided as part of their preparation for the review process of their own system development efforts.

Respondents: Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SACWIS Assessment Review Guide	3	1	250	750

Estimated Total Annual Burden Hours: 750.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: oira_submission@omb.eop.gov, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–11995 Filed 5–16–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NCI Cancer Genetics Services Directory Web-Based Application Form and Update Mailer

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), and the National Institutes of Health (NIH), have submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 15, 2011 (76 FR 14034) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: NCI Cancer Genetics Services Directory Web-based Application Form and Update Mailer. *Type of Information Collection Request:* Existing Collection in Use Without an OMB Number. *Need and Use of Information Collection:* The purpose of the online application form and the Web-based update mailer is to collect information about genetics professionals to be included in the NCI Cancer Genetics Services Directory on NCI's *Cancer.gov* Web site. The information collected includes name, practice locations, professional qualifications, and areas of specialization. *Frequency of Response:* Information is collected once via the online application form, and then updated annually via the Web-based mailer. *Affected Public:* Individuals. *Type of Respondents:* Genetics professionals including nurses, physicians, genetic counselors, and other professionals who provide services related to cancer genetics. The annual reporting burden is estimated at 180 hours (see Table below). There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Tool	Number of respondents	Frequency of response	Average time per response minutes/hour (hours)	Annual burden hours
Genetics Professionals	Application Form	60	1	30/60 (.50)	30
	Web-based Update Mailer	600	1	15/60 (0.25)	150

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS—Continued

Type of respondents	Tool	Number of respondents	Frequency of response	Average time per response minutes/hour (hours)	Annual burden hours
Totals		660			180

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Margaret Beckwith, Acting Branch Chief, International Cancer Research Databank Branch, Office of Cancer Content Management, Office of Communication and Education, National Cancer Institute, 6116 Executive Blvd., Rockville, MD 20852, or call non-toll-free number 301–496–9096 or e-mail your request, including your address to: *mbeckwit@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 11, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–12047 Filed 5–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 15–16, 2011.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Helen Lin, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 10, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12099 Filed 5–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Headache Clinical Trial.

Date: June 8, 2011.

Time: 9 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *Rc218u@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Stroke Clinical Trial.

Date: June 17, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *Rc218u@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research

Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 10, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12050 Filed 5–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA:RM11–002: The Market for Long-Term Care Insurance.

Date: May 26, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative: Behavioral Genetics and Epidemiology.

Date: June 9, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Chicago Downtown Magnificent Mile, 165 E. Ontario Street, Chicago, IL 60611.

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function D Study Section.

Date: June 14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: James W. Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

Date: June 15–16, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrument Review 1.

Date: June 16, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Ping Fan, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel: Epilepsy, Stroke, Trauma and Neuropathies.

Date: June 22, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Health IT.

Date: June 23, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Magnificent Mile, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Melinda Jenkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: June 27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–AG–11–010: Basic Research on Self-Regulation (R21).

Date: June 27, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, Washington DC, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.

Date: June 27–28, 2011.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel of Georgetown, 3000 M Street, Washington, DC 20007.

Contact Person: Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7808, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special: Pilot and Feasibility Clinical Research Studies in Digestive Diseases and Nutrition.

Date: June 28, 2011.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Eye Disorders and Infection.

Date: June 28, 2011.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: James P. Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vision, Cognition and Pain.
Date: June 29–30, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell, Molecular, and Computational Biology.
Date: June 29–30, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Maria DeBernardi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognition and Central Visual Processing.
Date: June 29–30, 2011.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Edwin C Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Career Development in International Settings.
Date: June 29, 2011.
Time: 12 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Hilary D Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Visual Systems.
Date: June 30–July 1, 2011.
Time: 8 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: The Ritz-Carlton, Washington, DC, 1150 22nd Street, NW., Washington, DC 20037.
Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–996–0993, *mckiegeo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Diagnostics and Treatments (CDT) SBIR/STTR.
Date: June 30–July 1, 2011.
Time: 10 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Syed M Quadri, PhD, Chief, OTC IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 11, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12049 Filed 5–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 7–9, 2011.
Time: June 7, 2011, 11 a.m. to 5:45 p.m.
Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols, and discuss related data management activities as well as a review of biocontainment for experiments with a defective Lassa virus. Please check the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Time: June 8, 2011, 8 a.m. to 5:35 p.m.
Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols, including a protocol for severe obesity in subjects who either have a mutation in the melanocortin 4 receptor or Prader-Willi syndrome, and discuss related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Time: June 9, 2011, 8 a.m. to 11:15 a.m.
Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols, and discuss related data management activities including proposed revisions to the NIH Guidelines for Research with Recombinant DNA Molecules for work with partial viral genomes in tissue culture (Section III–E–1). Please check the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html.*
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *georgec@od.nih.gov.*

Information is also available on the Institute's/Center's home page: http://oba.od.nih.gov/rdna/rdna.html, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites

readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected. (Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 10, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12046 Filed 5–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Research Resources Special Emphasis Panel, June 14, 2011, 8 a.m. to June 15, 2011, 1 p.m., Marriott Courtyard Gaithersburg Washingtonian Center, which was published in the **Federal Register** on May 3, 2011, 76 FR 85, page 24890.

The meeting date of this meeting has been changed to July 12–13, 2011. The meeting is closed to the public.

Dated: May 11, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12045 Filed 5–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Ancillary Studies in Immunomodulation Clinical Trials (R01).

Date: June 9, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: James T. Snyder, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Room #3257, Bethesda, MD 20892, 301–435–1614, *james.snyder@nih.gov.*

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: June 16, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Michelle M. Timmerman, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–4573, *timmermanm@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 11, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12043 Filed 5–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, R13 Conference Grant Application.

Date: June 17, 2011.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 11, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12041 Filed 5–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0029]

President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of Partially Closed Federal Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Thursday, June 2, 2011, in Washington, DC. The meeting will be partially closed to the public.

DATES: The NSTAC will meet in open session on Thursday, June 2, 2011, from 2 p.m. to 5 p.m. and in closed session on Thursday, June 2, 2011, from 10 a.m. to 11:30 a.m.

ADDRESSES: The public portion of the meeting will be held at the U.S.

Chamber of Commerce, 1615 H Street NW., Washington, DC. All visitors must pre-register to be admitted to the building. Please provide your name, telephone number and e-mail address by close of business on Friday, May 27, 2011, to Sue Daage at (703) 235–4964.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact *nstac@dhs.gov* as soon as possible.

We are inviting public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials that will be discussed at the meeting will be available at *http://www.ncs.gov/nstac* for review on May 18, 2011. Comments must be submitted in writing no later than May 27, 2011, and must be identified by DHS–2011–0029 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: NSTAC@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (703) 235–4981, *Attn:* Sue Daage.
- *Mail:* Deputy Manager, National Communications System, National Protection and Programs Directorate, U.S. Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Arlington, VA 20598–0615.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NSTAC, go to *http://www.regulations.gov.*

A public comment period will be held during the open portion of the meeting on Thursday, June 2, 2011 from 4:25 p.m. to 4:55 p.m., and speakers are requested to limit their comments to three minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact Sue Daage at 703–235–4964 to register as a speaker.

FOR FURTHER INFORMATION CONTACT: James Madon, NSTAC Designated Federal Officer, Department of Homeland Security, telephone (703) 235–4900.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications policy.

Agenda: The committee will meet in open session to receive briefings on the Federal Government's use of cloud computing; the Federal Emergency Management Agency's NS/EP communications requirements; the progress of the Government's implementation of NSTAC recommendations from the 2011 NSTAC *Report to the President on Communications Resiliency* and the 2009 NSTAC *Report to the President on Commercial Satellite Mission Assurance;* and the way forward for the committee's cloud computing effort.

The committee will meet in a closed session to review information on implementation of the National Public Safety Broadband Network as well as secure communications for mobile devices.

Basis for Closure: In accordance with 5 U.S.C. 552b(c), Government in the Sunshine Act, it has been determined that two meeting agenda items require closure as the disclosure of the information would not be in the public interest.

The first of these agenda items relates to issues and concerns surrounding the Government's planning for implementation of the National Public Safety Broadband Network, a nationwide, interoperable network for public safety. The NSTAC will discuss the migration by public safety users from legacy Land Mobile Radio to 4G technologies for their mobile telecommunications needs. The discussion will include a review of the advantages of 4G technologies, and details of various risks. In examining those risks, the NSTAC will address the vulnerabilities the technologies can have, and how the Government can best plan to mitigate those vulnerabilities. Disclosure of these vulnerabilities would provide a road map to criminals who wish to intrude into the system, and perhaps cause the government to deviate from its planned implementation of this system. Therefore, this portion of the meeting is required to be closed pursuant to 5 U.S.C. 552b(c)(9)(B).

Another agenda item will address secure communications for mobile devices. Government officials will share data with NSTAC members on initiatives, assessments, and future technical requirements for networks to be used by the government. The data to be shared includes specific vulnerabilities of various communications modalities and is not public information. Disclosure of this information to the public would provide criminals with the means to disrupt and hack into planned devices. Since this would undermine the ability of the United States to develop secure mobile networks, this portion of the meeting is required to be closed pursuant to 5 U.S.C. 552b(c)(9)(B).

Dated: May 10, 2011.

James Madon,

Designated Federal Officer for the NSTAC.

[FR Doc. 2011–12053 Filed 5–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–884, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of information collection under review: Form G–884, Request for the Return of Original Documents; OMB Control No. 1615–0100.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until July 18, 2011.

During this 60-day period, USCIS will be evaluating whether to revise the Form G–884. Should USCIS decide to revise Form G–884 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form G–884.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to

DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0100 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Request for the Return of Original Documents.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–884. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: *Individuals or households.* The information will be used by USCIS to determine whether a person is eligible to obtain original document(s) contained in an alien file.

(5) *An estimate of the total annual number of respondents and the amount of time estimated for an average respondent to respond:* 7,500 annual responses at 30 minutes (0.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.* We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: May 11, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–11968 Filed 5–16–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wildland Fire Executive Council Meeting Schedule

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meetings.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the U.S. Department of the Interior, Office of the Secretary, Wildland Fire Executive Council (WFEC) will meet as indicated below.

DATES: The meetings will be held on the first and third Friday of each month from 10 a.m. to 12 noon Eastern Time as follows: June 3, 2011; June 17, 2011; July 1, 2011; July 15, 2011; August 5, 2011; August 19, 2011; September 2, 2011; September 16, 2011; October 7, 2011; October 21, 2011; November 4, 2011; November 18, 2011; December 2, 2011; December 16, 2011.

ADDRESSES: The meetings will be held from 10 a.m. to 12 noon Eastern Time in the McArdle Room (First Floor Conference Room) in the Yates Federal Building, USDA Forest Service Headquarters, 1400 Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Roy Johnson, Designated Federal Officer, 300 E Mallard Drive, Suite 170, Boise, Idaho 83706; telephone (208) 334–1550; fax (208) 334–1549; or e-mail *Roy_Johnson@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The WFEC is established as a discretionary advisory committee under the authorities of the Secretary of the Interior and Secretary of Agriculture, in furtherance of 43 U.S.C. 1457 and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The Secretary of the Interior and Secretary of Agriculture certify that the formation of the WFEC is necessary and is in the public interest.

The purpose of the WFEC is to provide advice on coordinated national-level wildland fire policy and to provide leadership, direction, and program oversight in support of the Wildland Fire Leadership Council. Questions related to the WFEC should be directed to Roy Johnson (Designated Federal Officer) at *Roy_Johnson@ios.doi.gov* or (208) 334–1550 or 300 E. Mallard Drive, Suite 170, Boise, Idaho 83706–6648.

Meeting Agenda: The meeting agenda will include: (1) Welcome and introduction of Council members; (2) Overview of prior meeting and action tracking; (3) Members' round robin to share information and identify key issues to be addressed; (4) Wildland Fire Management Cohesive Strategy; (5) Wildland Fire Issues; (6) Council Members' review and discussion of sub-committee activities; (7) Future Council activities; (8) Public comments; and (9) closing remarks. Participation is open to the public.

Public Input: All WFEC meetings are open to the public. Members of the public who wish to participate must notify Shari Shetler at *Shari_Shetler@ios.doi.gov* no later than the Friday preceding the meeting. Those who are not committee members and wish to present oral statements or obtain information should contact Shari Shetler via e-mail no later than the Friday preceding the meeting. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Questions about the agenda or written comments may be e-mailed or submitted by U.S. Mail to: Department of the Interior, Office of the Secretary, Office of Wildland Fire, Attention: Shari Shetler, 300 E. Mallard Drive, Suite 170, Boise, Idaho 83706–6648. WFEC requests that written comments be received by the Friday preceding the scheduled meeting. Attendance is open to the public, but limited space is available. Persons with a disability

requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Shetler at (202) 527–0133 at least seven calendar days prior to the meeting.

Dated: May 11, 2011.

Roy Johnson,

Designated Federal Officer.

[FR Doc. 2011–12097 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–J4–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Policy on Consultation With Indian Tribes

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed policy: Request for comments.

SUMMARY: The Department of the Interior seeks comments on a proposed policy on consultation with Indian tribes. This policy would establish standards for improved consultation with Indian Tribes to the extent that a conflict does not exist with laws or regulations. It would apply to any Department action that affects Indian tribes and would require that the Department's government-to-government consultation involve appropriate Tribal and Departmental officials.

DATES: We will consider all comments received by July 18, 2011.

ADDRESSES: Submit comments by e-mail to *consultation@doi.gov* or by US mail to: Consultation Policy Comments, Department of the Interior, Room 5129 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kallie Hanley, Office of the Secretary, 202–208–5397 or *kallie_hanley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

The Department of the Interior proposed policy on consultation with tribes is set forth below.

Department of the Interior Policy on Consultation With Indian Tribes

I. Preamble

The obligation for Federal agencies to engage with Indian Tribes on a government-to-government basis is based on the U.S. Constitution, treaties, statutes, executive orders, and policies. Federal agencies meet that obligation through consultation with Indian Tribes. The Department of the Interior is committed to fulfilling its Tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments) or other applicable Secretarial Orders or policies—by adhering to the framework described in this Policy. This Policy reflects the Department's highest commitment to the principles embodied in this Policy and the Secretary's support of Tribal sovereignty.

The Department's Bureaus and Offices shall review their existing practices and revise them as needed to comply with the Department's Policy as described in this document. All Bureaus and Offices will report to the Secretary's designee on their efforts to comply with this Policy and as described in a companion Secretarial Order.

II. Guiding Principles

This Policy broadly defines provisions for improving the Department's consultation processes with Indian Tribes to the extent that a conflict does not exist with applicable law or regulations. The Department recognizes and respects the distinct, unique, and individual cultural traditions and values of each Tribe.

This Policy requires that the Department's government-to-government consultation involve the appropriate Tribal Officials and appropriate Departmental officials. The appropriate Departmental officials are knowledgeable about the matters at hand, are authorized to speak for Interior, and have delegated authority in the disposition and implementation of an action. The appropriate Departmental official will have an obligation to identify consulting parties early in the planning process and allow a reasonable opportunity for Indian Tribes to respond and participate as described in Section VII. Department officials will make the effort to fully participate in the consultation process, ensure continuity, and demonstrate commitment to the process. Communication will be open and transparent without compromising the rights of federally recognized Indian Tribes and the government-to-government consultation process.

Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making where all parties share a goal of reaching a decision together and it creates an opportunity for equal input from all affected tribal governments. Consultation promotes an enhanced form of communication that emphasizes trust, respect, and shared responsibility and should be an open and free exchange of information. Federal consultation that is meaningful, effective, and conducted in good faith makes the Department's operation and governance practices more efficient. To that end, Bureaus or Offices will seek and promote cooperation and participation between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with Tribal Implications. Efficiencies that derive from including Indian Tribes in all stages of the Tribal consultation process and decision-making process help to ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of Tribal input.

The United States has a long-standing and inter-governmental relationship with Indian Tribes. Appropriate consultation practices will honor the government-to-government relationship between Indian Tribes and the United States; and will comply with the Presidential Memorandum of November 5, 2009 that affirms this relationship and obligates the Department of the Interior to meet the spirit and intent of EO 13175.

The Policy creates a framework for synchronizing the Department's consultation practices with its Bureaus and Offices.

III. Definitions

Bureau or Office—As defined in the Department of the Interior Manual.

Collaboration—The Department of the Interior working jointly with Indian Tribes to develop and implement positive solutions on Departmental Action with Tribal Implications.

Consultation Policies—Those institutionalized policies established to comply with the procedures described in Section VII of this document.

Departmental Action With Tribal Implications—Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an Indian Tribe, including but not limited to:

1. Tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance on Federally managed lands;

2. The ability of an Indian Tribe to govern or provide services to its members; an Indian Tribe's relationship with the Department; or

3. The distribution of responsibilities between the Department and Indian Tribes.

This term does not include matters that are the subject of litigation or in settlement negotiations, or matters undertaken in accordance with an administrative or judicial order where the Department has no discretion with respect to consultation.

Indian Tribe or Tribe—Any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Tribal Consultation Team—The Secretary's designee has established and may develop a plan of action for the continued involvement of a joint Federal-Tribal Team including making recommendations on the implementation of this Policy.

Tribal Governance Officer (TGO)—An individual designated by the Department to carry out responsibilities defined in this Policy.

Tribal Liaison Officer (TLO)—One or more individuals designated by their Bureaus or Offices to carry out responsibilities defined in this Policy.

Tribal Official—An Elected or appointed Tribal leader or official delegate designated in writing by an Indian Tribe.

IV. Accountability and Reporting

Methods that ensure accountability and reporting are essential to regular and meaningful consultation. The heads of Bureaus and Offices will include in future annual performance plans of their employees appropriate performance measures consistent with this Policy.

On an annual basis, Bureaus and Offices shall report to the Secretary the results of their efforts to promote consultation with Indian Tribes. Reporting is intended to be comprehensive and may include, but is not limited to, the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities. Bureaus and Offices should provide a comprehensive listing of the topics on which consultations were held, training, innovations, and the engagement of senior leadership in these efforts. Such reports should include feedback from Tribes with whom the Bureau or Office has consulted. Reports will account for the documents and correspondence with Indian Tribes to satisfy the Implementation of the Final Federal Action Stage described in Section VII or alternatively, summaries of such documents and correspondence with information concerning how the complete documents might be obtained. Methods of reporting may be a description of budget expenditures in the execution of consultation efforts, narratives describing significant consultation efforts, and anticipation of forthcoming consultation opportunities.

The Secretary of the Interior will provide an annual report to Indian Tribes and may use the Department's website to share the reporting information, where appropriate.

For Federal block grants that only Indian Tribes are eligible to receive and in compliance with Federal statutes, a Bureau or Office will take special care to disclose actions it has taken to consult with Indian Tribes in the development of formulas to administer the block grants.

V. Training

Training will aim to improve the Department's capacity for promoting collaboration with Tribes and executing the consultation provisions of Section VII.

The training will:

A. Promote consultation, communication, collaboration, and other interaction with Tribes;

B. Outline and reinforce the Department's duties concerning tribal interests;

C. Describe the legal trust obligation of the Federal-Tribal relationship; and

D. Transfer the knowledge, skills, and tools necessary for collaborative engagement to Tribal and Departmental staff engaged in the consultative process.

The Department, through the Department of the Interior University (DOIU), in collaboration with Bureaus, Offices, Tribal colleges and universities, and other entities with Indian expertise, will develop and deliver training. The Department, through the DOIU, will develop required core competencies, which Bureaus and Offices may enhance through other appropriate sources of tribal expertise.

This training will seek to enhance mutual understanding of cultural perspectives and administrative requirements between Tribal and Federal officials and to promote inter-governmental relationships. Tribal representatives are encouraged to participate in training along with federal employees.

VI. Innovative and Effective Consultation Practices

The Department's leadership will strive to advance Federal consultation practices and to offer examples for innovation across the Administration. The Department will identify and seek to address impediments, both external and internal, to improving its consultation processes.

In consultation with Tribes, the Department will develop a plan of action for the continued improvement of this policy and its implementation. This plan may include:

A. Annual meetings between the Secretary and Tribes;

B. Communicating through a regular gathering of Tribes to discuss improving consultation practices and procedures;

C. Institutionalizing a joint Tribal-Federal consultation team that would meet periodically to identify improvements;

D. Soliciting Tribes' evaluation of consultation practices and procedures.

VII. Consultation Guidelines

Consultation guidelines are meant to establish uniform practices and common standards, which all Bureaus and Offices will use except when otherwise agreed to in writing by a Bureau or Office and Indian Tribe through an individual protocol conforming, to the extent possible, to the guidelines in this Section. Consultation and individual protocols will provide greater efficiency and transparency in Department practices in order to maximize Indian Tribes' participation. Departmental Actions with Tribal Implications that are regional or impact a limited number of Indian Tribes should be carried out in a manner consistent with this Policy while allowing discretion to employ only appropriate parts of this Section.

A. *Initiating Consultation.* A Bureau or Office must notify the appropriate Indian Tribe(s) of the opportunity to consult when considering a Departmental Action with Tribal Implications. The Bureau or Office will strive to ensure that a notice is given at least 30 days prior to a scheduled consultation. If exceptional circumstances prevent notice within 30 days of the consultation, explanation for the abbreviated notification will be provided in the invitation letter. An Indian Tribe may request an extension for timelines associated with this Policy.

Adequate notice entails providing a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes. Notification of a consultation should include sufficient detail of the topic to be discussed to allow Tribal leaders an opportunity to fully engage in the consultation.

Beginning at the Initial Planning Stage, see Section VII, Part E, Subsection 1, a Bureau or Office will consult with Indian Tribes on a Departmental Action with Tribal Implications.

An Indian Tribe may request that the Department initiate consultation when the Tribe believes that a Bureau or Office is considering a Departmental Action with Tribal Implications. Requests should be made in writing to the Department's TGO and describe the specific Departmental Action with Tribal Implications. However, the fact

that an Indian Tribe may choose not to engage the TGO does not relieve a Bureau or Office of its obligation to engage in consultation as described by this Policy. In the event that the Bureau or Office makes an attempt to initiate consultation and does not receive a response, the Bureau or Office should make reasonable and periodic efforts throughout the process to repeat the invitation. Reasonable efforts should be made to adequately document or memorialize these communications.

B. *Role of Tribal Governance Officer and Tribal Liaison Officer in Consultation Process.*

1. The Department will designate a TGO who will be located within the Department so that the position shall be accessible to Tribal Officials and so that the TGO will have access to the Secretary or Deputy Secretary to carry out the responsibilities defined in this Policy. These responsibilities shall include:

a. Monitoring compliance with this Policy, EO 13175, and other Consultation Policies pertaining to government-to-government consultation;

b. Serving as the Secretary's representative when requested to do so in matters pertaining to consultation;

c. Promoting government-to-government consultation;

d. Communicating and coordinating with TLOs concerning Bureau and Office compliance with this Policy;

e. Encouraging Indian Tribes to request consultation directly with the appropriate Bureau or Office representative or the TLO, and helping to ensure the resolution of all requests;

f. Implementing, in coordination with the TLOs, a reporting system to ensure that consultation efforts are documented and reported to the Secretary and to the Department's TGO for EO 13175; and

g. Facilitating a government-to-government relationship that is honored by all parties in tribal consultations of national significance or involving multiple Bureaus or Offices.

2. Each Bureau or Office will designate one or more TLOs whose responsibilities shall include:

a. Working with their Bureaus or Offices to achieve compliance with this Policy, the Consultation Policies of their Bureaus or Offices, and any future policies related to EO 13175 or other government-to-government consultation policies;

b. Promoting and facilitating consultation and collaboration between Tribes and the TLOs' Bureau or Office;

c. Advocating for opportunities for and consideration of positions of Indian Tribes, consistent with Bureau and Office missions;

d. Serving as the principal point of contact for the TGO concerning compliance with this Policy, including Bureau and Office reporting requirements;

e. Striving to enhance trusting and on-going relationships with Tribes, consistent with applicable law and executive orders;

f. Serving as an initial contact for Tribes requesting or inquiring about consultation when it is unclear whom to contact for the Bureau or Office; and

g. Carrying out other responsibilities as assigned by Bureau or Office Consultation Policies.

3. Publicize TLOs and TGO—Each Bureau or Office shall take appropriate measures to publicize the name of the TGO and the names and contact information of their TLO(s) to facilitate contacts by tribal officials.

C. *Guidelines for Response to Request for Consultation.* The TGO or appropriate representative will confirm receipt of a request for consultation from a Tribal Official. When the request is directed to the TGO, the request is to be forwarded to the appropriate Bureau or Office. The TGO or appropriate representative will treat an official request for consultation in an expedited fashion and respond in writing, using the most expedient methods to communicate to the Tribe, that the Department has received their request.

D. *Consultation Process Support.* The Office of Collaborative Action and Dispute Resolution can assist in planning or facilitating an effective consultation process, negotiated rulemaking or other collaborative approach to decision-making. In planning consultation processes as outlined below in Paragraph E, Bureaus and Offices are encouraged to consider best practices for engagement, including but not limited to the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.

E. *Stages of Consultation.* Bureaus and Offices will carry out the stages described below in order to satisfy consultation for a Departmental Action with Tribal Implications.

1. Initial Planning Stage.

Each Bureau or Office will consult as early as possible when considering a Departmental Action with Tribal Implications. A Bureau or Office may conduct a meeting or other forms of interaction with Indian Tribes in order to receive and evaluate comments received as part of the Initial Planning Stage.

2. Proposal Development Stage.

The Proposal Development Stage begins once the Department discloses the scope of a Departmental Action with Tribal Implications. Indian Tribes should be considered as appropriate collaborative partners, particularly where negotiated rulemaking or a Tribal Leader Task Force is created.

The Bureau or Office will select a process for the Proposal Development Stage that maximizes the opportunity for timely input by Tribes and is consistent with both Tribal and Bureau schedules. The Bureau or Office should work with Indian Tribes to structure a process, which to the extent feasible, considers specific Indian Tribal structures, traditional needs, and schedules of the Tribes and may proceed with the expectation that interested Indian Tribes will respond within a reasonable time period. If litigation or legal requirements impact a Bureau's or Office's schedule for conducting consultation, then the Bureau or Office should explain these constraints to the Indian Tribe.

Examples of appropriate processes for the Proposal Development Stage include but are not limited to the following:

- *Negotiated Rulemaking.* Where appropriate, the Bureau or Office should consider using negotiated rulemaking for developing significant regulations or other formal policies in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act.
- *Tribal Leader Task Force.* A Tribal Leader Task Force may be used, in appropriate circumstances, on regional or issue-specific (*e.g.,* timber) matters. In each instance, the composition of the Task Force shall be collaboratively determined by the Tribes, provided that the Task Force shall be a process open to all Tribes and, to the extent possible, represent a cross-section of Tribal interests with respect to the matter at issue. The location and number of meetings to be held will conform to the expressed views of the Tribes, to the extent practicable and permitted by law and in accordance with FACA.
- *Series of Open Tribal Meetings.* The Bureau or Office may provide open invitations to Tribal leaders as part of a series of open meetings to consider action(s). Open meetings can be used for national, regional or subject-matter-specific issues.
- *Single Meetings.* The Bureau or Office may host Tribal Officials in a single meeting to discuss a Departmental Action with Tribal Implications under consideration. Single meetings are particularly

appropriate for local, regional, or single Tribe issues.

The Bureau or Office will solicit the views of affected Tribes regarding the process timeline to meaningfully consider a Departmental Action with Tribal Implications. The Bureau or Office should make all reasonable efforts to comply with the expressed views of the affected Tribes regarding the process timeline at this Stage, taking into account the level of impact, the scope, and the complexity of the issues involved in the Departmental Action with Tribal Implications, along with the other factors driving the schedule. The process will be open and transparent.

If the Bureau or Office determines that the Administrative Procedure Act or other Federal law or regulation expressly prohibits continued discussion at a specified point in the decision-making process, the Bureau or Office should so inform the Tribes at the outset of this Stage in the process.

3. *Implementation of Final Federal Action Stage.*

In addition to any formal notice required by law or regulation, final decisions on Departmental Action with Tribal Implications should be communicated in writing to affected Tribes, with a summarized explanation of the final decision.

A Bureau or Office may consider implementing a post-consultation review process where it is consistent with law, regulations, and EO 13175. Any review process shall not limit the Department's deliberative process privilege regarding internal considerations or any other applicable privilege. The Bureau or Office at this Stage will consider the need for training or technical assistance.

F. *Impact of Consultation Guidelines.* Consultation as described in this Section is not a basis for the Department to preclude requests or recommendations by Bureaus, Offices, or Indian Tribes to collaborate and foster trusting relationships between the Department and Indian Tribes outside of the processes described in this Section. Exigent circumstances may allow the Department to take measures that deviate from this Policy, but the Department should make every effort to comply and should explain to Indian Tribes as soon as exigent circumstances arise.

VIII. Supplemental Policies

Bureaus and Offices, in collaboration with the TGO, are to review existing policies that may be impacted by this Policy. All Bureau and Office policies are to conform to this Policy. Where necessary, a Bureau or Office may develop a new policy in order to conform to this Policy.

Consistent with Federal appropriations law, the Department shall develop a policy for consultation with Alaska Native Corporations. The Policy will address when a Department action impacts an Alaska Native Corporation's interest. The Policy will not conflict with the requirements of this document. The Secretary's designee will provide a Plan of Action for developing the Alaska Native Corporation consultation policy. Other entities that are not Bureaus or Offices as defined in this Policy may develop policies that conform to this Policy. Other entities may develop such policies in coordination with the TGO.

IX. Disclaimer

Except to the extent already established by law, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person. The Department also does not waive any applicable privilege that it may hold by virtue of this Policy.

Dated: May 11, 2011.

Laura Daniel Davis,

Chief of Staff.

[FR Doc. 2011–11971 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Bureau of Ocean Energy Management, Regulation and Enforcement by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period May 1, 2011, through October 31, 2011. The List of Restricted Joint Bidders published in the **Federal Register** on January 24, 2011, covered the period November 1, 2010, through April 30, 2011.

Group I.
Exxon Mobil Corporation,
ExxonMobil Exploration Company.
Group II.
Shell Oil Company,
Shell Offshore Inc.,
SWEPI LP,
Shell Frontier Oil & Gas Inc.,
SOI Finance Inc.,
Shell Gulf of Mexico Inc.
Group III.
BP America Production Company,
BP Exploration & Production Inc.,
BP Exploration (Alaska) Inc.,
Group IV.
Chevron Corporation,
Chevron U.S.A. Inc.,
Chevron Midcontinent, L.P.,
Unocal Corporation,
Union Oil Company of California,
Pure Partners, L.P.
Group V.
ConocoPhillips Company,
ConocoPhillips Alaska, Inc.,
Phillips Pt. Arguello Production Company,
Burlington Resources Oil & Gas Company LP,
Burlington Resources Offshore Inc.,
The Louisiana Land and Exploration Company,
Inexeco Oil Company.
Group VI.
Eni Petroleum Co. Inc.,
Eni Petroleum US LLC,
Eni Oil US LLC,
Eni Marketing Inc.,
Eni BB Petroleum Inc.,
Eni US Operating Co. Inc.,
Eni BB Pipeline LLC.
Group VII.
Petrobras America Inc.,
Petroleo Brasileiro S.A.
Group VIII.
Statoil ASA,
Statoil Gulf of Mexico LLC,
Statoil USA E&P Inc.,
Statoil Gulf Properties Inc.
Group IX.
Total E&P, Inc.

Dated: April 27, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011–12023 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on June 8–9, 2011 at the American Institute of Architects Building, 1735 New York Avenue, NW., Washington, DC 20006. The meeting will be held in the Gallery Room. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. *Topics to be addressed at the meeting include:*

—FGDC Update.
—Transportation for the Nation.
—Census Update.
—Parcel Data.
—National Map Users Conference.
—NGAC Action Plan.
—Subcommittee Reports.

The meeting will include an opportunity for public comment on June 9. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the U.S. Geological Survey (703–648–6283, *amaher@usgs.gov*). Registrations are due by June 3, 2011. While the meeting will be open to the public, seating may be limited due to room capacity.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on June 8 and from 8:30 a.m. to 4 p.m. on June 9.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting is available at *http://www.fgdc.gov/ngac.*

Dated: May 11, 2011.

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee.

[FR Doc. 2011–12028 Filed 5–16–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12200000.AL 0000]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council (DAC) to the Bureau of Land Management (BLM), U.S. Department of the Interior, will meet in formal session on Saturday, June 4, 2011, from 8 a.m. to 5 p.m. at the Handlery Hotel, 950 Hotel Circle North, San Diego, CA 92108. There will be a field trip on Friday, June 3, details of which will be posted on the DAC web page, *http://www.blm.gov/ca/st/en/info/rac/dac.html,* when finalized.

Agenda topics for the Saturday meeting will include updates by council members and reports from the BLM California Desert District manager and five field office managers. In addition, the agenda will include updates on special recreation permits, council subgroups, and renewable energy. Final agenda items will be posted on the DAC web page listed above.

SUPPLEMENTARY INFORMATION: All DAC meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the council chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8 a.m. to 5 p.m., the meeting could conclude prior to 5 p.m. should the council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs (951) 697–5220.

Dated: April 29, 2011.

Teresa A. Raml,

California Desert District Manager.

[FR Doc. 2011–12084 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO300000.L1430000]

Notice of Meeting Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On April 21, 2011, the Bureau of Land Management (BLM) published a notice in the **Federal Register** [77 FR 22414] announcing a public meeting in connection with a proposed withdrawal to be held on Monday, May 23, 2011, from 6 to 8 p.m. at the BLM Southern Nevada District Office. The BLM has cancelled the meeting. The BLM will reschedule the meeting later.

FOR FURTHER INFORMATION CONTACT: Linda Resseguie, BLM, by telephone at (202) 912–7337, or by e-mail at *linda_resseguie@blm.gov.*

Michael D. Nedd,

Assistant Director, Minerals and Realty Management, Bureau of Land Management.

[FR Doc. 2011–12098 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV9230000 L13100000.FI0000 241A; NVN–75955; 11–08807; MO#4500021010; TAS 14x1109]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b), the Bureau of Land Management (BLM) received a petition for reinstatement from Sandridge Energy, Inc., for noncompetitive oil and gas lease NVN–75955 on land in Nye County, Nevada. The petition was timely filed and was accompanied by rental due since the lease terminated under the law. No valid leases have been issued affecting the lands.

FOR FURTHER INFORMATION CONTACT: Atanda Clark, BLM Nevada State Office, 775–861–6632, or *e-mail: Atanda_Clark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above

individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rental and royalties at rates of $5 per acre or fraction thereof per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Department for the cost of this **Federal Register** notice. The lessee has met all of the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate the lease effective August 1, 2010 under the original terms and conditions of the lease and the increased rental and royalty rate cited above. The BLM has not issued a lease affecting the lands encumbered by the lease to any other interest in the interim.

Authority: 43 CFR 3108.2–3(a).

Gary Johnson,

Deputy State Director, Minerals Management.

[FR Doc. 2011–12031 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV9230000 L13100000.FI0000 241A; NVN–84801; NVN–84802; 11–08807; MO#4500020787; TAS 14x1109]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Leases.

SUMMARY: Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b), the Bureau of Land Management (BLM) received a petition for reinstatement from John Wolcott, for competitive oil and gas leases NVN–84801 and NVN–84802 on land in Elko County, Nevada. The petition was timely filed and was accompanied by all the rentals due since the leases terminated under the law. No valid leases have been issued affecting the lands.

FOR FURTHER INFORMATION CONTACT: Atanda Clark, BLM Nevada State Office, 775–861–6632, or e-mail: *Atanda_Clark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rental and royalties at rates of $10 per acre or fraction thereof per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for each lease and has reimbursed the Department for the cost of this **Federal Register** notice. The lessee has met all of the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 [30 U.S.C. 188], and the BLM is proposing to reinstate the leases effective June 1, 2010 under the original terms and conditions of the leases and the increased rental and royalty rates cited above. The BLM has not issued a lease affecting the lands encumbered by these leases to any other interest in the interim.

Authority: 43 CFR 3108.2–3(a).

Gary Johnson,

Deputy State Director, Minerals Management.

[FR Doc. 2011–12036 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; NMNM 112906]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 112906, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the Class II provisions of the Federal Oil and Gas Royalty Management Act of 1982, as amended, the Bureau of Land Management received a petition for reinstatement of oil and gas lease NMNM 112906 from the lessee Crown Oil Partners, LP, for lands in Eddy County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502 or at (505) 954–2146.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500 administrative fee for the reinstatement of the lease and the $166 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMNM 112906, effective the date of termination, January 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 2011–12030 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV9230000 L13100000.FI0000 241A; NVN–75901; 11–08807; MO#4500020701; TAS: 14x1109]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b), the Bureau of Land Management (BLM) received a petition for reinstatement from SandRidge Energy, Inc. and DY Exploration, Inc., for noncompetitive oil and gas lease NVN–75901 on land in Nye County, Nevada. The petition was timely filed and was accompanied by all the rentals due since the lease terminated under the law. No valid lease has been issued affecting the lands.

FOR FURTHER INFORMATION CONTACT: Atanda Clark, BLM Nevada State Office, 775–861–6632, or *e-mail: Atanda_Clark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message

or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rental and royalties at rates of $5 per acre or fraction thereof per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and have reimbursed the Department for the cost of this **Federal Register** notice. The lessees have met all of the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate the lease effective June 1, 2010 under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a lease affecting the lands encumbered by this lease to any other interest in the interim.

Authority: 43 CFR 3108.2–3(a).

Gary Johnson,

Deputy State Director, Minerals Management.

[FR Doc. 2011–12034 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–11–L13100000–FI0000–P; MTM 94684 and MTM 94685]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease MTM 94684 and MTM 94685

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), Sonalta Resources Inc. and Koro Energy USA Inc. timely filed a petition for reinstatement of competitive oil and gas leases MTM 94684 and MTM 64685, Stillwater County, Montana. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent. The lessee paid the $500 administration fee for the reinstatement of each lease and $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the leases, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. 2011–12033 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–11–L13100000–FI0000–P; MTM 99624 and MTM 99625]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases MTM 99624 and MTM 99625

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with 30 U.S.C. 188(d), Kykuit Resources, LLC, timely filed a petition for reinstatement of competitive oil and gas leases MTM 99624 and MTM 99625, Fergus County, Montana. The lessee paid the required rentals accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent. The lessee paid the $500 administration fee for the reinstatement of each lease and $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the leases per Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the leases, effective the date of termination subject to:

- The original terms and conditions of the leases;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. 2011–12032 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560.L58530000.ES0000 241A; N–80113; 11–08807; MO#4500020397;TAS 14X5232]

Notice of Realty Action: Recreation and Public Purposes Lease Partial Change of Use of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Recreation and Public Purposes (R&PP) Act request to change the use of a portion of a previously approved lease in the City of North Las Vegas, Clark County, Nevada. The city proposes to change the use of 10 acres from a public park and police substation to a safety village.

DATES: Interested parties may submit written comments regarding the proposed change of use of the lands until July 1, 2011.

ADDRESSES: Send written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130, or *e-mail: ddickey@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Dorothy Jean Dickey, (702) 515–5119, or *ddickey@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the

above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A notice was previously published in the **Federal Register** on October 16, 2007, (72 FR 58682) segregating approximately 41.48 acres of public land for a park site and police substation under the R&PP Act. The lease was issued to the city on April 8, 2008. The city wants to change the use of the northwest 10 acres of the site to a safety, training and rescue skills area called Northern Safety Training and Rescue Skills (STARS) Village. The remaining 31.48 acres of land is still being used as a park and police substation. The parcel of land is legally described as:

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E., sec. 24, Lot 12 (within).

The change of use area described contains 10 acres, more or less. This description will be refined upon final approval of the official plat of survey.

The city filed an R&PP application to change the use and to develop the above described land as a Northern STARS Village with related facilities. Related facilities include: Amphitheater, picnic area, educational fire fighters park, education classrooms, education auditorium, administration building, garage, swimming pool and parking area. The mission of the Northern STARS Village is to provide state-of-the-art, hands-on, and life-safety programs such as bicycle safety, emergency services, fire safety and prevention, injury prevention for seniors, internet safety, motor vehicle safety, pedestrian safety, rules of the road, and water safety. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–80113, which is located in the BLM Las Vegas Field Office at the above address.

The city is a political subdivision of the State of Nevada and is therefore a qualified applicant under the R&PP Act.

The change of use of the public land shall be subject to valid existing rights as previously published. Subject to limitations prescribed by law and regulation, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.

Interested parties may submit written comments regarding the specific use proposed in the application and plan of development or any other factor not directly related to the suitability of the land for a Northern STARS Village. Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior and will become effective on July 18, 2011. The lands will not be available as a Northern STARS Village until after the decision becomes effective.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Only written comments submitted to the Field Manager, BLM Las Vegas Field Office, or by e-mail at the addresses above will be considered properly filed. Any adverse comments will be reviewed by the BLM Nevada State Director.

Authority: 43 CFR part 2741.

Beth Ransel,

Acting Assistant Field Manager, Division of Lands.

[FR Doc. 2011–12035 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–0412–7147; 9082–CECH–420]

Cesar Chavez Special Resource Study—Alameda, Fresno, Imperial, Kern, Los Angeles, Monterey, Riverside, San Benito, San Diego, San Francisco, San Joaquin, Santa Barbara, Santa Clara, Stanislaus, Tulare and Ventura Counties, CA, and Maricopa and Yuma Counties, AZ

AGENCY: National Park Service.

ACTION: Notice of Scoping for Cesar Chavez Special Resource Study.

SUMMARY: In accordance with provisions of the National Environmental Policy Act of 1969 (Pub L. 91–190) and Council on Environmental Quality's implementing regulations (40 CFR 1502.9(c)), the National Park Service (NPS) has initiated the public scoping phase for a conservation planning and environmental impact analysis process needed to identify and assess potential impacts of alternatives for resource protection and other considerations concerning sites associated with Cesar Chavez and the farm labor movement throughout California and Arizona, including but not necessarily limited to Alameda, Fresno, Imperial, Kern, Los Angeles, Monterey, Riverside, San Benito, San Diego, San Francisco, San Joaquin, Santa Barbara, Santa Clara, Stanislaus, Tulare and Ventura Counties of California, and Yuma and Maricopa Counties of Arizona. The purpose of the scoping phase is to elicit early public comment regarding issues and concerns, preliminary alternatives, and the nature and extent of potential environmental impacts (and as appropriate, mitigation measures) which should be addressed.

Background: As authorized by the Consolidated Natural Resources Act of 2008 (Pub. L. 110–229–May 2008), the NPS is conducting a special resource study of the sites in the State of Arizona, the State of California, and other states that are significant to the life of Cesar Chavez and the farm labor movement in the western United States. The authorizing statute directs the NPS to consult with the Cesar Chavez Foundation, the United Farm Workers Union, state and local historical associations and societies, and state historic preservation offices.

In conducting the Cesar Chavez Special Resource Study, the NPS will evaluate the significance of the sites' resources and assess the sites' suitability and feasibility to be a unit of the national park system. *Factors which the NPS will evaluate include:* Whether the sites posses nationally significant cultural resources; whether the sites include types or quality of resources not already adequately represented in the National Park System; whether long-term protection and public use of sites are feasible; and whether sites can be adequately protected and administered at a reasonable cost. Recommendations may vary for different sites.

The NPS will also consider: alternative strategies for the management, protection and use of significant resources, including management by other public agencies or the private sector; technical or financial assistance available from established programs or special initiatives and partnerships; alternative designations to a national park unit; and cooperative management by NPS and other entities.

Public Involvement: The NPS will develop a range of management alternatives, and conduct an environmental review of the alternatives and their potential impacts as part of the Cesar Chavez Special Resource Study. At this time, it has not been determined whether an Environmental Assessment or an Environmental Impact Statement will be prepared, however, this scoping

effort will aid in the preparation of either document. In addition to this opportunity to comment and participate from the beginning of the study process, the public will be afforded the opportunity to review the environmental document and submit additional comments. For initial scoping and alternatives development, the most useful comments are those that provide the NPS with assistance in identifying issues and concerns which should be addressed, or providing important information germane to this study. All responses to this Scoping Notice will also be used to establish a mailing list of interested persons, organizations, and agencies that desire to receive further information as the environmental document is developed.

The public scoping period for the Cesar Chavez Special Resource Study will conclude June 16, 2011. Scoping meetings (public workshops) will be held in the vicinity of key sites, likely in or near San Jose, the Salinas Valley, Delano, Los Angeles, Oxnard, Yuma and Phoenix in April and May of 2010. A news release will be distributed announcing the public meetings. The dates, times and locations of the meetings will be posted on both the project Web site (address below) and the Web site for NPS Planning, Environment and Public Comment, and will be advertised in a newsletter which will be distributed to stakeholders and interested parties. Interested individuals, organizations, and agencies wishing to provide written comments on issues or concerns should *respond to:* National Park Service, Cesar Chavez Special Resource Study, Park Planning and Environmental Compliance, 1111 Jackson Street, Suite 700, Oakland, CA 94607. Comments may also be submitted electronically by e-mail (address below) or through the NPS Planning, Environment and Public Comment (PEPC) Web site. This site can be accessed through the study's Web site listed below.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Information updates about the study process and opportunities for the public to participate will be periodically distributed via direct mailings, regional and local news media and the Cesar Chavez Special Resource Study Web site (*http://www.nps.gov/pwro/chavez*). The study team may be contacted via e-mail at *pwr_chavez@nps.gov.*

Decision Process: Availability of the forthcoming draft environmental document for review and written comment will be announced by local and regional news media, the above listed Web site, and direct mailing. At this time the environmental document is anticipated to be available for public review and comment in Fall 2011. Comments on the draft document will be fully considered and responded to as appropriate in the final document. The official responsible for the initial recommendation will be the Regional Director, Pacific West Region, National Park Service. The official responsible for amending or ratifying the recommendation and transmitting the final document to the Secretary of the Interior will be the Director of the National Park Service. The final document will identify the alternative that, in the professional judgment of the Director of the National Park Service, is the most effective and efficient method for protecting significant resources and providing for public enjoyment. The Secretary of the Interior subsequently will forward the completed study along with a recommendation regarding the Secretary's preferred management option for the area to Congress for their consideration. It is anticipated that the final study report will be available in late 2011.

Dated: April 6, 2011.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 2011–11978 Filed 5–16–11; 8:45 am]

BILLING CODE 4312–EP–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments for 1029–0063.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the continued collection of information for the Abandoned Mine Reclamation Fund-Fee Collection and Coal Production Reporting and the form it implements, the OSM–1, Coal Reclamation Fee Report. This collection was previously approved by the Office of Management and Budget (OMB) and assigned control number 1029–0063.

DATES: Comments on the proposed information collection must be received by July 18, 2011, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection package contact John Trelease at the address listed in Addresses.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR 870—Abandoned Mine Reclamation Fund-Fee Collection and Coal Production Reporting, and the implementing form OSM–1—Coal Reclamation Fee Report. OSM will request a 3-year term of approval for each information collection activity.

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. The OMB control number for this collection is 1029–0063. Responses are mandatory.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Title: 30 CFR Part 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting.

OMB Control Number: 1029–0063.

SUMMARY: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR part 870 and section 401 of Public Law 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of information OSM could not implement its regulatory responsibilities and collect the fee.

Bureau Form Number: OSM–1.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine permittees.

Total Annual Responses: 11,192.

Total Annual Burden Hours: 2,462.

Dated May 11, 2011.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–12004 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments for 1029–0092.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for State-Federal cooperative agreements.

DATES: Comments on the proposed information collection must be received by July 18, 2011, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783 or by e-mail at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR 745—State-Federal cooperative agreements. Responses are required to obtain a benefit.

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. The OMB control number for 30 CFR 745 is 1029–0092. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR Part 745—State-Federal cooperative agreements.

OMB Control Number: 1029–0092.

SUMMARY: 30 CFR part 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities on Federal lands.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments that regulate coal operations.

Total Annual Responses: 11.

Total Annual Burden Hours: 600.

Total Annual Non-Wage Costs: $0.

Dated: May 11, 2011.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–12006 Filed 5–16–11; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–385 (Third Review)]

Granular Polytetrafluoroethylene Resin From Italy; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Granular Polytetrafluoroethylene Resin From Italy

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on granular polytetrafluoroethylene resin from Italy would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Stefania Pozzi Porter (202–205–3177; *Stefania.PozziPorter@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility

impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On May 2, 2011, the Commission determined that the domestic interested party group response to its notice of institution (75 FR 67105, November 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 1, 2011, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 6, 2011, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 6, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).[3]

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 9, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–11981 Filed 5–16–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Muzzle-Loading Firearms and Components Thereof,* DN 2804; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Thompson/Center Arms Company, Inc. on May 11, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain muzzle-loading firearms and components thereof. The complaint names as respondents Dikar Sociedad Cooperativa Limitada of Bergara, Spain; Bergara Barrels Europe of Spain; Blackpowder Products Inc. of Duluth, GA; Connecticut Valley Arms of Duluth, GA; Bergara Barrels North America of Duluth, GA; Ardesa Firearms of Spain and Traditional Sporting Goods, Inc. of Old Saybrook, CT.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by *Identify* to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

[3] See revised schedule, 76 FR 4936, January 27, 2011.

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2804") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf).* Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: May 11, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–11982 Filed 5–16–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–731]

In the Matter of Certain Toner Cartridges and Components Thereof; Determination Not To Review an Initial Determination; Issuance of a Consent Order; and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 11) granting Complainants' and Respondents' joint motion to terminate the investigation based upon entry of a consent order.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, *Esq.,* Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 30, 2010, based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Lake Success, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, "Canon") on June 28, 2010. 75 FR 44988 (July 30, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain toner cartridges and components thereof by reason of infringement of various claims of United States Patent Nos. 5,903,803 and 6,128,454. The complaint named as respondents Ninestar Image Int'l, Ltd. of Zhuhai, China; Ninestar Technology Co., Ltd. of Zhuhai, China; Ninestar Management Co., Ltd. of Zhuhai, China; Zhuhai Seine Technology Co. of Zhuhai, China; Seine Image Int'l Co. of Shatin, Hong Kong; Ninestar Image Co., Ltd. of Shatin, Hong Kong; Ziprint Image Corp. of Walnut, California; Nano Pacific Corp. of South San Francisco, California; Ninestar Tech. Co., Ltd. of City of Industry, California; Town Sky, Inc. of South San Francisco, California; ACM Technologies, Inc. of Corona, California; LD Products, Inc. of Long Beach, California; Printer Essentials.com, Inc. of Reno, Nevada; XSE Group, Inc., d/b/a Image Star of Middletown, Connecticut; Copy Technologies, Inc., d/b/a ITM Corporation of Atlanta, Georgia; Red Powers, Inc., d/b/a LaptopTraveller.com of Alhambra, California; Direct Billing International, Inc., d/b/a OfficeSupplyOutfitters.com of Carlsbad, California; Compu-Imaging, Inc. of Doral, Florida; EIS Office Solutions, Inc. of Houston, Texas; and 123 Refills, Inc. of Irwindale, California (collectively, "Respondents").

On April 6, 2011, Canon and Respondents filed a joint motion to terminate the investigation in its entirety based upon entry of a consent order. On April 7, 2011, the Commission investigative attorney filed a response in support of the joint motion. No other responses to the motion were filed.

On April 8, 2011, the ALJ issued the subject ID, granting the joint motion to terminate the investigation in its entirety. The ALJ found that the consent order stipulation complied with the requirements of Commission Rule 210.21(c)(3) (19 CFR 210.21(c)(3)) and would not be contrary to the public interest. None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID and to issue a consent order. Accordingly, this investigation is terminated.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: May 5, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–11450 Filed 5–16–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0094]

Agency Information Collection Activities: Extension of a Previously Approved Collection; Comments Requested: Department Annual Progress Report

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 48, Page 13435, on March 11, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for 30 days for public comment until June 16, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N Street, NE., Washington, DC 20530.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Ashley Hoornstra at 202–616–1314 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection; comments requested.

(2) *Title of the Form/Collection:* Department Annual Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement and public safety agencies that are recipients of COPS hiring grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 100 respondents can complete the report in an average of 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 total burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: May 11, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–12024 Filed 5–16–11; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 11, 2011, a proposed Consent Decree (the "Decree") in *United States* v. *SB Building Associates, Limited Partnership, SB Building GP, L.L.C., United States Land Resources, L.P., and United States Realty Resources, Inc., and 7.04 Acres of Land, More or Less, located within Block 58, Lot 1.03 of 2 through 130 Ford Avenue, Milltown, Middlesex County, New Jersey,* Civil Action No. 3:08–cv–05298 (AET/LHG), was lodged with the United States District Court for the District of New Jersey.

The Decree resolves the United States' claims against the Defendants under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9606 and 9607, as amended. Under the terms of the settlement, the United States will recover $300,000 for both past response costs incurred in a removal action at the Algro Knitting Mills Superfund Site in Milltown, Middlesex County, New Jersey, and stipulated penalties for Defendant SB Building, Limited Partnership's failure to comply with an administrative order on consent with respect to the Site.

The Department of Justice will receive comments relating to the Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *SB Building Associates, Limited Partnership et al.,* D.J. Ref. 90–11–3–09425.

During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice,

Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–11989 Filed 5–16–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 11, 2011, a proposed Consent Decree (the "Decree") in *United States* v. *Alsol Corporation, SB Building Associates, Limited Partnership, SB Building GP, L.L.C., United States Land Resources, L.P., United States Realty Resources, Inc., and Lawrence S. Berger,* Civil Action No. 2:09-cv-03026 (JLL/CCC), was lodged with the United States District Court for the District of New Jersey.

The Decree resolves the United States' claims against the Defendants under Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9604, as amended. Under the terms of the settlement, the United States will recover a $200,000 civil penalty for the Defendant Alsol Corporation's failure to provide entry and site access to EPA at the Michelin Powerhouse Superfund Site, located in Milltown, Middlesex County, New Jersey.

The Department of Justice will receive comments relating to the Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Alsol Corporation et al.,* D.J. Ref. 90–11–3–09697.

During the public comment period, the Decree may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–11990 Filed 5–16–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0277]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Revisions of Currently Approved Collection and Extension of Currently Approved Collection; OVC Training and Technical Assistance Center (TTAC) and OJJDP National Training and Technical Assistance Center (NTTAC) Evaluation Feedback Form Package

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice, Office of Justice Programs will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until July 18, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Janet Chiancone, Associate Administrator, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Janet Chiancone at 202–353–9258 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* OVC TTAC and OJJDP NTTAC Evaluation Feedback Form Package.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office for Victims of Crime and Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal. Other: Federal Government, Individuals or households; Not-for-profit institutions; Businesses or other for-profit. The Office for Victims of Crime

Training and Technical Assistance Center (TTAC) and the Office for Juvenile Justice and Delinquency Prevention National Training and Technical Assistance Center (NTTAC) Evaluation Feedback Form Package is designed to collect the data necessary to continuously assess the outcome and impact of the assistance provided for both monitoring and accountability purposes and to continuously assess and meet the needs of the field. OJJDP NTTAC will send these forms to technical assistance (TA) recipients, conference attendees, and product recipients, to capture important feedback on the recipient's satisfaction with the quality, efficiency, referrals, and resources provided and assess the recipients additional training and TA needs. The data will then be used to advise NTTAC on ways to improve the support provided to its users and the juvenile justice field at-large.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 24312.75 respondents will complete forms and the response time will range from .03 hours to 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,998.45 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: May 11, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–12026 Filed 5–16–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rock Burst Control Plan—Pertains to Underground Metal and Nonmetal Mines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Burst Control Plan—Pertains to Underground Metal and Nonmetal Mines," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 16, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Regulations 30 CFR 57.3461 requires underground metal and nonmetal mine operators to develop a rock burst plan within 90 days after a rock burst has been experienced. Stress data are normally recorded on gauges and plotted on maps. This information is used for work assignments to ensure miner safety and to schedule correction work.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0097. The current OMB approval is scheduled to expire on 1219–0097; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 19, 2011 (76 FR 3178).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1219–0097. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Burst Control Plan—Pertains to Underground Metal and Nonmetal Mines.

OMB Control Number: 1219–0097.

Affected Public: Private Sector—Businesses or other for profits.

Total Estimated Number of Respondents: 2.

Total Estimated Number of Responses: 2.

Total Estimated Annual Burden Hours: 24.

Total Estimated Annual Costs Burden: $0.

Dated: May 11, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–11964 Filed 5–16–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

Program Year 2011 Allotments and Grants: Workforce Investment Act, Wagner-Peyser Act, and Workforce Information

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces allotments for PY 2011 for WIA Title I Youth, Adults and Dislocated Worker Activities programs; final allotments for Employment Service (ES) activities under the Wagner-Peyser Act for PY 2011 and Workforce Information Grants allotments for PY 2011.

The WIA allotments for States and the State final allotments for the Wagner-Peyser Act are based on formulas defined in their respective statutes. The WIA allotments for the outlying areas are based on a formula determined by the Secretary. For Wagner-Peyser and Workforce Information Grants, amounts for outlying areas are provided in this Notice. ETA will release a separate TEGL and Notice in the **Federal Register** announcing the formulas and allotment levels related to the WIA funding for each of the outlying areas. At this time, we note only the overall WIA funds set aside for the outlying areas.

DATES: This Notice is effective on May 17, 2011.

FOR FURTHER INFORMATION CONTACT: WIA Youth Activities allotments—Evan Rosenberg at (202) 693–3593 or LaSharn Youngblood at (202) 693–3606; WIA Adult and Dislocated Worker Activities and ES final allotments—Mike Qualter at (202) 693–3014; Workforce Information Grant allotments—Anthony Dais at (202) 693–2784.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing WIA allotments for PY 2011 for Youth Activities, Adults and Dislocated Worker Activities; Wagner-Peyser Act PY 2011 final allotments; and PY 2011 Workforce Information Grant allotments. This Notice provides information on the amount of funds available during PY 2011 to States with an approved WIA Title I and Wagner-Peyser Act Strategic Plan for PY 2011, and information regarding allotments to the outlying areas for Wagner-Peyser and Workforce Information Grants. As noted earlier, a future Notice will announce final allotments to outlying areas for WIA programs.

The allotments are based on the funds appropriated in the Full-Year Continuing Appropriations Act, 2011, Public Law (Pub. L.) 112–10, signed April 15, 2011. This appropriation requires an across-the-board rescission of 0.2 percent to all Federal Fiscal Year (FY) 2011 discretionary program funding. Included below are tables listing the PY 2011 allotments (including the 0.2 percent rescission) for programs under WIA Title I Youth Activities (Table A), Adult and Dislocated Workers Employment and Training Activities (Tables B and C, respectively), and the PY 2011 Wagner-Peyser Act final allotments (Table D). Also attached is the PY 2011 Workforce Information Grant table (Table E).

Youth Activities Allotments. PY 2011 Youth Activities funds under WIA total $825,913,862 (including the 0.2 percent rescission). Table A includes a breakdown of the Youth Activities program allotments for PY 2011 and provides a comparison of these allotments to PY 2010 Youth Activities allotments for all States and the total set aside for outlying areas (levels for individual outlying areas will be announced separately). Before determining the amount available for States, the total funding available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Youth Activities (after the 0.2 percent rescission).

The total amount available for Native Americans is 1.5 percent of the total amount for Youth Activities (including the 0.2 percent rescission), in accordance with WIA section 127. After determining the amount for the outlying areas and Native Americans, the amount available for allotment to the States for PY 2011 is $811,460,369. This total amount was below the required $1 billion threshold specified in section 127(b)(1)(C)(iv)(IV); therefore, as in PY 2010, the WIA additional minimum provisions were not applied, and, instead, as required by WIA, the Job Training Partnership Act (JTPA) section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent State minimum floor were used. Also, as required by WIA, the provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors required in WIA use the following data for the PY 2011 allotments:

(1) Number of unemployed for Areas of Substantial Unemployment (ASUs), averages for the 12-month period, July 2009 through June 2010;

(2) Number of excess unemployed individuals or the ASU excess (depending on which is higher), averages for the same 12-month period used for ASU unemployed data; and

(3) Number of economically disadvantaged youth (age 16 to 21, excluding college students and military), from special 2000 Census calculations.

As done beginning with the PY 2006 allotments, the ASU data for the PY 2011 allotments was identified by the States using special 2000 Census data based on households, obtained under Employment and Training Administration (ETA) contract with the Census Bureau and provided to States by the Bureau of Labor Statistics.

It should be noted that the most current Census, conducted in 2010, did not include the long form survey which ETA would have used to update the data from the 2000 Census. Instead, ETA will be working with the Census Bureau over the next year to use data from the American Community Survey (ACS). ETA will alert States when new data are available for use in within-State allocation formulas; however, updated data will not be available for use with PY 2011 funding.

Adult Employment and Training Activities Allotments. The total Adult Employment and Training Activities appropriation is $770,921,920 (including the 0.2 percent rescission). Table B shows the PY2011 Adult Employment and Training Activities allotments and comparison to PY 2010 allotments by State. Like the Youth Activities program, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Adult Activities (after the 0.2 percent rescission). After determining the amount for the outlying areas, the amount available for allotments to the States is $768,994,615. Like the Youth Activities program, the WIA minimum provisions were not applied for the PY 2011 allotments because the total amount available for the States was below the $960 million threshold required for Adult Activities in section 132(b)(1)(B)(iv)(IV). Instead, as required by WIA, the minimum allotments were calculated using the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent State minimum floor. Also, like the Youth Activities program, a provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors use the

same data as used for the PY 2011 Youth Activities formula, except that data from the 2000 Census for the number of economically disadvantaged adults (age 22 to 72, excluding college students and military) were used.

It should be noted that the most current Census, conducted in 2010, did not include the long form survey which ETA would have used to update the data from the 2000 Census. Instead, ETA will be working with the Census Bureau over the next year to use data from the ACS. ETA will be alert States when data from the ACS are available for use in within-State allocation formulas; however, updated data will not be available for use with PY 2011 funding.

Dislocated Worker Employment and Training Activities Allotments. The total Dislocated Worker appropriation is $1,287,544,000 (including the 0.2 percent rescission). The total appropriation includes formula funds for the States, while the National Reserve is used for National Emergency Grants, technical assistance and training, demonstration projects, and the outlying areas' Dislocated Worker allotments. Table C shows the PY 2011 Dislocated Worker Activities fund allotments by State. Like the Youth and Adult Activities programs, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Dislocated Worker Activities (after the 0.2 percent rescission). For the State distribution of formula funds, the three formula factors required in WIA use the following data for the PY 2011 allotments:

(1) Number of unemployed, averages for the 12-month period, October 2009 through September 2010;

(2) Number of excess unemployed, averages for the 12-month period, October 2009 through September 2010; and

(3) Number of long-term unemployed, averages for the 12-month period, October 2009 through September 2010.

Since the Dislocated Worker Activities formula has no floor amount or hold-harmless provisions, funding changes for States directly reflect the impact of changes in the number of unemployed.

Wagner-Peyser Act Employment Service Final Allotments. The appropriated level for PY 2011 for ES grants totals $702,168,848 (including the 0.2 percent rescission). After determining the funding for outlying areas, allotments to States were calculated using the formula set forth at section 6 of the Wagner-Peyser Act (29 U.S.C. 49e). PY 2011 formula allotments were based on each State's share of calendar year 2010 monthly averages of the civilian labor force (CLF) and unemployment. The Secretary is required to set aside up to three percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment service activities, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, the three percent set-aside funds are included in the total allotment. The set-aside funds were distributed in two steps to States that have lost in relative share of resources from the previous year. In Step 1, States that have a CLF below one million and are also below the median CLF density were maintained at 100 percent of their relative share of prior year resources. All remaining set-aside funds were distributed on a pro-rata basis in Step 2 to all other States losing in relative share from the prior year but not meeting the size and density criteria for Step 1. The distribution of Employment Service funds (Table D) includes $700,457,204 for States, as well as $1,711,644 for outlying areas.

Under section 7 of the Wagner-Peyser Act, 10 percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for ES offices, services for groups with special needs, and for the extra costs of exemplary models for delivering job services.

Workforce Information Grants Allotments. Total PY 2011 funding for Workforce Information Grants allotments to States is $31,936,000 (including the 0.2 percent rescission). The allotment figures for each State are listed in Table E. Funds are distributed by administrative formula, with a reserve of $176,646 for Guam and the Virgin Islands. The remaining funds are distributed to the States with 40 percent distributed equally to all States and 60 percent distributed based on each State's share of CLF for the 12 months ending September 2010.

Signed in Washington, DC, on this 10th day of May 2011.

Jane Oates,

Assistant Secretary for Employment and Training Administration.

TABLE A—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION

WIA Youth activities State allotments
Comparison of PY 2011 vs PY 2010

State	PY 2010	PY 2011	Difference	% Difference
Total	$924,069,000	$825,913,862	($98,155,138)	−10.62
Alabama	11,777,698	12,455,574	677,876	5.76
Alaska	2,755,418	2,216,462	(538,956)	−19.56
Arizona	15,982,731	15,326,190	(656,541)	−4.11
Arkansas	8,446,520	6,794,393	(1,652,127)	−19.56
California	136,875,948	117,952,080	(18,923,868)	−13.83
Colorado	11,132,070	9,788,025	(1,344,045)	−12.07
Connecticut	8,869,254	8,060,872	(808,382)	−9.11
Delaware	2,269,744	2,028,651	(241,093)	−10.62
District of Columbia	2,779,082	2,402,872	(376,210)	−13.54
Florida	43,352,872	50,372,277	7,019,405	16.19
Georgia	28,251,785	24,305,197	(3,946,588)	−13.97
Hawaii	2,690,193	2,272,811	(417,382)	−15.51
Idaho	2,950,667	3,428,419	477,752	16.19
Illinois	43,545,632	36,086,031	(7,459,601)	−17.13
Indiana	19,697,136	16,043,006	(3,654,130)	−18.55
Iowa	4,750,212	5,519,334	769,122	16.19
Kansas	5,930,458	5,248,975	(681,483)	−11.49
Kentucky	14,303,105	12,514,937	(1,788,168)	−12.50
Louisiana	14,009,636	11,269,372	(2,740,264)	−19.56
Maine	3,476,520	2,887,584	(588,936)	−16.94

TABLE A—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION—Continued

WIA Youth activities State allotments
Comparison of PY 2011 vs PY 2010

State	PY 2010	PY 2011	Difference	% Difference
Maryland	11,311,383	10,073,999	(1,237,384)	−10.94
Massachusetts	17,387,925	15,988,686	(1,399,239)	−8.05
Michigan	51,768,509	41,642,666	(10,125,843)	−19.56
Minnesota	14,264,509	11,474,392	(2,790,117)	−19.56
Mississippi	13,081,892	10,523,093	(2,558,799)	−19.56
Missouri	17,781,382	14,549,044	(3,232,338)	−18.18
Montana	2,344,418	2,174,750	(169,668)	−7.24
Nebraska	2,518,508	2,288,141	(230,367)	−9.15
Nevada	7,654,897	8,303,837	648,940	8.48
New Hampshire	2,269,744	2,253,475	(16,269)	−0.72
New Jersey	20,938,294	20,362,826	(575,468)	−2.75
New Mexico	4,365,301	4,775,669	410,368	9.40
New York	51,835,670	46,253,787	(5,581,883)	−10.77
North Carolina	25,351,154	24,598,968	(752,186)	−2.97
North Dakota	2,269,744	2,028,651	(241,093)	−10.62
Ohio	39,313,893	31,915,350	(7,398,543)	−18.82
Oklahoma	6,970,582	6,877,913	(92,669)	−1.33
Oregon	13,707,810	11,026,583	(2,681,227)	−19.56
Pennsylvania	31,871,328	29,506,561	(2,364,767)	−7.42
Puerto Rico	29,722,110	23,908,509	(5,813,601)	−19.56
Rhode Island	4,531,698	3,767,218	(764,480)	−16.87
South Carolina	17,299,897	13,916,063	(3,383,834)	−19.56
South Dakota	2,269,744	2,028,651	(241,093)	−10.62
Tennessee	18,716,506	16,288,215	(2,428,291)	−12.97
Texas	57,404,782	52,833,195	(4,571,587)	−7.96
Utah	3,547,273	4,121,624	574,351	16.19
Vermont	2,269,744	2,028,651	(241,093)	−10.62
Virginia	13,127,843	13,540,444	412,601	3.14
Washington	17,997,280	15,992,583	(2,004,697)	−11.14
West Virginia	3,924,261	4,315,932	391,671	9.98
Wisconsin	13,963,286	13,099,180	(864,106)	−6.19
Wyoming	2,269,744	2,028,651	(241,093)	−10.62
State Total	907,897,792	811,460,369	(96,437,423)	−10.62
Outlying Areas Total	2,310,173	2,064,785	(245,388)	−10.62
Native Americans	13,861,035	12,388,708	(1,472,327)	−10.62

TABLE B—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION

WIA Adult activities State allotments
Comparison of PY 2011 vs PY 2010

State	PY 2010 (pre-FY 2011 0.2% rescission)	PY 2011	Difference	% Difference
Total	$861,540,000	$770,921,920	($90,618,080)	−10.52
Alabama	11,546,269	12,090,307	544,038	4.71
Alaska	2,630,761	2,118,648	(512,113)	−19.47
Arizona	15,227,363	14,638,503	(588,860)	−3.87
Arkansas	7,946,421	6,399,544	(1,546,877)	−19.47
California	131,676,574	113,937,862	(17,738,712)	−13.47
Colorado	10,028,610	8,838,405	(1,190,205)	−11.87
Connecticut	7,899,746	7,208,528	(691,218)	−8.75
Delaware	2,148,465	1,922,487	(225,978)	−10.52
District of Columbia	2,416,917	2,040,921	(375,996)	−15.56
Florida	44,003,639	50,666,671	6,663,032	15.14
Georgia	26,468,737	22,840,137	(3,628,600)	−13.71
Hawaii	2,786,714	2,375,218	(411,496)	−14.77
Idaho	2,793,005	3,112,389	319,384	11.44
Illinois	40,399,352	33,485,477	(6,913,875)	−17.11
Indiana	17,396,927	14,120,139	(3,276,788)	−18.84
Iowa	3,329,069	3,872,586	543,517	16.33
Kansas	4,907,309	4,349,496	(557,813)	−11.37
Kentucky	14,765,556	12,990,026	(1,775,530)	−12.02
Louisiana	13,633,150	10,979,275	(2,653,875)	−19.47
Maine	3,276,134	2,730,113	(546,021)	−16.67

TABLE B—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION—Continued

WIA Adult activities State allotments
Comparison of PY 2011 vs PY 2010

State	PY 2010 (pre-FY 2011 0.2% rescission)	PY 2011	Difference	% Difference
Maryland	10,691,615	9,553,233	(1,138,382)	−10.65
Massachusetts	15,779,759	14,398,404	(1,381,355)	−8.75
Michigan	48,336,592	38,927,229	(9,409,363)	−19.47
Minnesota	12,498,015	10,065,109	(2,432,906)	−19.47
Mississippi	12,175,592	9,805,450	(2,370,142)	−19.47
Missouri	16,419,448	13,419,717	(2,999,731)	−18.27
Montana	2,281,343	2,120,862	(160,481)	−7.03
Nebraska	2,148,465	1,922,487	(225,978)	−10.52
Nevada	7,675,248	8,185,256	510,008	6.64
New Hampshire	2,148,465	1,922,487	(225,978)	−10.52
New Jersey	20,803,661	20,215,513	(588,148)	−2.83
New Mexico	4,166,386	4,573,434	407,048	9.77
New York	51,297,403	45,933,685	(5,363,718)	−10.46
North Carolina	23,389,183	22,906,147	(483,036)	−2.07
North Dakota	2,148,465	1,922,487	(225,978)	−10.52
Ohio	36,633,264	29,608,861	(7,024,403)	−19.17
Oklahoma	6,516,603	6,455,261	(61,342)	−0.94
Oregon	12,848,682	10,347,514	(2,501,168)	−19.47
Pennsylvania	29,034,229	26,995,920	(2,038,309)	−7.02
Puerto Rico	31,530,340	25,392,538	(6,137,802)	−19.47
Rhode Island	3,919,536	3,245,983	(673,553)	−17.18
South Carolina	16,317,914	13,141,414	(3,176,500)	−19.47
South Dakota	2,148,465	1,922,487	(225,978)	−10.52
Tennessee	18,105,616	15,820,576	(2,285,040)	−12.62
Texas	53,798,899	49,503,599	(4,295,300)	−7.98
Utah	2,816,695	3,276,560	459,865	16.33
Vermont	2,148,465	1,922,487	(225,978)	−10.52
Virginia	11,828,202	12,422,005	593,803	5.02
Washington	16,563,114	14,762,815	(1,800,299)	−10.87
West Virginia	4,058,158	4,403,989	345,831	8.52
Wisconsin	11,729,145	11,261,887	(467,258)	−3.98
Wyoming	2,148,465	1,922,487	(225,978)	−10.52
State Total	859,386,150	768,994,615	(90,391,535)	−10.52
Outlying Areas Total	2,153,850	1,927,305	(226,545)	−10.52

TABLE C—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION

WIA Dislocated worker activities State allotments
comparison of PY 2011 vs PY 2010

State	PY 2010 (pre-FY 2011 0.2% rescission)	PY 2011	% Difference	Difference
Total	$1,413,000,000	$1,287,544,000	($125,456,000)	−8.88
Alabama	17,669,335	16,128,630	(1,540,705)	−8.72
Alaska	2,187,095	1,804,590	(382,505)	−17.49
Arizona	22,788,184	21,992,101	(796,083)	−3.49
Arkansas	6,867,051	6,535,066	(331,985)	−4.83
California	192,413,016	170,303,818	(22,109,198)	−11.49
Colorado	14,509,305	13,969,269	(540,036)	−3.72
Connecticut	11,850,579	12,117,862	267,283	2.26
Delaware	2,778,921	2,526,887	(252,034)	−9.07
District of Columbia	2,990,511	2,592,780	(397,731)	−13.30
Florida	83,019,633	81,270,552	(1,749,081)	−2.11
Georgia	40,912,792	35,502,366	(5,410,426)	−13.22
Hawaii	3,268,124	2,539,205	(728,919)	−22.30
Idaho	4,536,856	4,240,518	(296,338)	−6.53
Illinois	54,673,396	52,391,500	(2,281,896)	−4.17
Indiana	27,257,656	22,971,198	(4,286,458)	−15.73
Iowa	5,888,367	6,222,410	334,043	5.67
Kansas	6,855,442	5,780,312	(1,075,130)	−15.68
Kentucky	18,089,024	14,985,351	(3,103,673)	−17.16
Louisiana	9,812,674	8,768,499	(1,044,175)	−10.64
Maine	4,578,544	3,599,239	(979,305)	−21.39

TABLE C—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—Continued

WIA Dislocated worker activities State allotments
comparison of PY 2011 vs PY 2010

State	PY 2010 (pre-FY 2011 0.2% rescission)	PY 2011	% Difference	Difference
Maryland	15,543,289	14,302,198	(1,241,091)	−7.98
Massachusetts	22,706,846	21,065,395	(1,641,451)	−7.23
Michigan	64,544,036	51,285,260	(13,258,776)	−20.54
Minnesota	18,020,939	12,889,304	(5,131,635)	−28.48
Mississippi	9,867,047	10,150,118	283,071	2.87
Missouri	22,223,344	19,187,040	(3,036,304)	−13.66
Montana	2,174,950	2,047,301	(127,649)	−5.87
Nebraska	2,428,300	2,059,689	(368,611)	−15.18
Nevada	14,124,712	14,332,064	207,352	1.47
New Hampshire	3,181,956	2,764,686	(417,270)	−13.11
New Jersey	33,365,324	32,250,359	(1,114,965)	−3.34
New Mexico	4,093,214	5,179,814	1,086,600	26.55
New York	65,534,311	55,889,913	(9,644,398)	−14.72
North Carolina	44,039,515	35,096,512	(8,943,003)	−20.31
North Dakota	690,086	499,920	(190,166)	−27.56
Ohio	51,610,221	44,079,882	(7,530,339)	−14.59
Oklahoma	6,905,534	6,917,377	11,843	0.17
Oregon	20,167,658	15,077,317	(5,090,341)	−25.24
Pennsylvania	39,561,993	37,972,551	(1,589,442)	−4.02
Puerto Rico	17,054,847	13,696,022	(3,358,825)	−19.69
Rhode Island	6,227,600	5,104,108	(1,123,492)	−18.04
South Carolina	23,089,893	19,186,456	(3,903,437)	−16.91
South Dakota	1,000,388	840,914	(159,474)	−15.94
Tennessee	26,930,077	22,128,000	(4,802,077)	−17.83
Texas	61,378,563	62,020,936	642,373	1.05
Utah	4,625,970	6,063,094	1,437,124	31.07
Vermont	1,787,950	1,243,942	(544,008)	−30.43
Virginia	18,472,220	18,481,552	9,332	0.05
Washington	24,271,171	22,272,901	(1,998,270)	−8.23
West Virginia	4,551,211	4,558,971	7,760	0.17
Wisconsin	19,934,322	17,345,523	(2,588,799)	−12.99
Wyoming	786,008	1,201,048	415,040	52.80
State Total	1,183,840,000	1,063,432,320	(120,407,680)	−10.17
Outlying Areas Total	3,532,500	3,218,860	(313,640)	−8.88
Other National Reserve	225,627,500	220,892,820	(4,734,680)	−2.10

TABLE D—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION

Employment Service (Wagner-Peyser)
PY 2011 Final vs PY 2010 Final Allotments

State	Final PY 2010	Final PY 2011	Difference	% Difference
Total	$703,576,000	$702,168,848	($1,407,152)	−0.20
Alabama	9,042,125	9,001,789	(40,336)	−0.45
Alaska	7,648,207	7,632,911	(15,296)	−0.20
Arizona	12,822,660	13,258,184	435,524	3.40
Arkansas	5,773,513	5,681,857	(91,656)	−1.59
California	84,038,299	83,952,834	(85,465)	−0.10
Colorado	10,944,825	10,866,249	(78,576)	−0.72
Connecticut	7,843,690	7,819,386	(24,304)	−0.31
Delaware	1,965,210	1,961,280	(3,930)	−0.20
District of Columbia	2,479,777	2,418,616	(61,161)	−2.47
Florida	40,350,319	41,764,675	1,414,356	3.51
Georgia	20,714,232	20,557,324	(156,908)	−0.76
Hawaii	2,525,177	2,494,923	(30,254)	−1.20
Idaho	6,372,318	6,359,573	(12,745)	−0.20
Illinois	29,258,315	29,100,366	(157,949)	−0.54
Indiana	13,903,821	13,763,379	(140,442)	−1.01
Iowa	6,548,144	6,495,675	(52,469)	−0.80
Kansas	6,048,497	5,968,265	(80,232)	−1.33
Kentucky	9,125,242	9,075,114	(50,128)	−0.55
Louisiana	9,018,836	8,843,833	(175,003)	−1.94
Maine	3,789,556	3,781,977	(7,579)	−0.20

TABLE D—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION—Continued

Employment Service (Wagner-Peyser)
PY 2011 Final vs PY 2010 Final Allotments

State	Final PY 2010	Final PY 2011	Difference	% Difference
Maryland	11,800,235	11,722,275	(77,960)	−0.66
Massachusetts	14,269,289	14,234,162	(35,127)	−0.25
Michigan	24,475,871	24,113,898	(361,973)	−1.48
Minnesota	12,164,816	11,997,952	(166,864)	−1.37
Mississippi	6,285,179	6,165,253	(119,926)	−1.91
Missouri	13,030,412	12,903,606	(126,806)	−0.97
Montana	5,207,490	5,197,075	(10,415)	−0.20
Nebraska	6,258,380	6,245,863	(12,517)	−0.20
Nevada	6,370,598	6,550,359	179,761	2.82
New Hampshire	2,859,890	2,833,820	(26,070)	−0.91
New Jersey	18,931,877	18,929,760	(2,117)	−0.01
New Mexico	5,843,720	5,832,033	(11,687)	−0.20
New York	40,405,589	40,044,986	(360,603)	−0.89
North Carolina	20,093,605	19,923,339	(170,266)	−0.85
North Dakota	5,302,783	5,292,177	(10,606)	−0.20
Ohio	26,537,471	26,306,239	(231,232)	−0.87
Oklahoma	6,902,154	6,853,237	(48,917)	−0.71
Oregon	8,902,979	8,821,269	(81,710)	−0.92
Pennsylvania	26,651,245	26,526,233	(125,012)	−0.47
Puerto Rico	8,070,562	7,871,512	(199,050)	−2.47
Rhode Island	2,652,902	2,639,094	(13,808)	−0.52
South Carolina	9,953,286	9,864,977	(88,309)	−0.89
South Dakota	4,900,991	4,891,189	(9,802)	−0.20
Tennessee	13,154,566	13,083,238	(71,328)	−0.54
Texas	48,080,415	48,565,592	485,177	1.01
Utah	7,468,473	7,284,273	(184,200)	−2.47
Vermont	2,295,903	2,291,311	(4,592)	−0.20
Virginia	15,795,653	15,912,960	117,307	0.74
Washington	14,688,343	14,651,411	(36,932)	−0.25
West Virginia	5,609,667	5,598,448	(11,219)	−0.20
Wisconsin	12,881,393	12,716,632	(164,761)	−1.28
Wyoming	3,802,426	3,794,821	(7,605)	−0.20
State total	701,860,926	700,457,204	(1,403,722)	−0.20
Guam	329,219	328,561	(658)	−0.20
Virgin Islands	1,385,855	1,383,083	(2,772)	−0.20
Outlying areas total	1,715,074	1,711,644	(3,430)	−0.20

TABLE E—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION

Workforce information grants to States
PY 2011 vs PY 2010 Allotments

State	PY 2010	PY 2011	Difference	% Difference
Total	$32,000,000	$31,936,000	($64,000)	−0.20
Alabama	505,992	500,647	(5,345)	−1.06
Alaska	288,781	288,982	201	0.07
Arizona	631,779	632,935	1,156	0.18
Arkansas	412,277	411,497	(780)	−0.19
California	2,515,778	2,483,795	(31,983)	−1.27
Colorado	577,959	570,990	(6,969)	−1.21
Connecticut	475,973	476,946	973	0.20
Delaware	298,498	296,667	(1,831)	−0.61
District of Columbia	285,170	285,384	214	0.08
Florida	1,377,429	1,379,470	2,041	0.15
Georgia	832,325	821,518	(10,807)	−1.30
Hawaii	324,368	322,344	(2,024)	−0.62
Idaho	337,134	337,184	50	0.01
Illinois	1,056,837	1,060,267	3,430	0.32
Indiana	637,859	628,290	(9,569)	−1.50
Iowa	450,390	450,618	228	0.05
Kansas	430,687	429,451	(1,236)	−0.29
Kentucky	498,273	499,293	1,020	0.20
Louisiana	499,711	500,874	1,163	0.23

TABLE E—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION—Continued

Workforce information grants to States
PY 2011 vs PY 2010 Allotments

State	PY 2010	PY 2011	Difference	% Difference
Maine	331,210	330,405	(805)	−0.24
Maryland	608,631	607,963	(668)	−0.11
Massachusetts	665,387	671,621	6,234	0.94
Michigan	840,933	840,199	(734)	−0.09
Minnesota	606,706	609,146	2,440	0.40
Mississippi	404,978	403,784	(1,194)	−0.29
Missouri	613,786	612,168	(1,618)	−0.26
Montana	306,340	305,461	(879)	−0.29
Nebraska	365,970	364,956	(1,014)	−0.28
Nevada	416,502	412,224	(4,278)	−1.03
New Hampshire	335,493	335,675	182	0.05
New Jersey	800,638	801,753	1,115	0.14
New Mexico	362,201	362,260	59	0.02
New York	1,439,096	1,431,886	(7,210)	−0.50
North Carolina	803,030	800,773	(2,257)	−0.28
North Dakota	289,915	289,407	(508)	−0.18
Ohio	974,547	973,816	(731)	−0.08
Oklahoma	461,686	461,908	222	0.05
Oregon	487,891	484,674	(3,217)	−0.66
Pennsylvania	1,032,188	1,032,323	135	0.01
Puerto Rico	408,794	404,628	(4,166)	−1.02
Rhode Island	314,349	314,871	522	0.17
South Carolina	512,460	510,108	(2,352)	−0.46
South Dakota	299,507	298,888	(619)	−0.21
Tennessee	616,563	615,549	(1,014)	−0.16
Texas	1,704,900	1,734,172	29,272	1.72
Utah	414,068	410,093	(3,975)	−0.96
Vermont	288,734	288,413	(321)	−0.11
Virginia	753,436	756,466	3,030	0.40
Washington	679,171	677,933	(1,238)	−0.18
West Virginia	342,209	340,653	(1,556)	−0.45
Wisconsin	624,061	617,807	(6,254)	−1.00
Wyoming	280,600	280,219	(381)	−0.14
State total	31,823,200	31,759,354	(63,846)	−0.20
Guam	92,899	92,813	(86)	−0.09
Virgin Islands	83,901	83,833	(68)	−0.08
Outlying areas total	176,800	176,646	(154)	−0.09

[FR Doc. 2011–11881 Filed 5–16–11; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Comment Request

AGENCY: Bureau of Labor Statistics.

ACTION: Notice of solicitation of comments.

SUMMARY: To expand the scope of coverage for the Producer Price Index (PPI), BLS recently developed an experimental aggregation system that includes price changes for goods, services, and construction sold to all portions of final demand and intermediate demand.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 18, 2011.

ADDRESSES: Send comments to Jonathan Weinhagen, Producer Price Index, Bureau of Labor Statistics, Room 3650, 2 Massachusetts Avenue, NE., Washington, DC 20212 or by *e-mail to: weinhagen.jonathan@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan Weinhagen, Producer Price Index, Bureau of Labor Statistics, telephone number 202–691–7709 (this is not a toll-free number), or by *e-mail to: weinhagen.jonathan@bls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the Bureau of Labor Statistics (BLS) uses the stage-of-processing (SOP) system as the key structure for analyzing producer prices. This system aggregates commodity price indexes for processed and unprocessed goods and is organized into three stages: Finished goods, intermediate goods, and crude materials for further processing. Over the past 20 years, the BLS has expanded Producer Price Index (PPI) coverage to include price indexes for many service and construction activities, but the SOP system continues to include only goods indexes. The PPI program recently developed an experimental aggregation system that includes goods price indexes as well as service and construction price indexes for products sold to all portions of final demand (personal consumption, capital investment, government use, and export) and to intermediate demand (business inputs, excluding capital investment). The experimental aggregation system was introduced with the release of January 2011 data in February 2011. This new system is a model that greatly expands PPI coverage of the United States economy.

In developing the experimental aggregation system, two main criteria were considered. First, the system should be designed in such a way as to alleviate or minimize problems resulting from multiple counting. Second, the system should be analytically useful. Multiple counting can lead to overstated or understated measures of inflation. Multiple counting occurs when the price for a specific commodity and the inputs to production for that same commodity are included in an aggregate index. Before 1978, for example, the PPI program highlighted the all commodities index as its primary aggregate index. This index aggregates prices for all goods sold in the economy, using weights that reflect sales to all portions of intermediate and final demand. The all commodities index was the subject of serious criticism when petroleum prices spiked in the 1970s. Price change, as measured by the all commodities index, was seen as exaggerated because the index included both gasoline sold for final demand and crude petroleum, the primary input used in the production of gasoline. The SOP system substantially reduced multiple counting by separating goods into three stages: Crude, intermediate, and finished.

The second criterion is that the aggregation system be analytically useful. The SOP system is more analytically useful than the all commodities index, as the system potentially allows price changes to be tracked through the various segments of the economy. In developing an aggregation system that incorporates prices for services and construction, the possible analytical functions of the system were considered.

The new PPI aggregation system was designed to satisfy the two criteria identified earlier. To avoid multiple counting, the system separates final-demand transactions from intermediate-demand transactions and, in some cases, voids instances of multiple counting. One of the reasons the system is useful for analysis is that it combines commodity indexes into meaningful final-demand and intermediate-demand aggregates. The aggregates convey information about the types of commodities contributing to inflation at both the final demand level and at earlier stages of production, and can be used to track price change through the economy.

II. Final Demand

The final demand segment of the PPI experimental aggregation system tracks price change for commodities—goods, services, and construction—sold by producers to all portions of final demand (personal consumption, capital investment, government, and export).[1] The final demand segment of the experimental aggregation system is composed of six main price indexes: Final demand goods, final demand construction, final demand transportation services, final demand trade services, final demand traditional services, and overall final demand. The experimental final demand goods index measures price change for both unprocessed and processed goods sold to final demand. Fresh fruits sold to consumers or computers sold as exports are examples of transactions included in this index. The final demand construction index tracks price change for new construction as well as maintenance and repair construction sold to final demand. Construction of office buildings is an example of a commodity in this index. The final demand transportation services index tracks price change for transportation of passengers and cargo sold to final demand and includes prices for warehousing and storage of goods sold to final demand. The final demand trade services index measures price change for the retailing and wholesaling of merchandise sold to final demand, generally without transformation. The final demand traditional services index tracks price change for services other than trade and transportation services sold to final demand. Publishing, banking, lodging, and health care are examples of traditional services in the index. The overall final demand index tracks price change for all types of commodities sold to final demand and is constructed by combining the five final demand indexes described above.

III. Intermediate Demand

The intermediate demand portion of the PPI experimental aggregation system tracks price change for goods, services, and construction products sold to businesses as inputs to production, excluding capital investment. In order to meet the needs of different data users, the experimental aggregation system includes two separate treatments of intermediate demand. The first treatment organizes intermediate-demand commodities by commodity type and is structurally similar to the final demand portion of the system. The second approach organizes intermediate demand commodities into stages by production flow with the explicit goal of developing a forward flow model of production and price change.

Intermediate-demand-by-commodity-type. The intermediate-demand-by-commodity-type portion of the experimental aggregation system organizes indexes for commodities sold to businesses, where types include goods, services, and maintenance and repair construction. The system is composed of six main price indexes: Unprocessed goods for intermediate demand, processed goods for intermediate demand, intermediate demand construction, intermediate demand transportation services, intermediate demand trade services, and intermediate demand traditional services. The unprocessed-goods-for-intermediate-demand price index measures price change for goods that have undergone no fabrication and will be sold to businesses as inputs to production. Crude petroleum sold to refineries is an example of an unprocessed good sold to intermediate demand. The processed-goods-for-intermediate-demand index tracks price change for fabricated goods sold as business inputs. Examples include car parts sold to car manufacturers and gasoline sold to trucking companies. The intermediate demand construction index measures price change for construction purchased by firms as inputs to production. Because new construction is categorized in the final demand portion of the economy, this index tracks price change for maintenance and repair construction purchased by firms. The intermediate demand transportation services indexes measure price change for business travel as well as transportation and warehousing of cargo sold to intermediate demand. The index for intermediate trade services measures price change in the service of retailing or wholesaling goods purchased by businesses as inputs to production. Finally, the intermediate traditional services price index tracks price change in traditional services purchased by firms as inputs to production. Legal and accounting services purchased by businesses are examples of intermediate

[1] All PPI aggregate indexes, including the SOP indexes and experimental aggregation indexes, are constructed from producers' output prices. In both the SOP system and experimental aggregation system, commodity prices are aggregated according to the type of buyer, and producer output prices are used as a proxy for actual prices paid by the buyer. In many cases, the same commodity is purchased by different types of buyers and is therefore included in more than one aggregate index. In these cases, the same PPI commodity index often is used in all aggregations. For example, regular gasoline is purchased for personal consumption, export, government use, and business use. The PPI program publishes only one commodity index for regular gasoline (wpu057104), and this index is used in all aggregations regardless of whether the gasoline is sold for personal consumption, as an export, to government, or to businesses.

traditional services. The system does not include an overall intermediate demand index since this index would have severe multiple counting problems.

Intermediate-demand-by-production-flow. The production flow treatment of intermediate demand within the experimental aggregation system is a stage-based system of price indexes. The stage-based indexes can be used to study price transmission relationships between intermediate-demand stages, and to final demand. The production flow treatment contains four main indexes: Intermediate-demand stages 1 through 4.

A four-step process was used by the PPI program to develop the intermediate-demand-by-production-flow system. The first step in the process of developing stages was to determine the total production of each industry in the economy. In general, industries are classified as primary producers of specific goods or services; however, industries may also be secondary producers of other goods or services. The first step therefore requires determining both the primary production and secondary production of each industry in the economy. The 2002 BEA "Make of Commodities by Industries" table was used for this purpose.

The second step in developing stages was to ascertain where the total output of each industry is consumed. This step requires determining, for each industry, the portion of the industry output consumed as final demand and the portion consumed as intermediate demand. For the intermediate-demand portion, determining which specific industries are consuming the industry's output also is required. BEA 2002 "Use of Commodities by Industry" data were employed to make this determination.

The third step in developing stages was to assign industries to stages of production. The PPI program chose the criterion of maximizing net forward flow within the system to assign industries to stages. Net forward flow is defined as (forward shipments of the industry stage + inputs received from previous stages of process)—(backward shipments of the industry stage + inputs received from forward stages of process).

The PPI program implemented a two-step procedure to attempt to maximize net forward flow. In the first step, a set of rules was used to assign industries to stages and select the appropriate number of stages for the system. The system that the PPI program eventually chose is a four-stage system. The set of rules used to assign industries to the four stages is summarized as follows:

- Assign industry to stage 4 if shipments sold to final demand ≥75 percent of industry production.
- Assign industry to stage 3 if shipments sold to final demand and to stage 4 ≥65 percent of industry production and shipments sold to final demand <75 percent of production.
- Assign industry to stage 2 if shipments sold to final demand, to stage 4, and to stage 3 ≥65 percent of industry production; and shipments sold to final demand and to stage 4 <65 percent of production; and shipments sold to final demand <75 percent.
- Assign industry to stage 1 if it does not meet the conditions of stage 4, 3, or 2.

Before selecting the number of stages and set of rules just described, the PPI program examined many different sets of rules and numbers of stages. It eventually chose the aforementioned system because it performed very well in terms of maximizing net forward flow and minimizing internal flow (shipments produces and consumed in the same stage of production).

After the assignment of industries to stages by use of the aforementioned rules, the second step in the procedure to maximize net forward flow was to examine the effects on net forward flow of moving individual industries to stages to which they were not originally assigned. In cases in which there were substantial gains to net forward flow industries were left in the new stage.

The PPI production-flow-based system exhibits strong forward flow and little backflow. After weighting, 83.6 percent of transactions in the system are forward flowing, 5.7 percent are back flowing, and 10.7 percent are internally flowing.

The final step in constructing stages for the production-flow-based intermediate demand indexes was to determine the commodities to be included and weights to be used in the intermediate demand indexes. It is important to understand that these indexes track prices for inputs consumed by industries in each of the four stages of production, as opposed to prices for the output produced by industries in each of the four stages of production. These indexes also exclude prices for inputs both produced and consumed within an industry production stage, thereby eliminating any multiple counting of price change. The fourth intermediate demand index, for example, tracks price change for inputs consumed, but not produced, by industries included in the fourth stage of production. Recall that industries classified in the fourth stage of production mostly produce goods sold to final demand. The stage 4 intermediate demand index therefore measures price change in the inputs to production of industries that produce primarily final-demand goods (stage 4 producers).

IV. Further Information

For further information about the new PPI experimental aggregation system, please visit *http://www.bls.gov/ppi/experimentalaggregation.htm.* The experimental aggregation Web page contains information on relative importance figures for categories, various methodological articles from the *Monthly Labor Review and PPI Detailed Report,* a table showing the industry stage assignments in intermediate demand by production flow, a list of areas of non-coverage, and instructions for obtaining time series data.

V. Desired Focus of Comments

Comments and recommendations are requested from the public on the new PPI experimental aggregation system. The concepts, methods, and definitions described here may change based on input from the public and experience gained in data collection.

The BLS welcomes comments on any aspect of the experimental aggregation system but is especially interested in comments on:

1. The inclusion of the weight for government purchases and exports in the new system.
2. The usefulness of the new experimental aggregation system, including either or both treatments of intermediate demand—intermediate-demand by production flow and intermediate demand by commodity type.
3. The criterion of maximizing net forward flow to develop the intermediate demand by production flow segment of the experimental aggregation system.
4. The usefulness of the commodity groupings. The final demand and intermediate demand by commodity type portion of the experimental aggregation system group price indexes by type of commodities, where commodity types include unprocessed goods, processed goods, traditional services, transportation services, trade services, and construction.

Signed at Washington, DC, this 11th day of May 2011.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2011–12042 Filed 5–16–11; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–047)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Monday, June 20, 2011, 9 a.m. to 5:30 p.m.; Tuesday, June 21, 2011, 9 a.m. to 5:30 p.m.; and Wednesday, June 22, 2011, 9 a.m. to 1 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Rooms 9H40, 8R40, and 3H46 consecutively, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status
—Status of Living with a Star Program
—Status of Solar Terrestrial Probes Program
—Status of Explorer Program
—Research and Analysis Programs
—Report from Data and Computing Working Group
—Assessment of Heliophysics Division Science Accomplishments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: Full Name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: May 12, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–12104 Filed 5–16–11; 8:45 am]

BILLING CODE P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, May 24, 2011.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

8251A Aircraft Accident Report: Collision into Mountainous Terrain, GCI Communication Corp., de Havilland DHC–3T, N455A, Aleknagik, Alaska, August 9, 2010.

8306 Aircraft Accident Report: Crash After Encounter with Instrument Meteorological Conditions During Takeoff from Remote Landing Site, New Mexico State Police Agusta S.p.A. A–109E, N606SP, near Santa Fe, New Mexico, June 9, 2009.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, May 20, 2011.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by e-mail at *bingc@ntsb.gov.*

Friday, May 13, 2011.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2011–12271 Filed 5–13–11; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0104]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 21, 2011 to May 4, 2011. The last biweekly notice was published on May 3, 2011 (76 FR 24926).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will

establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E–Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E–Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the ADAMS Library online at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: March 7, 2011.

Description of amendment request: The proposed amendment would add an applicability period of 42.1 effective full power years (EFPY) to TS LCO 3.4.3, figures 3.4.3–1 and 3.4.3–2 which contain the pressure-temperature (P/T) limit curves for primary coolant system (PCS) heatup and cooldown, and limiting condition for operation (LCO) 3.4.12 figure 3.4.12–1, which contains the low temperature overpressure protection (LTOP) setpoint limit curve.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

No changes are being made to the existing pressure-temperature (P/T) limit curves in TS Limiting Condition for Operation (LCO) 3.4.3

Figures 3.4.3–1 and 3.4.3–2 and the low temperature overpressure (LTOP) setpoint limit curve in LCO 3.4.12 Figure 3.4.12–1. The P/T limits curves and the LTOP setpoint limit curve are only being revised to add the applicability period of 42.1 effective full power years. This applicability period has been verified to be conservative for operation through the expiration of the operating license on March 24, 2031.

The changes to the TS figures are applicable to normal plant operations and do not influence the probability of occurrence or safety analysis considerations for design basis accidents. Consequently, there will be no change to the probability or consequences of accidents previously evaluated. Operating the facility in accordance with the P/T limit and LTOP setpoint limit curves ensures that stresses caused by the thermal gradient through the RV beltline material remain bounded by the stress analyses. The proposed amendment does not involve operation of required structures, systems, or components in a manner or configuration different than previously recognized or evaluated. No radiological barriers are affected by the change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No changes are being made to the existing P/T limit curves in TS Figures 3.4.3–1 and 3.4.3–2 and or in the existing LTOP setpoint limit curves in TS Figure 3.4.12–1. The TS figures are only being changed to add the applicability period of 42.1 effective full power years for the P/T limits and LTOP setpoint limit curves. Adding the applicability periods to the TS figures will not create the possibility of any new or different kind of accidents.

The change does not involve a modification of plant structures, systems, or components. The change will not affect the manner in which the plant is operated and will not degrade the reliability of structures, systems, or components. Equipment protection features will not be deleted or modified, equipment redundancy or independence will not be reduced, and supporting system performance will not be affected. No new failure modes or mechanisms will be introduced as a result of this proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Appendix G to 10 CFR Part 50 describes the conditions that require P/T limits and provides the general bases for these limits. Operating limits based on the criteria of Appendix G, as defined by applicable regulations, codes and standards, provide reasonable assurance that non-ductile or rapidly propagating failure will not occur. The P/T limits are prescribed for all plant modes to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause non-ductile failure of the reactor coolant pressure boundary. Calculation of P/T limits in accordance with the criteria of Appendix G to 10 CFR Part 50 and applicable regulatory requirements ensures that adequate margins of safety are maintained and there is no significant reduction in a margin of safety.

No change is being made to the existing P/T limit curves or LTOP setpoint curve. Only the applicability period associated with the P/T Limits and LTOP setpoints is being extended. Since the P/T limits and LTOP setpoint limits remain unchanged there is no reduction in a margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. There is no change or impact on any safety analysis assumption or on any other parameter affecting the course of an accident analysis supporting the basis of any Technical Specification. The proposed change does not involve any increase in calculated off-site dose consequences.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 4, 2011.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to define a new time limit for restoring inoperable reactor coolant system (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable and make conforming TS Bases changes. These changes are consistent with NRC-approved Revision 3 to Technical Specification Task Force (TSTF) Standard Technical Specification (STS) Change Traveler TSTF–514, "Revise BWR Operability Requirements and Actions for RCS Leakage Instrumentation."

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the *Code of Federal Regulations* (10 CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable Reactor Coolant System (RCS) leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the drywell atmospheric gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Robert D. Carlson.

Indiana Michigan Power Company (the Licensee), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2 (DCCNP–1), Berrien County, Michigan

Date of amendment request: March 18, 2011.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS), removing the specific isolation time for the main steam and main feedwater isolation valves (MSIVs) from Surveillance Requirements 3.7.2.1, 3.7.3.1, and 3.7.3.2. These changes were previously approved generically by the NRC staff and are tracked as Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler TSTF–491.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee incorporated by reference the no significant hazards consideration (NSHC) analysis endorsed by the NRC staff in a December 29, 2006, **Federal Register** notice (71 FR 78472) and which was published in an October 5, 2006, **Federal Register** notice (71 FR 58884). The October 5, 2006, NSHC analysis is reproduced below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows relocating main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. The proposed change is described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–491 related to relocating the main steam and main feedwater valves isolation times to the Licensee Controlled Document that is referenced in the Bases and replacing the isolation time with the phase "within limits."

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes relocate the main steam and main feedwater isolation valve times to the Licensee Controlled Document that is referenced in the Bases. The requirements to perform the testing of these isolation valves are retained in the TS. Future changes to the Bases or licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, "Changes, test and experiments," to ensure that such changes do not result in more than minimal increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes relocate the main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the phase "within limits." The changes do not involve a physical altering of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in methods governing normal plant operation. The requirements in the TS continue to require testing of the main steam and main feedwater isolation valves to ensure the proper functioning of these isolation valves.

Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed changes relocate the main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the phase "within limits." Instituting the proposed changes will continue to ensure the testing of main steam and main feedwater isolation valves. Changes to the Bases or license controlled document are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that main steam and feedwater isolation valve testing is conducted such that there is no significant reduction in the margin of safety.

The margin of safety provided by the isolation valves is unaffected by the proposed changes since there continue to be TS requirements to ensure the testing of main steam and main feedwater isolation valves. The proposed changes maintain sufficient controls to preserve the current margins of safety.

The NRC staff has reviewed the above analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Robert J. Pascarelli.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 23, 2011.

Description of amendment request: The proposed amendment would adopt an approved change to the standard technical specifications (TSs) for General Electric Plants, BWR/4 (NUREG–1433), to allow relocation of specific TS surveillance frequencies to a licensee controlled program. The proposed change is described in Technical Specification Task Force (TSTF) Traveler, TSTF–425, Revision 3 (Rev. 3) (ADAMS Accession No. ML090850642) related to the Relocation of Surveillance Frequencies to Licensee Control-RITSTF (Risk-Informed TSTF) Initiative 5b and was described in the Notice of Availability published in the **Federal Register** on July 6, 2009 (74 FR 31996).

The proposed change is consistent with NRC-approved Industry/Technical Specification Task Force Traveler, TSTF–425, Rev. 3, "Relocate Surveillance Frequencies to Licensee Control-RITSTF Initiative 5b." The proposed change relocates surveillance frequencies to a licensee-controlled program, the Surveillance Frequency Control Program (SFCP). This change is applicable to licensees using probabilistic risk guidelines contained in NRC-approved NEI 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies," (ADAMS Accession No. ML071360456).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic

surveillance requirements to licensee control under a new program—the SFCP. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the Technical Specifications (TS) for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumption and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and Bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, NextEra Energy Duane Arnold will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1 in accordance with the SFCP. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Marjan Mashhadi, 801 Pennsylvania Avenue, NW., Suite 220 Washington, DC 20004.

NRC Branch Chief: Robert J. Pascarelli.

NextEra Energy Point Beach, LLC (the Licensee), Docket Nos. 50–266 and 50–301, Point Beach

Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowac County, Wisconsin.

Date of amendment request: March 23, 2011.

Description of amendment request: The proposed amendment consists of replacing non-conservative values for five operating limits in the Technical Specifications with more conservative values that incorporate measurement uncertainty. Additionally, one of the operating limits will replace a volume expressed in cubic feet with a volume expressed in tank percent level to allow the plant operators a direct verification of the technical specification limit based on instrument readings.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes clarify the requirements for five plant operating limits by incorporating measurement uncertainties in the Technical Specification values to ensure the parameters remain within the ranges assumed in the accident analysis. The parameters are not accident initiators. Therefore, the proposed change will not increase the probability of an accident previously evaluated. Maintaining the parameters within the ranges specified in the Technical Specifications ensures that the systems will respond as assumed to mitigate the accidents previously evaluated. Therefore, the proposed change will not increase the consequences of an accident previously evaluated.

Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis, but ensures that plant operating parameters will be maintained as assumed in the accident analysis. The proposed change is consistent with the accident analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment clarifies the requirements for plant operating limits by incorporating instrument uncertainties to ensure the parameters remain within the initial operating limits or ranges assumed in the accident analysis. No change is made to the accident analysis assumptions.

Therefore, the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, Senior Attorney, NextEra Energy Point Beach, LLC, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert J. Pascarelli.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit 1 and 2, San Luis Obispo County, California

Date of amendment request: February 17, 2011, as supplemented on April 21, 2011.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.7.1, "Main Steam Safety Valves (MSSVs)," Table 3.7.1–1, "Maximum Allowable Power Range Neutron Flux High Setpoint With Inoperable MSSVs," and the Bases section for the MSSVs. This license amendment request proposed to remove a one-time note listed in TS Table 3.7.1–1, specific to Diablo Canyon Power Plant, Unit No. 2 for Cycle 15, that is no longer applicable or needed. This license amendment request also proposes to revise the TS Bases B 3.7.1 to reflect a new analysis methodology for establishing the reduced Power Range Neutron Flux High setpoint for one inoperable MSSV as listed in TS Table 3.7.1–1. The supplement dated April 21, 2011, proposes to revise the Final Safety

Analysis Report Update (FSARU) Sections 15.2.7.3 and 15.2.16 to reflect the proposed changes to the TS Bases. The supplement provided additional information that clarified the application and did not expand the scope of the February 17, 2011, application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This License Amendment Request (LAR) proposes to remove a one-time Unit 2 Cycle 15 Limiting Condition for Operation (LCO) exemption that is no longer applicable and revise the safety analysis performed in support of Technical Specification (TS) 3.7.1, "Main Steam Safety Valves (MSSVs)," Table 3.7.1–1, "Maximum Allowable Power Range Neutron Flux High Setpoint with Inoperable MSSVs" for one inoperable MSSV. The revised safety analysis resolves a nonconforming condition associated with the TS 3.7.1 Bases and re-establishes that the Power Range Neutron Flux High setpoint of 87 percent Rated Thermal Power (RTP) continues to provide adequate protection for one inoperable MSSV on each steam lead.

The Power Range Neutron Flux High setpoint TS value does not initiate an accident. Technician adjustments to lower the Power Range Neutron Flux High setpoint could cause a reactor trip; however, this action is already a TS requirement. There has been no change in the TS setpoint value from the current value or in the requirement for a technician to adjust the setpoints downward when MSSVs become inoperable.

Therefore, this proposed change will not increase the probability of a reactor trip.

The revised TS B 3.7.1 safety analyses establishes that the current Power Range Neutron Flux High setpoint of 87 percent with one inoperable MSSV on each loop will ensure the remaining MSSVs will continue to prevent overpressure of the main steam leads and steam generators, and remove adequate heat from the RCS [reactor coolant system].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The revised safety analysis which credits the Class 1 Over Temperature Delta Temperature (OTDT) reactor trip and the Power Range Neutron Flux High setpoint TS value with one inoperable MSSV do not initiate an accident and do not change the method by which any safety-related system performs its function.

The proposed change does not result in plant operation outside the limits previously considered, nor allow the progression of transients or accidents in a manner different than previously considered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change and revised safety analysis demonstrate that all applicable Reactor Coolant System (RCS) and steam generator (SG) pressure boundary acceptance criteria are satisfied, and re-establish that the existing Power Range Neutron Flux High setpoint TS value for one inoperable MSSV remains conservatively bounding.

Therefore, the proposed change does not involve a reduction in a margin of safety.

With the proposed change, the MSSVs will prevent SG pressure from exceeding 110 percent of SG design pressure in accordance with the American Society of Mechanical Engineers code. The conclusions for the Final Safety Analysis Report accident analyses are unaffected by the change, remain valid, and provide margin.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 14, 2011.

Description of amendment request: The proposed amendments would revise the licenses and the Technical Specifications regarding Residual Heat Removal (RHR) and Coolant Circulation-Low Water Level, specifically, to allow one RHR loop to be inoperable for up to 2 hours for surveillance testing provided the other RHR loop is operable and in operation. The proposed change is described in Technical Specification Task Force Traveler TSTF–361–A, Revision 2, "Allow standby SDC/RHR/DHR [shut down cooling/residual heat removal/decay heat removal] loop to [be] inoperable to support testing," approved for use by the Nuclear Regulatory Commission in a letter dated October 31, 2000 (Agencywide Documents Access and Management System, Accession No. ML003775261).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds an LCO [Limiting Condition for Operations] Note to LCO 3.9.6, "RHR and Coolant Circulation-Low Water Level," to allow one RHR loop to be inoperable for up to 2 hours for surveillance testing provided the other RHR loop is Operable and in operation. An inoperable RHR train is not an initiator to any accident previously evaluated. The RHR trains are not credited with mitigating any accident previously evaluated in Mode 6. As a result, the consequences of any accident previously evaluated are not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (i.e., no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds an LCO Note to LCO 3.9.6, "RHR and Coolant Circulation-Low Water Level," to allow one RHR loop to be inoperable for up to 2 hours for surveillance testing provided the other RHR loop is Operable and in operation. This allowance currently appears in Specification 3.4.7 and 3.4.8 and the conditions under which the Note would be applied in Specification 3.9.6 are not significantly different from those specifications. The Note is needed in LCO 3.9.6 to provide the flexibility to perform surveillance testing while ensuring that there is reasonable time for operators to respond to and mitigate any expected failures.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Branch Chief: Gloria Kulesa.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit 1 and 2, Surry County, Virginia

Date of amendment request: July 12, 2010.

Description of amendment request: The proposed revision is an administrative change that: (1) Corrects an error in TS 3.12.E.5, (2) deletes duplicative requirements in TS 3.12.E.2 and TS 3.12.E.4, (3) relocates the shutdown margin value in TS 3.12 and the TS 3.12 Basis to the Core Operating Limits Report (COLR), and (4) expands the TS 6.2 list of parameters defined in the COLR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change is administrative in nature. The proposed LAR does not involve a physical change to any structures, systems, or components (SSCs) at Surry Power Station; nor does it change any of the previously evaluated accidents in the Updated Final Safety Analysis Report (UFSAR).

Thus, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change is administrative in nature. The proposed change does not involve a physical change to any SSCs, and there is no impact on their design function. The proposed change does not affect initiators of analyzed events.

Therefore, the proposed change does not introduce any new failures that could create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed change is administrative in nature. Margin of safety is established through the design of plant SSCs, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not impact the condition or performance of SSCs relied upon for accident mitigation or any safety analysis assumptions.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) online at the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: April 13, 2010, as supplemented by a letter dated January 18, 2011.

Brief description of amendment: The licensee proposed to revise section 3.1.a.1.C, "Reactor Coolant Pumps," section 3.1.a.3, "Pressurizer Safety Valves," and section 3.1.b, "Heatup and Normal Cooldown Limit Curves for Normal Operation," of the Technical Specifications (TS), as described in its application of April 13, 2010. After conversion of the TS to Improved Technical Specifications (ITS), the affected information was contained in ITS section 3.4.3, "Reactor Coolant System (RCS) Pressure and Temperature (P–T, or equivalently P/T) Limits", ITS section 3.4.5, "RCS Loops—MODE 3", ITS section 3.4.6, "RCS Loops—MODE 4", ITS section 3.4.10, "Pressurizer Safety Valves", ITS 3.4.12, "Low Temperature Overpressure Protection (LTOP) System", and ITS section 3.5.2, "ECCS—Operating," as described in the licensee's supplement of January 18, 2011. Specifically, the proposed amendment would replace the heatup and cooldown pressure-temperature (P–T) limit curves with new ones, and specify a higher LTOP enabling temperature. The supplement also provided additional restrictions on RCS mass addition until the reactor coolant system cold leg temperature exceeded 356 °F, consistent with Improved Standard Technical Specifications.

Date of issuance: April 29, 2011.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 208.

Renewed Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 29, 2010 (75 FR 37473). The supplement dated January 18, 2011, provided additional information that

clarified the application, did not expand the scope of the application, and did not change the Commission's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 2011.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of application for amendment: March 31, 2010, as supplemented by letters dated June 23, June 24, August 9, and September 16, 2010.

Brief description of amendment: The amendment modified the requirements of the Technical Specification definitions, requirements, and terminology related to the use of an Alternate Source Term (AST) associated with accident offsite and control room dose consequences. In addition, implementation of the AST supports adoption of the control room envelope habitability controls in accordance with NRC-approved Technical Specification Task Force (TSTF)-448, Revision 3, "Control Room Habitability."

Date of issuance: April 26, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 293.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: June 29, 2010 (75 FR 37475). The supplemental letters dated June 23, June 24, August 9, and September 16, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 2011.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 8, 2010.

Brief description of amendment: The amendment revised the Technical Specifications to be consistent with the NRC-approved Technical Specifications Task Force (TSTF) change traveler TSTF–493, "Clarify Application of Setpoint Methodology for LSSS [Limiting Safety System Setting] Functions," Revision 4, Option A. Under Option A, two surveillance notes are added to TS Table 3.3.5.1–1, "Emergency Core Cooling System Instrumentation," Function 3.d, "Condensate Storage Tank Level—Low," and to TS Table 3.3.5.2–1, "Reactor Core Isolation Cooling System Instrumentation," Function 3, "Condensate Storage Tank Level—Low," for the suction swap from the condensate storage tank (CST) to the suppression pool function for the high pressure core spray and reactor core isolation cooling function, respectively. Specifically, surveillance notes would be added to surveillance requirements that require verifying trip setpoint setting values (*i.e.,* channel calibration and trip unit calibration). The amendment completes a commitment made by the licensee to address an unresolved issue associated with TS Amendment No. 181 for the CST level-low setpoint change approved by the NRC in its letter dated February 25, 2009 (ADAMS Accession No. ML090290209).

Date of issuance: April 27, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 185.

Facility Operating License No. NPF–29: The amendment revises the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: December 28, 2010 (75 FR 81670).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 2011.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2 (BVPS–2), Beaver County, Pennsylvania

Date of application for amendment: April 9, 2009, as supplemented by letters dated June 15, 2009, January 18, 2010, March 18, 2010, May 3, 2010, May 21, 2010, June 1, 2010, August 9, 2010, October 7, 2010, October 18, 2010, January 5, 2011, February 18, 2011, March 18, 2011, and March 21, 2011.

Brief description of amendment: The amendment modified Technical Specifications (TSs) to support the replacement of existing Boraflex neutron absorber fuel storage racks in the BVPS–2 spent fuel pool with new high density, Metamic neutron absorber fuel storage racks, which will increase the total storage locations from 1,088 to 1,690.

Date of issuance: April 29, 2011.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No: 173.

Facility Operating License No. NPF–73: The amendment revised the License and the TSs.

Date of initial notice in Federal Register: March 11, 2010 (75 FR 11566). The supplements dated June 15, 2009, January 18, 2010, March 18, 2010, May 3, 2010, May 21, 2010, June 1, 2010, August 9, 2010, October 7, 2010, October 18, 2010, January 5, 2011, February 18, 2011, March 18, 2011, and March 21, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 2011.

No significant hazards consideration comments received: No.

NextEra Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 7, 2009, as supplemented by letters dated October 17, 2008; April 8, June 17 (2 letters), August 24, September 11, September 25, October 9, November 13, November 20 (2 letters), November 21 (2 letters), December 8, December 16, December 21, and December 22 of 2009; January 7, January 8, January 13, January 22, January 29, February 11, February 12, February 25, March 3, March 24, March 25, April 15, April 21, April 22, April 26, April 28 (2 letters), April 29, April 30, May 6, May 13, May 14, May 20, June 10 (2 letters), June 11, June 14, June 24, July 8 (2 letters), July 15 (2 letters), July 21, July 23, July 27, July 28, July 29, August 2, August 6, August 9 (2 letters), August 12, August 23, August 24 (2 letters), August 26, September 1, September 8, September 9, September 14, September 21, September 27, September 28 (3 letters), October 1, October 12, October 14, October 15, October 28, November 1, November 4, November 12 (2 letters), November 15, November 30, December 1, December 7, December 10 (2 letters), December 13, December 15, December

21 (2 letters), and December 30 of 2010; January 7 (2 letters), January 11, January 13, January 21, February 22, March 2, and March 4 of 2011.

Brief description of amendments: The proposed amendments would increase the licensed core power level for PBNP Units 1 and 2 from 1540 megawatts thermal (MWt) to 1800 MWt. The increase in core thermal power will be approximately 17 percent over the current licensed thermal power level and is defined as an Extended Power Uprate (EPU). The proposed amendments would change the Renewed Facility Operating Licenses, the Technical Specifications (TSs) and licensing bases to support operation at the increased core thermal power level, including changes to the maximum licensed reactor core thermal power, reactor core safety limits, Constant Axial Offset Control (CAOC) operating strategy, Reactor Protection System (RPS) and Engineered Safety Feature Actuation System (ESFAS) Limited Safety System Settings (LSSSs) and diesel generator (DG) start loss of voltage time delays. Additional TS changes include Reactor Coolant System (RCS) flow rate, pressurizer operating level, pressurizer safety valve settings, accumulator and refueling water storage tank boron concentrations, main steam safety valve maximum allowable power level and lift settings, new Main Feedwater Isolation Valves (MFIVs), and Core Operating Limits Report (COLR) references.

The review of the EPU LAR will include the changes to the HELB methodology to verify compliance with the licensing basis and acceptability for EPU conditions. The HELB evaluations have been re-evaluated at EPU conditions using the following: (1) Implementation of NRC Generic Letter (GL) 87–11, "Relaxation in Arbitrary Intermediate Pipe Rupture Requirements," dated June 19, 1987, and Branch Technical Position MEB 3–1, "Postulated Rupture Locations in Fluid System Piping Inside and Outside Containment," Revision 2, dated June 1987, (2) mass and energy released from a HELB, (3) compartment pressurization transient evaluation following a HELB event, (4) jet impingement from streams following a HELB event, and (5) operator response time evaluation.

Date of issuance: May 3, 2011.

Effective date: Unit 1—As of the date of issuance and shall be implemented prior to Unit 1 startup from the Fall 2011 refueling outage. Unit 2—As of the date of issuance and shall be implemented prior to startup from the Spring 2011 refueling outage.

Amendment Nos.: 241, 245.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revise the License, Appendix C, and the Technical Specifications.

Date of initial notice in Federal Register: November 17, 2010 (75 FR 70305).

The supplemental letters contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 3, 2011.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: June 28, 2010.

Description of amendment request: This amendment revises the Seabrook Technical Specifications (TSs) by deleting TS 3/4.8.4.2, "Containment Penetration Conductor Overcurrent Protective Devices and Protective Devices for Class 1E Sources Connected to Non-Class 1E Circuits," and relocates the information to the Seabrook Technical Requirements Manual.

Date of issuance: April 29, 2011.

Effective date: As of its date of issuance and shall be implemented within 30 days.

Amendment No.: 125.

Facility Operating License No. NPF–86: The amendment revised the TS and the License.

Date of initial notice in Federal Register: November 2, 2010 (75 FR 67403).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 2011.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 28, 2010.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.7.7, "Control Room Makeup and Cleanup Filtration System," to add shutdown actions if the required actions for an inoperable control room envelope (CRE) boundary were not met. The amendments also added a note to the required action for an inoperable CRE boundary to clarify that the boundary is not a required system, subsystem, train, component, or device that depends on a diesel generator as a source of emergency power.

Date of issuance: April 25, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1—195; Unit 2—183.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: September 21, 2010 (75 FR 57529).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 2011.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Unit 1 and 2, Surry County, Virginia

Date of application for amendments: March 30, 2010, as supplemented by letters dated August 23, 2010, and March 4, 2011.

Brief Description of amendments: The amendments revised the Technical Specifications by relocating specific surveillance frequency requirements to a licensee-controlled document using a risk-informed justification.

Date of issuance: April 29, 2011.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: Unit 1—273 and Unit 2—272.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the licenses and the technical specifications.

Date of initial notice in Federal Register: August 10, 2010 (75 FR 48377).

The supplements dated August 23, 2010, and March 4, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 5th day of May 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–11804 Filed 5–16–11; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2011–0108]; Docket No. 50–010

Environmental Assessment and Finding of No Significant Impact Related to Exemption From Certain Requirements for the Dresden Nuclear Power Station, Unit No. 1 License DPR–002, Grundy County, IL

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: John Hickman, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, *Mail Stop:* T8F5, Washington, DC 20555–00001. *Telephone:* 301–415–3017; *e-mail: John.Hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) staff is considering a request dated December 3, 2010, by Exelon Nuclear (Exelon, the licensee) requesting exemptions from the security requirements in 10 CFR Part 73 and 10 CFR 50.54(p) for the Dresden Nuclear Power Station (DNPS) Unit 1.

This Environmental Assessment (EA) has been developed in accordance with the requirements of 10 CFR 51.21.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would eliminate the security plan requirements from the 10 CFR Part 50 licensed site because the DNPS Unit 1 spent nuclear fuel has been transferred to either the Dresden Independent Spent Fuel Storage Installation (ISFSI) site or to the DNPS Unit 3 spent fuel pool, both located within the protected area of Units 2 and 3. There is no longer any special nuclear material (SNM) located within DNPS Unit 1 other than that contained in plant systems as residual contamination.

Part of this proposed action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as part of this action is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement. This environmental assessment was prepared for the part of the proposed action not involving safeguards plans.

Need for Proposed Action

Sections 50.54 and 73.55 of Title 10 of the *Code of Federal Regulations* require that licensees establish and maintain physical protection and security for activities involving SNM within the 10 CFR Part 50 licensed area of a facility. The proposed action is needed because there is no longer any nuclear fuel in the 10 CFR Part 50 licensed facility that requires protection against radiological sabotage or diversion. The proposed action will allow the licensee to conserve resources for decommissioning activities.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that exempting the facility from physical protection security requirements will not have any adverse environmental impacts. There will be minor savings of energy and vehicular use associated with the security force no longer performing patrols, checks, and normal security functions.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

The alternative is the no-action alternative, under which the staff would deny the exemption request. This denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are similar, therefore the no-action alternative is not further considered.

Conclusion

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

Agencies and Persons Consulted

In accordance with its stated policy, on April 6, 2011, the staff consulted with the Illinois State official, Joseph G. Klinger of the Division of Nuclear Safety, Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

For further details with respect to the proposed action, see the licensee's letter dated December 3, 2010, [ADAMS Accession Number ML103400572]. Documents related to this action, including the application and supporting documentation, are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 6th day of May, 2011.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–12039 Filed 5–16–11; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324; NRC–2011–0107]

Carolina Power & Light Company; Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 26.9, "Specific exemptions," from paragraphs (c) and (d) of 10 CFR 26.205, "Work hours," for Facility Operating License Nos. DPR 71 and DPR–62, issued to Carolina Power & Light Company (the licensee), for operation of the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, located in Brunswick County, North Carolina.

In accordance with 10 CFR 51.21, "Criteria for and identification of licensing and regulatory actions requiring environmental assessments," the NRC performed an environmental assessment and concluded that the proposed action will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consider approval of an exemption for BSEP, Units 1 and 2 from certain requirements of 10 CFR part 26, "Fitness for duty programs." Specifically, the licensee requested approval of an exemption from the requirements of 10 CFR 26.205(c), "Work hours scheduling," and (d), "Work hour controls," during declaration of severe weather conditions involving tropical storm or hurricane force winds. The licensee in its request stated that during these conditions, adherence to all work hour control requirements could impede the ability to respond to a plant emergency and ensure that the plant reaches and maintains a safe and secure status.

The licensee specifically stated that the exemption would only apply to severe weather conditions where tropical storm or hurricane force winds are predicted onsite; requiring the sequestering of the BSEP personnel.

The proposed exemption will allow the licensee to not meet the requirements of 10 CFR 26.205(c) and (d), during the period of time defined by the entry condition until the exit condition. The licensee needs the proposed exemption to support effective response to severe weather conditions when travel to and from the BSEP site may not be safe or even possible. During these times, the licensee sequesters sufficient individuals, including covered workers, to staff two 12-hour shifts to maintain the safe and secure operation of the facility.

The exemption would only apply to individuals designated as the storm crew who perform duties specified in 10 CFR 26.4(a)(1) through (a)(5), namely, (1) Operating or onsite directing of the operation of structures, systems and components (SSCs) that a risk-informed evaluation process has shown to be significant to public health and safety; (2) performing health physics or chemistry duties required as a member of the onsite emergency response organization minimum shift complement; (3) performing the duties of a fire brigade member who is responsible for understanding the effects of fire and fire suppressants on safe shutdown capability; (4) performing maintenance or onsite directing of the maintenance of SSCs that a risk-informed evaluation process has shown to be significant to public health and safety; and (5) performing security duties as an armed security force officer, alarm station operator, response team leader, or watchperson. When storm crew sequestering exit conditions are met, full compliance with 10 CFR 26.205(c) and (d) will be required.

Since 10 CFR 26.207(d), "Plant emergencies," already provides an exception for the time period associated with a declared emergency, the exemption requested per 10 CFR 26.9 only applies to the applicable time periods prior to and following the 10 CFR 26.207(d) exception, requiring the sequestering storm crew at BSEP, Units 1 and 2.

The proposed action does not involve any physical changes to the reactor, fuel, plant, structures, support structures, water, or land at the BSEP, Units 1 and 2, site.

The proposed action is in accordance with the licensee's application dated December 16, 2010, as supplemented by letters dated January 27, March 7, and April 13, 2011.

The Need for the Proposed Action

The proposed action is needed because the licensee is unable to meet the requirements of 10 CFR 26.205(c) and (d) during declarations of severe weather conditions that could result due to prevailing tropical storm or hurricane force winds impacting the facility.

Compliance with work hour control requirements could impede the licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant reaches and maintains a safe and secure status.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no environmental impacts associated with the proposed exemption. The details of the staff's safety evaluation will be provided in the exemption, if approved by the NRC, that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental

impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the fatigue rules in 10 CFR 26.205(c) and (d). This would cause unnecessary burden on the licensee, without a significant benefit in environmental impacts. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the BSEP dated January 1976, and the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG–1437, Supplement 25, dated March 2006 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML060900480).

Agencies and Persons Consulted

In accordance with its stated policy, on April 16, 2011, the NRC staff consulted with the North Carolina State official, Mr. William Lee Cox of the North Carolina Department of Environment and Natural Resources regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Pursuant to 10 CFR 51.32, "Finding of No Significant Impact," and on the basis of the above environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 16, 2010 (ADAMS Accession No. ML103630405), as supplemented by letters dated January 27, March 7, and April 13, 2011 (ADAMS Accession Nos. ML110730275, ML110400193, and ML11110A021). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of May 2011.

For the Nuclear Regulatory Commission.

Farideh E. Saba,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–12044 Filed 5–16–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64479; File No. 81–937]

Notice of an Application of BF Enterprises, Inc. Under Section 12(h) of the Securities Exchange Act of 1934

May 12, 2011.

The Securities and Exchange Commission gives notice that BF Enterprises, Inc. has filed an application under Section 12(h) of the Securities Exchange Act of 1934. BF Enterprises asks the Commission to issue an order exempting the company from the requirement to register its common stock under Section 12(g) of the Exchange Act. In its application, BF Enterprises asserts that exemptive relief would be consistent with the standards articulated in Section 12(h) because: (1) As of December 31, 2010, BF Enterprises has total assets of approximately $13.3 million and stockholders' equity of approximately $11.8 million; (2) BF Enterprises has fewer than 85 total beneficial owners of its common stock, one of which has expressly stated under oath that its shares are held indirectly through 500 trust entities formed solely for the purpose of attempting to cause BF Enterprises to register its common stock under Section 12(g) of the Exchange Act; and (3) there is no trading activity in, and an absence of any regular market for, BF Enterprises' common stock.

For a detailed statement of the information presented, all persons are referred to BF Enterprises' application, which is available on the Commission's Internet website at *http://www.sec.gov/rules/other.shtml* and for website viewing and printing in the Commission's Public Reference Room, Station Place, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

The Commission also gives notice that any interested person not later than June 16, 2011 may submit to the Commission in writing its views on any substantial facts bearing on the application or the desirability of a hearing thereon.

Any such communication or request may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 81–937 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 81–937. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the application filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, Station Place, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should be submitted on or before June 16, 2011.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including

the date of the hearing (if ordered) and any postponements thereof. At any time after said date, the Commission may issue an order granting the application upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–12064 Filed 5–16–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 19, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, May 19, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: May 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12191 Filed 5–13–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64464; File No. SR–NYSEArca–2011–24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Following Under NYSE Arca Equities Rule 8.200: ProShares Short DJ–UBS Natural Gas, ProShares Ultra DJ–UBS Natural Gas and ProShares UltraShort DJ–UBS Natural Gas

May 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 28, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.200: ProShares Short DJ–UBS Natural Gas, ProShares Ultra DJ–UBS Natural Gas and ProShares UltraShort DJ–UBS Natural Gas. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").[3] The Exchange proposes to list and trade shares ("Shares") of the following pursuant to NYSE Arca Equities Rule 8.200: ProShares Short DJ–UBS Natural Gas, ProShares Ultra DJ–UBS Natural Gas and ProShares UltraShort DJ–UBS Natural Gas (each a "Fund" and, collectively, the "Funds").[4] Each of the Funds is a series of the ProShares Trust II ("Trust"), a Delaware statutory trust. ProShare Capital Management LLC ("Sponsor") is the Trust's Sponsor, and Wilmington Trust Company is the Trust's trustee. Brown Brothers Harriman & Co. ("Administrator") serves as the administrator, custodian and transfer agent of the Funds. SEI Investments Distribution Co. ("Distributor") serves as distributor of the Shares.

The Exchange notes that the Commission has previously approved the listing and trading of other series of the Commodities and Currency Trust (now known as ProShares Trust II) both on the American Stock Exchange LLC [5] and on NYSE Arca pursuant to unlisted trading privileges ("UTP"),[6] and listing on NYSE Arca.[7] In addition, the

[3] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] *See* Post-Effective Amendment No. 1 dated May 28, 2010 (File No. 333–163511) and Post-Effective Amendment No. 4 dated April 13, 2011 (File No. 333–163511) to the Funds' Registration Statement on Form S–3 ("Registration Statements"). The description of the Funds and the Shares contained herein are based on the Registration Statements.

[5] *See* Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39) ("Amex Proposal").

[6] *See* Securities Exchange Act Release No. 58163 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73).

[7] *See* Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91). The series of the Trust approved for Exchange listing by the Commission included the Ultra DJ–AIG Commodity ProShares, UltraShort DJ–AIG Commodity ProShares, Ultra DJ–AIG Agriculture ProShares, UltraShort DJ–AIG Agriculture ProShares, Ultra DJ–AIG Crude Oil ProShares, UltraShort DJ–AIG Crude Oil ProShares, Ultra Gold ProShares, UltraShort Gold ProShares, Ultra Silver ProShares, UltraShort

Continued

Commission has approved other exchange-traded investment products linked to the performance of underlying commodities.[8] The Exchange further notes that the shares of other ProShares UltraFunds and UltraShort Funds based on various securities indexes have previously been approved by the Commission.[9]

According to the Registration Statements, the Funds seek daily investment results (before fees and expenses) that correspond to the inverse (opposite) of the daily performance, a multiple of the daily performance or an inverse multiple of the daily performance of the benchmark index for each of the Funds (the "Benchmark" or "Index"), the Dow Jones-UBS Natural Gas Sub-Index.[10]

The Index is comprised of New York Mercantile Exchange ("NYMEX") Natural Gas futures contracts ("Natural Gas Futures Contracts").[11] The Index is intended to reflect the performance of natural gas as measured by the performance of Natural Gas Futures Contracts, including roll costs, without regard to income earned on cash positions. It rolls (or sells its existing position prior to settlement while purchasing a new position further from settlement) the component Natural Gas Futures Contracts every other month as follows in the table below. The roll for each Index component occurs over a period of five NYMEX business days.

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Component Natural Gas Contract	Mar	Mar	May	May	Jul	Jul	Sep	Sep	Nov	Nov	Jan	Jan

The Funds will utilize Natural Gas Futures Contracts and, under limited circumstances, swap agreements, as described below, to produce economically "inverse," "leveraged," and "inverse leveraged" investment results for the respective Funds.[12] For each dollar invested in the Funds, each Fund will seek the requisite exposure in Natural Gas Futures Contracts to pursue its respective investment objective. The Sponsor does not intend to invest directly in any commodity.

According to the Registration Statements, each of the Funds uses investment techniques that include the use of any one or a combination of Natural Gas Futures Contracts, and may include swap agreements. The Funds' investment techniques may involve a small investment relative to the amount of investment exposure assumed and may result in losses exceeding the amounts invested. Such techniques, particularly when used to create leverage, may expose the Funds to potentially dramatic changes (losses or gains) in the value of their investments and imperfect correlation between the value of the investments and the security or index.

If ProShares Short DJ–UBS Natural Gas is successful in meeting its objective, its value on a given day (before fees and expenses) should gain approximately as much on a percentage basis as its Benchmark when the Benchmark falls on a given day. Conversely, its value on a given day (before fees and expenses) should lose approximately as much on a percentage basis as the Benchmark when the Benchmark rises on a given day. If the ProShares Ultra DJ–UBS Natural Gas Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately twice as much on a percentage basis as the Benchmark when it rises on a given day. Conversely, its value (before fees and expenses) should lose approximately twice as much on a percentage basis as the Benchmark when it declines on a given day. If the

Silver ProShares, Ultra Euro ProShares, UltraShort Euro ProShares, Ultra Yen ProShares and UltraShort Yen ProShares. *See also* Securities Exchange Act Release No. 58647 (September 25, 2008), 73 FR 57399 (October 2, 2008) (SR–NYSEArca–2008–99) (notice of filing and immediate effectiveness relating to the names of the Trust and the funds of the Trust, among other matters).

[8] *See, e.g.,* Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR–NYSEArca–2007–91) (order granting accelerated approval for NYSE Arca listing the iShares GS Commodity Trusts); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (order granting accelerated approval for NYSE Arca listing the ETFS Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order granting accelerated approval for NYSE Arca listing the ETFS Gold Trust); 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (order approving listing on NYSE Arca of the ETFS Platinum Trust); 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (order approving listing on NYSE Arca of the ETFS Palladium Trust).

[9] *See* Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of shares of the xtraShares Trust); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex2006–41) (approving the listing and trading of shares of the ProShares Trust); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex 2006–101) (approving the listing and trading of shares of the ProShares Trust); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (approving the listing and trading of 6 funds of the ProShares Trust based on international equity indexes); and 56998 (December 19, 2007), 72 FR 73404 (December 27, 2007) (SR–Amex–2007–104) (approving the listing and trading of shares of the ProShares Trust).

[10] CME Group Index Services LLC ("CME Indexes"), a joint venture between Dow Jones & Company, Inc. ("Dow Jones" or "Index Provider") and CME Group Inc. ("CME Group"), and UBS Securities LLC ("UBS") have entered into a non-exclusive license agreement providing for the use of the Index in connection with the Funds.

UBS, a co-sponsor of the Index, is a registered broker-dealer and has represented to the Exchange that it will: (1) Implement and maintain procedures reasonably designed to prevent the use and dissemination by relevant personnel of UBS, in violation of applicable laws, rules, and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index; and (2) periodically review the requirements of such procedures as they relate to certain personnel of UBS directly responsible for such changes.

CME Indexes, a co-sponsor of the Index, is not engaged in the business of trading in commodities or securities. CME Group, together with its subsidiaries, operates derivatives exchanges. CME Group maintains a Code of Conduct applicable to all personnel that prohibits disclosure of any confidential information obtained during the course of one's employment and the use or disclosure of any material non-public information relating to changes to the composition of the Index or changes to the Index methodology in violation of applicable laws, rules or regulations. For a transitional period, certain Dow Jones employees are providing index-related services to CME Indexes. Dow Jones also maintains a Code of Conduct applicable to all personnel that prohibits disclosure of any confidential information relating to changes to the composition of the Index or changes to the Index methodology obtained during the course of one's employment and the use of any material non-public information in violation of applicable laws, rules or regulations.

[11] Natural gas futures volume on NYMEX for 2009 and 2010 (through December 31, 2010) was 47,864,639 contracts and 64,350,673 contracts, respectively. As of December 31, 2010, NYMEX open interest for all natural gas futures was 772,104 contracts, and the approximate value of all outstanding contracts was $35,664,257,310 billion. Open interest as of December 31, 2010 for the near month contract was 166,757 contracts and the near month contract value was $7,345,645,850 ($4.405 per MMBtu and 10,000 MMBtu per contract). The position accountability limits for all months is 12,000 contracts and the total value of contracts if position accountability limits were reached would be approximately $528,600,000 million (based on the $4.405 contract price). As of December 31, 2010, open interest in natural gas swaps cleared on the NYMEX was approximately 1,493,013 contracts, with an approximate value of $16,463,384,003 ($4.411 per MMBtu and 2,500 MMBtu per contract). Natural gas futures are also traded on ICE Futures Europe ("ICE") and the European Energy Exchange.

[12] Terms relating to the Funds, the Shares and the Index referred to, but not defined, herein are defined in the Registration Statements.

ProShares UltraShort DJ–UBS Natural Gas Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately twice as much on a percentage basis as the Benchmark when it declines on a given day. Conversely, its value (before fees and expenses) should lose approximately twice as much on a percentage basis as the Benchmark when it rises on a given day.

In seeking to achieve each Fund's daily investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with a Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning each Fund's investments in accordance with its daily investment objectives.

A number of factors may affect a Fund's ability to achieve a high degree of correlation with its Benchmark, and there can be no guarantee that a Fund will achieve a high degree of correlation. While the Funds do not expect that their daily returns will deviate adversely from their respective daily investment objectives, several factors may affect their ability to achieve this correlation. Among these factors are a Fund's expenses, including fees, transaction costs and the cost of the investment techniques employed by that Fund, bid-ask spreads, a Fund's Share prices being rounded to the nearest cent, changes to a Benchmark that are not disseminated in advance and the need to conform a Fund's portfolio holdings to comply with investment restrictions or policies or regulatory or tax law requirements.

The Funds will obtain exposure to the Index through Natural Gas Futures Contracts. Any futures contracts held by the Funds are expected to be the Natural Gas Futures Contracts. To the extent that Dow Jones alters the construction or composition of the Index to include natural gas futures contracts that trade on a different exchange, the Funds may so invest in such futures contracts.

According to the Registration Statements, each Fund seeks to achieve its investment objective by investing under normal market conditions in Natural Gas Futures Contracts. In the event position accountability rules are reached with respect to Natural Gas Futures Contracts, the Sponsor may, in its commercially reasonable judgment, cause the Funds to obtain exposure through swaps referencing the Index or particular Natural Gas Futures Contracts, or invest in other futures contracts or swaps not based on the particular Natural Gas Futures Contracts if such instruments tend to exhibit trading prices or returns that correlate with the Index or any Natural Gas Futures Contract and will further the investment objective of such Fund.[13] Each Fund may also invest in swaps if the market for a specific futures contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) that prevent such Fund from obtaining the appropriate amount of investment exposure to the affected Natural Gas Futures Contracts directly or to other futures contracts.[14]

The Sponsor expects the Funds to have a statistical correlation [15] over time of −.95 or better (for ProShares Short DJ–UBS Natural Gas and ProShares UltraShort DJ–UBS Natural Gas) and +.95 or better (for ProShares Ultra DJ–UBS Natural Gas) when correlating the daily return of a Fund's Net Asset Value ("NAV") against the daily return of its relevant Index or Benchmark.

Each Fund may also invest in cash, cash equivalents and/or U.S. Treasury Securities or other high credit quality short-term fixed-income or similar securities (such as shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes and repurchase agreements collateralized by government securities) that will serve as collateral for any futures contracts or swap agreements held by the Funds.

Futures Contracts Held by the Funds

All open futures contracts held by the Funds will be traded on the NYMEX and will be calculated at their then current market value, based upon the settlement price for that particular futures contract traded on the date with respect to which NAV is being determined; provided that, if a futures contract could not be liquidated on such day, due to the operation of daily limits or other rules of the exchange upon which that position is traded or otherwise, the Sponsor may in its sole discretion choose to determine a fair value price as the basis for determining the market value of such position for such day. The Sponsor will, in good faith, establish an appropriate methodology for determining such fair value prices, based on factors it deems relevant, including the prices of other instruments that provide an indication of the fair value price of the future contracts. For example, the Sponsor expects that such fair value determinations would be based on publicly traded options prices of Natural Gas Futures Contracts, if available and relevant.

Net Asset Value

According to the Registration Statements, the NAV of each Fund is calculated by the value of its total assets including, but not limited to, all cash and cash equivalents or other debt securities, less total liabilities, each determined on the basis of generally accepted accounting principles. In particular, the NAV includes any unrealized profit or loss on open Natural Gas Futures Contracts and swap agreements, and any other credit or debit accruing to a Fund, but unpaid or not received.

The NAV per Share of each Fund will be computed by dividing the value of the net assets of such Fund (*i.e.,* the value of its total assets, less total liabilities) by its total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV. The NAV of each Fund is calculated by the Administrator and is determined each business day as described in the Registration Statements.

Creation and Redemption of Shares

According to the Registration Statements, the Funds create and redeem Shares from time to time, but only in one or more Creation Units. A Creation Unit is a block of 50,000 Shares of a Fund. Creation Units may be created or redeemed only by Authorized Participants, as described in the Registration Statements. Except when aggregated in Creation Units, the Shares are not redeemable securities. Authorized Participants may pay a fixed and variable transaction fee in connection with each order to create or redeem a Creation Unit. Authorized Participants may sell the Shares included in the Creation Units they purchase from the Funds to other investors. On any business day, an

[13] To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

[14] According to the Registration Statements, the Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, as described in the Registration Statements.

[15] Correlation is the strength of the relationship between (1) the change in a Fund's NAV and (2) the change in the underlying Index or Benchmark. The statistical measure of correlation is known as the "correlation coefficient." A correlation coefficient of +1 indicates a perfect positive correlation while a value of −1 indicates a perfect negative (inverse) correlation. A value of zero would mean that there is no correlation between the two variables.

Authorized Participant may place an order with the Distributor to create one or more Creation Units. An order to create or redeem Shares must be placed by 1:30 p.m. Eastern Time ("E.T."). The total cash payment required to create each Creation Unit is the NAV of 50,000 Shares of the applicable Fund on the purchase order date plus the applicable transaction fee.

According to the Registration Statements, the procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any business day, an Authorized Participant may place an order with the Distributor to redeem one or more Creation Units. Individual shareholders may not redeem directly from a Fund.

By placing a redemption order, an Authorized Participant agrees to deliver the Creation Units to be redeemed through the Depository Trust Company's book-entry system to the applicable Fund not later than noon E.T., on the third business day immediately following the redemption order date (T+3). The redemption proceeds from a Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of such Fund requested in the Authorized Participant's redemption order as of the time of the calculation of such Fund's NAV on the redemption order date, less transaction fees, as described in the Registration Statements.

Availability of Information Regarding the Shares

The Web site for the Funds (*http://www.proshares.com*) and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV per Share; (b) calculation of the premium or discount of the closing market price against the NAV per Share; (c) the Prospectus; and (d) other applicable quantitative information.

The NAV per Share will be calculated and disseminated daily. One or more major market data vendors will disseminate for the Funds on a daily basis information with respect to the "Indicative Fund Value" (as discussed below), recent NAV per Share and Shares outstanding. The Exchange will also make available on its Web site (*http://www.nyse.com*) daily trading volume of the Shares, closing prices of the Shares, and the NAV per Share. The intra-day futures prices, closing price and settlement prices of the futures contracts held by the Funds are also available from the NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line.

Portfolio Disclosure

Each Fund's total portfolio composition will be disclosed on the Funds' Web site or another relevant Web site as determined by the Trust and/or the Exchange. The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and notional value (in U.S. dollars) of Natural Gas Futures Contracts and swap agreements, if any, cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Participants, so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of each Fund through the Funds' Web site, and/or at the Exchange's Web site.

Availability of Information About the Benchmarks

The daily closing Index level and the percentage change in the daily closing Index level for the Index will be publicly available on various Web sites, *e.g., http://www.bloomberg.com.* The Index level will be disseminated by one or more major market data vendors and will be updated at least every 15 seconds during the Exchange's Core Trading Session, except for that period after the end of the NYMEX Natural Gas pit trading session at 2:30 p.m. E.T., at which point the Index value will be static. Data regarding the Index is also available from the Index Provider to subscribers. In addition, data is available for the Natural Gas Futures Contracts in the Index and for other futures contracts from those futures exchanges that list and trade futures contracts on such commodity. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both Index constituents and Index levels and vendors displaying Index levels only).

Dissemination of Net Asset Value and Indicative Fund Value

The NAV for the Funds' Shares will be calculated by the Administrator once a day and will be disseminated daily to all market participants. The NAV calculation time for the Funds is 2:30 p.m. E.T.[16] The Exchange will obtain a representation (prior to listing of the Funds) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, the Sponsor will cause to be made available on a daily basis the total payment required to create each Creation Unit of the applicable Fund on the purchase order date in connection with the issuance of the respective Shares.

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem the Shares, one or more major market data vendors will disseminate an updated Indicative Fund Value ("IFV"). The IFV will be disseminated on a per-Share basis at least every 15 seconds during Exchange's Core Trading Session trading hours of 9:30 a.m. to 4 p.m. E.T. The IFV will be calculated based on the cash required for creations and redemptions for a Fund (prior calculated NAV) adjusted to reflect the price changes of such Fund's holdings.

The value of a Share may be influenced by non-concurrent trading hours between NYSE Arca and NYMEX when the Shares are traded on NYSE Arca after normal trading hours of NYMEX. The IFV will be updated during the NYSE Arca Core Trading Session when Natural Gas Futures Contracts held by the Funds are traded. However, a static IFV will be disseminated between the close of trading of Natural Gas Futures Contracts and the close of the NYSE Arca Core Trading Session.

Criteria for Initial and Continued Listing

The Funds will be subject to the criteria in NYSE Arca Equity Rule 8.200 and Commentary .02 thereto for initial and continued listing of the Shares.

The minimum number of Shares for each Fund to be outstanding at the start of trading will be 100,000 Shares. The Exchange believes that this anticipated

[16] The Commission previously has approved a commodity-based trust security for which the NAV is calculated earlier than 4 p.m. E.T. *See, e.g.,* Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust; and 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95) (order approving listing of ETFS Platinum Trust).

minimum number of Shares for each Fund to be outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the objectives of the Funds. The Exchange represents that, for the initial and continued listing of the Shares, the Funds will be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule [17] or by the halt or suspension of trading of the underlying futures contracts.

The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the Index value, IFV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the Index value, IFV or the value of the underlying futures contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) provides that an ETP Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs (which include the Shares) and options on leveraged ETFs, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009) and 09–65 (November 2009) ("FINRA Regulatory Notices"). ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices.

As disclosed in the Registration Statement, the Funds seek leveraged, inverse, or leveraged inverse returns on a daily basis, and the Funds do not seek to achieve their stated investment objective over a period of time greater than one day because mathematical compounding prevents the Funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a leveraged multiple (+200%), the inverse (−100%) or a leveraged inverse multiple (−200%) of the period return of the Benchmark and may differ significantly from these multiples. The Exchange's Information Bulletin regarding the Funds, described below, will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the NYMEX, which is a member of the Intermarket Surveillance Group ("ISG"). A list of ISG members is available at *http://www.isgportal.org.*[18]

[17] *See* NYSE Arca Equities Rule 7.12.

[18] The Exchange may obtain information from futures exchanges with which the Exchange has entered into a surveillance sharing agreement or that are ISG members. The Exchange notes that not all components of the portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, with respect to the Funds' futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) a static IFV will be disseminated between the close of trading Natural Gas Futures Contracts on the NYMEX and the close of the NYSE Arca Core Trading Session; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from the Funds will receive a prospectus. ETP Holders purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Bulletin will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statements. The Information Bulletin will also reference that the Commodity Futures Trading Commission has regulatory jurisdiction over the trading of futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds. The Bulletin will disclose that information about the Shares of the Funds is publicly available on the Funds' Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[19] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Any futures contracts held by the Funds are expected to be the Natural Gas Futures Contracts, which are traded on NYMEX, an ISG member. The intra-day futures prices, closing price and settlement prices of the futures contracts held by the Funds are also available from the NYMEX, automated quotation systems, published or other public sources, or on-line information services. Quotation and last-sale information for the Shares will be available via CTA. Each Fund's total portfolio composition will be disclosed on the Funds' Web site or another relevant Web site.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The Index level will be disseminated by one or more major market data vendors and will be updated at least every 15 seconds during the Exchange's Core Trading Session, except for that period after the end of the NYMEX Natural Gas pit trading session at 2:30 p.m. E.T., at which point the Index value will be static. The NAV per Share will be calculated daily and made available to all market participants at the same time. One or more major market data vendors will disseminate for the Funds on a daily basis information with respect to the IFV, recent NAV per Share and Shares outstanding. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Information Bulletin will also reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, IFV, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[19] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–24 and should be submitted on or before June 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11967 Filed 5–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64466; File No. SR–EDGA–2011–16]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule To Amend EDGA Rule 11.9 To Introduce Additional Routing Options to the Rule

May 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce additional routing options to Rule 11.9 and amend existing routing options. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current list of routing options are codified in Rule 11.9(b)(3). In this filing, the Exchange proposes to amend Rule 11.9(b)(3) to add three new additional strategies and amend other ones.

In Rule 11.9(b)(3), the Exchange describes that its system ("System") provides a variety of routing options. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The System will consider the quotations only of accessible markets. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The new System routing options are described in more detail below.

The Exchange proposes to introduce the ROBB and ROCO routing strategies and add them to Rules 11.9(b)(3)(c)(vi)–(vii). ROBB/ROCO are routing options under which an order checks the System for available shares and then are sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the book, unless otherwise

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

instructed by the User.[3] The difference between the latter two strategies lies in the difference in the System routing tables for the ROBB/ROCO strategies.

The Exchange also proposes to amend the descriptions in Rules11.9(b)(3)(b) (ROUD), 11.9(b)(3)(l) (IOCX), 11.9(b)(3)(m) (IOCT), 11.9(b)(3)(r), as proposed to be re-lettered as described below (IOCM), 11.9(b)(3)(s), as proposed to be re-lettered as described below (ICMT), to modify the routing strategies such that if shares remain unexecuted after routing, they are posted on the book, unless otherwise instructed by the User. The Exchange proposes to amend the description of the routing strategies listed in Rule 11.9(b)(3)(c) to state that if shares remain unexecuted after routing, they are posted on the book, unless otherwise instructed by the User.

The same revision is also proposed to other routing strategies that currently cancel back to the User if shares remain unexecuted after routing. These include Rules 11.9(b)(3)(e) (ROBA), 11.9(b)(3)(f) (ROBX), 11.9(b)(3)(g) (ROBY) and 11.9(b)(3)(k) (ROPA).

The Exchange also proposes to amend the descriptions of the IOCX and IOCT routing strategies in Rules 11.9(b)(3)(l)–(m) to describe that for each strategy, routed orders are sent, as an immediate or cancel (IOC) order, to EDGX. The IOC designation pertains only to the routed order. If shares remain unexecuted after routing, the order returns to its original parent order without the IOC designation and it posts to the book, unless otherwise instructed by the User. The Exchange also proposes to amend Rules 11.9(b)(3)(e) (ROBA), (b)(3)(f) (ROBX), (b)(3)(g) (ROBY), (b)(3)(k) (ROPA), (b)(3)(l)–(m) (IOCX/IOCT), and (b)(3)(r)–(s)(IOCM/ICMT), as proposed to be re-lettered as described below, to move the placement of the text of "immediate or cancel order" within these descriptions to clarify this point.

The Exchange also proposes to introduce the SWPC routing strategy and add it to proposed Rule 11.9(b)(3)(q). SWPC is a routing option under which an order checks the System for available shares and then is sent to only Protected Quotations and only for displayed size. To the extent that any portion of the order is unexecuted, the remainder is posted on the book at the order's limit price. The entire SWPC order will not be cancelled back to the User immediately if at the time of entry there is an insufficient share quantity in the SWPC order to fulfill the displayed size of all Protected Quotations. The Exchange believes that the proposed introduction of the SWPC routing option will provide market participants with greater flexibility in routing orders consistent with Regulation NMS. This proposed rule change is similar to NASDAQ Rule 4758(a)(1)(A)(vi) (NASDAQ's "MOPP" strategy) and BATS Exchange, Inc. Rule 11.13(a)(3)(D) ("Parallel T").[4]

As a result of the insertion of the SWPC routing strategy into Rule 11.9(b)(3)(r), the Exchange also proposes to move the existing descriptions of IOCM and ICMT from Rules 11.9(b)(3)(c)(q)–(r) into Rules 11.9(b)(3)(c)(r)–(s), respectively.

The Exchange believes that the proposed introduction of these routing options, described above, will provide market participants with greater flexibility in routing orders, without having to develop their own complicated routing strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed change to introduce the routing options described above will provide market participants with greater flexibility in routing orders without developing complicated order routing strategies on their own.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)(iii) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing, as the Exchange would like to make the additional strategies available on or about May 23, 2011. The Exchange notes that waiver of this requirement will allow the Exchange to immediately offer Exchange users new routing strategies, and the inability to immediately offer the new routing strategies would put the Exchange at a competitive disadvantage. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the new routing strategies to become immediately available to Exchange users. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[3] As defined in Rule 1.5 (cc).

[4] *See, e.g.,* NASDAQ Rule 4758, BATS Rule 11.13(a)(3)(D).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. EDGA has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *Id.*

[10] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2011–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2011–16 and should be submitted on or before June 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11973 Filed 5–16–11; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64465; File No. SR–EDGX–2011–15]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule To Amend EDGX Rule 11.9

May 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce an additional routing option to Rule 11.9 and amend existing routing options. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current list of routing options are codified in Rule 11.9(b)(3). In this filing, the Exchange proposes to amend Rule 11.9(b)(3) to add one new additional strategy and amend other ones.

In Rule 11.9(b)(3), the Exchange describes that its system ("System") provides a variety of routing options. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The System will consider the quotations only of accessible markets. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The new System routing options are described in more detail below.

The Exchange also proposes to amend the descriptions in Rules 11.9(b)(3)(b) (ROUD), 11.9(b)(3)(l) (IOCX), and 11.9(b)(3)(m) (IOCT) to modify the routing strategies such that if shares remain unexecuted after routing, they are posted on the book, unless otherwise instructed by the User. The Exchange proposes to amend the description of the routing strategies listed in Rule 11.9(b)(3)(c) to state that if shares remain unexecuted after routing, they are posted on the book, unless otherwise instructed by the User.[3]

The same revision is also proposed to other routing strategies that currently cancel back to the User if shares remain unexecuted after routing. These include Rules 11.9(b)(3)(e) (ROBA), 11.9(b)(3)(f) (ROBX), 11.9(b)(3)(g) (ROBY) and 11.9(b)(3)(k) (ROPA).

The Exchange also proposes to amend the descriptions of the IOCX and IOCT routing strategies in Rules 11.9(b)(3)(l)–(m) to describe that for each strategy, routed orders are sent, as an immediate or cancel (IOC) order, to EDGA. The IOC designation pertains only to the routed order. If shares remain unexecuted after routing, the order returns to its original parent order without the IOC designation and it posts to the book, unless otherwise instructed by the User. The Exchange also proposes to amend Rules 11.9(b)(3)(e) (ROBA), (b)(3)(f) (ROBX), (b)(3)(g) (ROBY), (b)(3)(k) (ROPA), (b)(3)(l)–(m) (IOCX/IOCT) to move the placement of the text of "immediate or cancel order" within these descriptions to clarify this point.

The Exchange also proposes to introduce the SWPC routing strategy and add it to proposed Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Rule 1.5(cc).

11.9(b)(3)(q). SWPC is a routing option under which an order checks the System for available shares and then is sent to only Protected Quotations and only for displayed size. To the extent that any portion of the order is unexecuted, the remainder is posted on the book at the order's limit price. The entire SWPC order will not be cancelled back to the User immediately if at the time of entry there is an insufficient share quantity in the SWPC order to fulfill the displayed size of all Protected Quotations. The Exchange believes that the proposed introduction of the SWPC routing option will provide market participants with greater flexibility in routing orders consistent with Regulation NMS. This proposed rule change is similar to NASDAQ Rule 4758(a)(1)(A)(vi) ("NASDAQ's "MOPP" strategy) and BATS Exchange, Inc. Rule 11.13(a)(3)(D) ("Parallel T").[4]

The Exchange believes that the proposed introduction of this routing option, described above, will provide market participants with greater flexibility in routing orders, without having to develop their own complicated routing strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed change to introduce the routing option described above will provide market participants with greater flexibility in routing orders without developing complicated order routing strategies on their own.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)(iii) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing, as the Exchange would like to make the additional strategies available on or about May 16, 2011. The Exchange notes that waiver of this requirement will allow the Exchange to immediately offer Exchange users new routing strategies, and the inability to immediately offer the new routing strategies would put the Exchange at a competitive disadvantage. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the new routing strategies to become immediately available to Exchange users. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2011–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–15 and should be submitted on or before June 7, 2011.

[4] *See, e.g.,* NASDAQ Rule 4758, BATS Rule 11.13(a)(3)(D).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. EDGX has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *Id.*

[10] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11972 Filed 5–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64470; File No. SR–NYSEArca–2011–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF Under NYSE Arca Equities Rule 8.200, Commentary .02

May 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 28, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF under NYSE Arca Equities Rule 8.200, Commentary .02. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").[3] The Exchange proposes to list and trade shares ("Shares") of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF (the "Short Funds"), ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF (the "Ultra Funds"), ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF (the "UltraShort Funds" and, together with the Short and Ultra Funds, the "Funds") under NYSE Arca Equities Rule 8.200, Commentary .02.[4] The Funds seek, on a daily basis, to provide investment results (before fees and expenses) that correspond to the inverse of the daily performance, a multiple of the daily performance or an inverse multiple of the daily performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares Short VIX Short-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, and ProShares UltraShort VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index, and the benchmark for ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF is the S&P 500 VIX Mid-Term Futures Index (each, an "Index," and, collectively, the "Indexes").[5] The Funds will take long (in the case of the Ultra Funds) and short (in the case of the Short and UltraShort Funds) positions in futures contracts based on the Chicago Board Options Exchange ("CBOE") Volatility Index ("VIX") and, under limited circumstances, swap agreements (as further described herein), to pursue their respective investment objectives. Each Fund also may invest in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes and repurchase agreements collateralized by government securities) that may serve as collateral for the futures contracts and swap agreements.

Each Fund acquires exposure through VIX futures contracts traded on the CBOE Futures Exchange ("CFE") ("VIX Futures Contracts") such that each Fund has exposure intended to approximate the inverse of the daily performance, a multiple of the daily performance or an inverse multiple of the daily performance of its respective Index at the time of the net asset value ("NAV") calculation.[6]

ProShare Capital Management LLC ("Sponsor"), a Maryland limited liability company, serves as the Sponsor of ProShares Trust II (the "Trust"). The Sponsor is a commodity pool operator and commodity trading advisor.[7] Brown

[3] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] The Commission previously has approved listing on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 of certain securities issuers. *See, e.g.,* Securities Exchange Act Release Nos. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (order granting accelerated approval to list on NYSE Arca of 14 ProShares funds); 63610 (December 27, 2010), 76 FR 199 (January 3, 2011) (SR–NYSEArca–2010–101) (order approving listing and trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF). *See also* Securities Exchange Act Release No. 58968 (November 17, 2008), 73 FR 71082 (November 24, 2008) (SR–NYSEArca–2008–111) (order granting accelerated approval of proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(6)(v) to add CBOE Volatility Index (VIX) Futures to the definition of Futures Reference Asset).

[5] Standard & Poor's Financial Services LLC, the index sponsor with respect to the Indexes, is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

[6] Terms relating to the Funds, the Shares and the Indexes referred to, but not defined, herein are defined in the Registration Statement.

[7] The Funds have filed a registration statement on Form S–3 under the Securities Act of 1933. *See* Post-Effective Amendment No. 4 dated April 13,

Continued

Brothers Harriman & Co. serves as the administrator (the "Administrator"), custodian and transfer agent of the Funds and their respective Shares. SEI Investments Distribution Co. ("Distributor") serves as Distributor of the Shares. Wilmington Trust Company, a Delaware banking corporation, is the sole trustee of the Trust.

According to the Registration Statement, each Fund seeks to achieve its investment objective by investing under normal market conditions in VIX Futures Contracts.[8] In the event position accountability rules are reached with respect to VIX Futures Contracts, the Sponsor, may, in its commercially reasonable judgment, cause such Fund to obtain exposure through swaps referencing the relevant Index or particular VIX Futures Contracts, or invest in other futures contracts or swaps not based on the particular VIX Futures Contracts if such instruments tend to exhibit trading prices or returns that correlate with the Indexes or any VIX Futures Contract and will further the investment objective of such Fund.[9] The Funds may also invest in swaps if the market for a specific futures contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) that prevent a Fund from obtaining the appropriate amount of investment exposure to the affected VIX Futures Contracts directly or to other futures contracts.[10]

According to the Registration Statement, if the Short Funds are successful in meeting their objectives, their values (before fees and expenses) should gain approximately as much on a percentage basis as their respective Index when it declines on a given day. Conversely, their values (before fees and expenses) should lose approximately as much on a percentage basis as their respective Index when it rises on a given day.

If the Ultra Funds are successful in meeting their objectives, their values (before fees and expenses) should gain approximately twice as much on a percentage basis as their respective Index when it rises on a given day. Conversely, their values (before fees and expenses) should lose approximately twice as much on a percentage basis as their respective Index when it declines on a given day.

If the UltraShort Funds are successful in meeting their objectives, their values (before fees and expenses) should gain approximately twice as much on a percentage basis as their respective Index when it declines on a given day. Conversely, their values (before fees and expenses) should lose approximately twice as much on a percentage basis as their respective Index when it rises on a given day.

Each of the Funds uses investment techniques that include the use of any one or a combination of VIX Futures Contracts and may, if applicable, include swap agreements. The Funds' investment techniques may involve a small investment relative to the amount of investment exposure assumed and may result in losses exceeding the amounts invested. Such techniques, particularly when used to create leverage, may expose the Funds to potentially dramatic changes (losses or gains) in the value of their investments and imperfect correlation between the value of the investments and the security or Index.

The Funds do not seek to achieve their stated investment objective over a period of time greater than one day because mathematical compounding prevents the Funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a simple inverse correlation (−100%), multiple correlation (+200%) or multiple inverse correlation (−200%) of the period return of the corresponding Index and may differ significantly.

According to the Registration Statement, each Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Sponsor seeks to cause the NAV to track the inverse of the daily performance, a multiple of the daily performance or an inverse multiple of the daily performance of an Index even during periods in which that benchmark is flat or moving in a manner which causes the NAV of a Fund to decline.

In seeking to achieve each Fund's investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce returns consistent with such Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Funds' investments in accordance with their respective investment objectives.

VIX Futures Contracts

The Indexes are comprised of, and the value of the Funds will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such will behave differently than current or spot VIX values.[11] The Funds are not linked to the VIX, and in many cases the Indexes, and by extension the Funds, could significantly underperform or outperform the VIX.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). To illustrate, on January 31, 2011, the VIX was 19.53 and the price of the February 2011 VIX Futures Contracts expiring on February 16, 2011 was 19.10. In this example, the price of the VIX represented the 30-day implied, or "spot," volatility (the volatility expected for the period from January 31 to March 2, 2011) of the S&P 500, and the February VIX futures represented forward implied volatility (the volatility expected for the period from February 16, 2011 to March 16, 2011) of the S&P 500.[12] The VIX Futures

2011 (File No. 333–163511) to the Trust's Registration Statement on Form S–3 ("Registration Statement"). The description of the Funds and the Shares contained herein are based on the Registration Statement.

[8] The term "under normal conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

[10] According to the Registration Statement, the Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, as described in the Registration Statement.

[11] VIX is the ticker symbol for the CBOE Volatility Index, a popular measure of implied volatility. According to the Registration Statement, the goal of the VIX is to estimate the implied volatility of the S&P 500 over the next 30 days. A relatively high level of the VIX corresponds to a more volatile U.S. equity market as expressed by more costly options on the S&P 500 Index. The VIX represents one measure of the market's expectation of the volatility over the next 30 day period. It is a composite value of options on the S&P 500 Index. The formula used to calculate the composite value utilizes current market prices for a series of out-of-the-money calls and puts for the front month and second month expirations.

[12] As of January 31, 2011, there was VIX Futures Contracts open interest on CFE of 163,396 contracts with a value of open interest of $3,461,984,900. Total CFE trading volume in 2010 in VIX Futures Contracts was 4,402,616 contracts, with average daily volume of 17,741 contracts. Total volume

Contracts trade from 8:20 a.m. Eastern Time ("E.T.") to 4:15 p.m. E.T.

The S&P 500 VIX Short-Term Futures Index and S&P 500 VIX Mid-Term Futures Index

According to the Registration Statement, the Indexes act as a measure of volatility as reflected by the price of certain VIX Futures Contracts (the "Index Components"), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. Each Index seeks to reflect the returns that are potentially available from holding an unleveraged long position in certain VIX Futures Contracts.

Unlike the Indexes, the VIX, which is not a benchmark for any Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded on the CBOE.

The S&P 500 VIX Short-Term Futures Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX futures months, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of one month. The roll period begins on the Tuesday prior to the monthly CFE VIX Futures Contracts settlement date and runs through the Tuesday prior to the subsequent month's CFE VIX Futures Contract settlement date.

The S&P 500 VIX Mid-Term Futures Index also employs rules for selecting the Index Components and a formula to calculate the level of the Index from the prices of these components. Specifically, the Index Components represent the prices for four contract months of VIX Futures Contracts, representing a market-based estimation of constant maturity, five month forward implied VIX values. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth and seventh month VIX Futures Contracts, and rolls continuously throughout each month while maintaining positions in the fifth and sixth month contracts. This results in a constant weighted average maturity of five months.

Calculation of the Indexes

The level of each Index is calculated in accordance with the method described in the Registration Statement. The level of each Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:15 p.m. E.T. and at the close of trading on each Business Day by Bloomberg L.P. and Reuters.[13]

The Index Components comprising each Index represent the prices of certain futures contracts on the VIX. Each Index takes a daily rolling long position in contracts of specified maturities and is intended to reflect the returns that are potentially available through an unleveraged investment in those contracts. The S&P 500 VIX Short-Term Futures Index measures the return from a rolling long position in the first and second month VIX Futures Contracts. The Index rolls continuously throughout each month from the first month VIX Futures Contract into the second month VIX Futures Contract. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth and seventh month VIX Futures Contracts. The Index rolls continuously throughout each month from the fourth month contract into the seventh month contract while maintaining positions in the fifth month and sixth month contracts.

The Indexes roll on a daily basis. According to the Registration Statement, one of the effects of daily rolling is to maintain a constant weighted average maturity for the underlying futures contracts. Unlike equities, which typically entitle the holder to a continuing stake in a corporation, futures contracts normally specify a certain date for the delivery of the underlying asset or financial instrument or, in the case of futures contracts relating to indices such as the VIX, a certain date for payment in cash of an amount determined by the level of the underlying index. The Indexes operate by selling, on a daily basis, Index Components with a nearby settlement date and purchasing Index Components with a longer-dated settlement date. The roll for each contract occurs on each Business Day according to a pre-determined schedule that has the effect of keeping constant the weighted average maturity of the relevant Index Components. This process is known as "rolling" a futures position, and each Index is a "rolling index." The constant weighted average maturity for the futures underlying the S&P 500 VIX Short-Term Futures Index is one month and for the futures underlying the S&P 500 VIX Mid-Term Futures Index, five months.

Because the Indexes incorporate this process of rolling futures positions on a daily basis, and the Funds, in general, also roll their positions on a daily basis, the daily roll is not anticipated to be a significant source of tracking error between a Fund and its respective Index. The Indexes are based on VIX Futures Contracts and not the VIX, and as such neither the Funds nor the Indexes are expected to track the VIX.

Purchases and Redemptions of Creation Units

The Funds will create and redeem Shares from time to time in one or more Creation Units. A Creation Unit is a block of 50,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an Authorized Participant may place an order with the Distributor to create one or more Creation Units.[14] The total cash payment required to create each Creation Unit is the NAV of 50,000 Shares of each Fund on the purchase order date plus the applicable transaction fee.

The procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an Authorized Participant may place an order with the Distributor to redeem one or more Creation Units. The redemption proceeds from a Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of a Fund requested in the Authorized Participant's redemption order as of the time of the calculation of a Fund's NAV on the redemption order date, less transaction fees.

Availability of Information Regarding the Shares

The NAV for the Funds' Shares will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.[15] The Exchange will make

year-to-date (through January 31, 2011) is 779,493 contracts, with average daily volume of 38,975 contracts. (Source: Bloomberg and CBOE).

[13] A "Business Day" means any day other than a day when any of the NYSE, the NYSE Arca, the CBOE, or the CFE or other exchange material to the valuation or operation of the Funds, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Indexes is closed for trading.

[14] Authorized Participants have a cut-off time of 12 p.m. E.T. to place creation and redemption orders.

[15] According to the Registration Statement, NAV means the total assets of the Funds including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of the Funds, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of

Continued

available on its Web site daily trading volume of each of the Shares, closing prices of such Shares, and number of Shares outstanding.

The intra-day, closing and settlement prices of the Index Components are also readily available from the Web sites of the CFE (*http://www.cfe.cboe.com*), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for component futures underlying the Indexes is available by subscription from Reuters and Bloomberg. The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for component futures underlying the Indexes are also available on such Web sites, as well as other financial informational sources. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). In addition, the Funds' Web site at *http://www.proshares.com* will display the end of day closing Index levels and NAV.

The Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Futures Contracts, other financial instruments, if any, cash equivalents, and amount of cash held in the portfolio of the Funds. This Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Funds of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of the Funds through the Funds' Web site.

In addition, in order to provide updated information relating to the Funds for use by investors and market professionals, an updated Indicative Optimized Portfolio Value ("IOPV") will be calculated. The IOPV is an indicator of the value of the VIX Futures Contracts and cash and/or cash equivalents less liabilities of a Fund at the time the IOPV is disseminated. NYSE Arca will calculate and disseminate every 15 seconds throughout the NYSE Arca Core Trading Session (9:30 a.m. to 4 p.m. E.T.) an updated IOPV. The IOPV will be calculated by the NYSE Arca using the prior day's closing net assets of a Fund as a base and updating throughout the trading day changes in the value of such Fund's holdings.

The IOPV is published on the NYSE Arca's Web site and is available through on-line information services such as Bloomberg and Reuters.

The IOPV disseminated during the Core Trading Session should not be viewed as an actual real time update of the NAV, which is calculated only once a day. The IOPV also should not be viewed as a precise value of the Shares.

The Exchange believes that dissemination of the IOPV provides additional information regarding the Funds that is not otherwise available to the public and is useful to professionals and investors in connection with the related Shares trading on the Exchange or the creation or redemption of such Shares.

Additional information regarding the Funds and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule [16] or by the halt or suspension of trading of the underlying futures contracts.

The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IOPV, the value of an Index, the VIX or the value of the underlying VIX Futures Contracts occurs. If an interruption to the dissemination of the IOPV, the value of an Index, the VIX or the value of the underlying VIX Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The Funds will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 under the Act,[17] the Funds must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act. A minimum of 100,000 Shares of each of the Funds will be outstanding as of the start of trading on the Exchange.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) provides that an ETP Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information

accounting. Each Fund's NAV is calculated at 4:15 p.m. E.T.

[16] *See* NYSE Arca Equities Rule 7.12.

[17] 17 CFR 240.10A–3.

that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs (which include the Shares) and options on leveraged ETFs, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009) and 09–65 (November 2009) (the "FINRA Regulatory Notices"). ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices.

As disclosed in the Registration Statement, the Funds seek leveraged, inverse, or leveraged inverse returns on a daily basis. Unlike conventional stock-based indexes and funds, it is not expected that the VIX Futures Indexes or the Funds will generally rise over time. In addition, the Exchange's Information Bulletin regarding the Funds, described below, will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including TIRs, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, options, futures or options on futures on Shares through ETP Holders, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the exchanges that are members of the Intermarket Surveillance Group ("ISG"), including the CBOE and CFE, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[18] A list of ISG members is available at *http://www.isgportal.org.*[19]

In addition, with respect to any Fund's holdings of futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

The Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from the Funds will receive a prospectus. ETP Holders purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Bulletin will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the Commodity Futures Trading Commission has regulatory jurisdiction over futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares is calculated after 4:15 p.m. E.T. each trading day. The Bulletin will disclose that information about the Shares of the Funds is publicly available on the Funds' Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[20] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to

[18] Telephone call among Michael Cavalier, Chief Counsel, Exchange, and Tim Malinowski, Senior Director, Global Index and Exchange Traded Funds, Exchange, and Ed Cho and Kristie Diemer, Special Counsels, Division, Commission, on May 11, 2011, clarifying the Exchange's ability to obtain surveillance information.

[19] The Exchange notes that not all components of the Funds' holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[20] 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Under normal market conditions, the Funds will invest in VIX Futures Contracts, which are traded on CFE, an ISG member. The intra-day futures prices, closing price and settlement prices of the futures contracts held by the Funds are also available from the CFE, automated quotation systems, published or other public sources, or on-line information services. Quotation and last-sale information for the Shares will be available via CTA. Each Fund's total portfolio composition will be disclosed on the Funds' Web site or another relevant Web site.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. One or more major market data vendors will disseminate the level of each Index at least every 15 seconds both in real time from 9:30 a.m. to 4:15 p.m. E.T. and at the close of trading on each Business Day. The NAV per Share will be calculated daily and made available to all market participants at the same time. One or more major market data vendors will disseminate for the Funds on a daily basis information with respect to the recent NAV per Share and Shares outstanding. NYSE Arca will calculate and disseminate every 15 seconds throughout the NYSE Arca Core Trading Session an updated IOPV. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Information Bulletin will also reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, IOPV, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2011–23 and should be submitted on or before June 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12017 Filed 5–16–11; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Data Fortress Systems Group Ltd., Digital Youth Network Corp., Fantom Technologies, Inc., and KIK Technology International, Inc., Order of Suspension of Trading

May 12, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Data Fortress Systems Group Ltd. because it has not filed any periodic reports since the period ended June 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Digital Youth Network Corp. because it has not filed any periodic reports since the period ended May 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fantom Technologies Inc. because it has not filed any periodic reports since the period ended June 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of KIK Technology International, Inc. because it has not filed any periodic reports since the period ended January 31, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 12, 2011 and terminating at 11:59 p.m. EDT on May 25, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–12092 Filed 5–12–11; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7459]

30-Day Notice of Proposed Information Collection: Form DS–6561, Pre-Assignment for Overseas Duty, OMB 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Pre-Assignment for Overseas Duty.
- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* New.
- *Originating Office:* Office of Medical Services, M/MED/C/MC.
- *Form Number:* DS–6561.
- *Respondents:* Employees and Family Members from Non-Foreign Affairs Agencies.
- *Estimated Number of Respondents:* 8,000 per year.
- *Estimated Number of Responses:* 8,000 per year
- *Average Hours per Response:* 1 hour per response.
- *Total Estimated Burden:* 8,000 hours.
- *Frequency:* Every 2 to 3 years.
- *Obligation to Respond:* Mandatory to retain medical clearance.

DATES: The Department will accept comments from the public up to 60 days from May 17, 2011.

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

- *E-mail: mahoneybj@state.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Department of State, Office of Medical Clearances, SA–15 Room 400, 1800 North Kent St., Rosslyn, VA 22209.
- *Fax:* 703–875–4850.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Barbara Mahoney, Department of State, Office of Medical Clearances, SA–15 Room 400, 1800 North Kent St., Rosslyn, VA 22209. FAX 703–875–4850.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Form DS–6561 provides a concise summary of basic medical history, lab tests and physical examination for employees and family members that are not members of one of the five Foreign Affairs agencies to include, State, USAID, Foreign Commercial Service, Foreign Agricultural Service, and Board of Broadcasting Governors. It is designed to collect current and adequate information on which medical providers can base decisions on whether an employee and family members will have sufficient medical resources at a diplomatic mission abroad to maintain their health and fitness.

Methodology:

The information collected will be collected through the use of an electronic forms engine or by hand written submission using a pre-printed form.

Dated: May 3, 2011.

Joseph Kenny,

Executive Director, Department of State, Office of Medical Services.

[FR Doc. 2011–12060 Filed 5–16–11; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice 7458]

Culturally Significant Objects Imported for Exhibition Determinations: "Picasso and Braque: The Cubist Experiment"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat.

2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Picasso and Braque: The Cubist Experiment," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from on or about May 29, 2011, until on or about August 21, 2011, the Santa Barbara Museum of Art, Santa Barbara, California, from on or about September 17, 2011, until on or about January 9, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 11, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–12057 Filed 5–16–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Agricultural Aircraft Operator Certificate Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 10, 2011, vol. 76, no. 47, page 13265–13266. Standards have been established for the certification of agricultural aircraft. The information collected shows applicant compliance and eligibility for certification by FAA.

DATES: Written comments should be submitted by June 16, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–0049.

Title: Agricultural Aircraft Operator Certificate Application.

Form Numbers: FAA Form 8710–3.

Type of Review: Renewal of an information collection.

Background: The information on FAA Form 8710–3, Agricultural Aircraft Operator Certificate Application, is required by FAR Part 137 from applicants who wish to be issued a commercial or private agricultural aircraft operator certificate.

Respondents: Approximately 2,950 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.3 hours.

Estimated Total Annual Burden: 10,275 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 10, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–12014 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reporting of Information Using Special Airworthiness Information Bulletin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) for approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 10, 2011, vol. 76, no. 47, page 13264. The FAA issues Special Airworthiness Information Bulletins (SAIBs) to alert, educate, and make recommendations to the aviation community and individual aircraft owners/operators on ways to improve products. They may include requests for reporting of results from requested actions/inspections.

DATES: Written comments should be submitted by June 16, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0731.

Title: Reporting of Information Using Special Airworthiness Information Bulletin.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: A special airworthiness information bulletin (SAIB) is an important tool that helps the FAA to gather information to determine whether an airworthiness directive is necessary. An SAIB alerts, educates, and makes recommendations to the aviation community and individual aircraft owners and operators about ways to improve the safety of a product. It

contains non-regulatory information and guidance that is advisory and may include recommended actions or inspections with a request for voluntary reporting of inspection results.

Respondents: Approximately 1,120 owners/operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 467 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 10, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–11999 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2011–0019, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Mercedes-Benz 350 CLS Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 2005 Mercedes-Benz 350 CLS passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005 Mercedes-Benz 350 CLS passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is June 16, 2011.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.*

Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, and has no substantially similar U.S.-certified counterpart, shall be refused admission into the United States unless NHTSA has decided that the motor vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notices in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (G&K) (Registered Importer 90–007) has petitioned NHTSA to decide whether nonconforming 2005 Mercedes-Benz 350 CLS passenger cars are eligible for importation into the United States. G&K believes that these vehicles are capable of being modified to meet all applicable FMVSS.

In its petition, G&K described the nonconforming 2005 Mercedes-Benz 350 CLS as the same model as the U.S.-certified 2006 Mercedes-Benz CLS class. Because the 350 CLS model was introduced in Europe as a new model in 2005, prior to the introduction of the

U.S-certified introduction of the CLS class in 2006, the petitioner acknowledged that it could not base its petition on the substantial similarity of the 2005 Mercedes-Benz 350 CLS to the U.S.-certified 2006 Mercedes-Benz CLS class due to the model year discrepancy and the petitioning requirements of 49 U.S.C. 30141(a)(1)(A), as set forth in 49 CFR part 593. Instead, the petitioner chose to establish import eligibility on the basis that the vehicles have safety features that comply with, or are capable of being modified to comply with, the FMVSS based on destructive test data or such other evidence that NHTSA decides to be adequate as set forth in 49 U.S.C Part 30141(a)(1)(B). The petitioner contends that the 2005 Mercedes-Benz 350 CLS utilizes the same components as the U.S.-certified 2006 Mercedes-Benz 350 CLS in virtually all of the systems subject to the applicable FMVSS.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 2005 Mercedes-Benz 350 CLS passenger cars conform to many FMVSS and are capable of being altered to comply with all other standards to which they were not originally manufactured to conform.

Specifically, the petitioner claims that non-U.S. certified 2005 Mercedes-Benz 350 CLS passenger cars, as originally manufactured, conform to: Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Standard,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies* 210, *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of U.S.-model instrument cluster and U.S.-version software.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model: (a) Headlamps; and (b) front side marker lamps with reflex reflectors.

Standard No. 110 *Tire Selection and Rims and Motor Home/Recreational Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 pounds) or Less:* Installation of a tire and rim information placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Installation of U.S.-version software, or a supplemental key warning system to meet the requirements of this standard.

Standard No. 206 *Door Locks and Door Retention Components:* Inspection of all vehicles and installation of a conforming door lock and door retention components on vehicles not already so equipped.

Standard No. 208 *Occupant Crash Protection:* Installation or activation of U.S.-version software to ensure that the seat belt warning system meets the requirements of this standard.

Standard No. 225 *Child Restraint Anchorage Systems:* Installation of U.S.-model child restraint anchorage system components that meet the requirements of FMVSS No. 225.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and installation of U.S.-conforming components on vehicles not already so equipped to ensure that the fuel system meets the requirements of this standard.

Standard No. 401 *Interior Trunk Release:* Installation of U.S.-model interior trunk release components to ensure that the vehicle meets the requirements of this standard.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 6, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–11993 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0054; Notice 1]

Cooper Tire & Rubber Tire Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Tire Company, (Cooper),[1] has determined that approximately 6,964 passenger car replacement tires manufactured between January 23, 2011 and March 26, 2011, do not fully comply with paragraph S5.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Cooper has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* (dated March 31, 2011).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Cooper's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 6,964 size LT285/75R16 Cooper brand Discoverer S/T MAXX model passenger car replacement tires manufactured between January 23, 2011 and March 26, 2011, at Cooper's plant located in Texarkana, Arkansas.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 6,964 [2] tires that Cooper no longer

[1] Cooper Tire & Rubber Tire Company (Cooper) is a replacement equipment manufacturer incorporated in the state of Delaware.

[2] Cooper's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Cooper as a replacement equipment manufacturer from the notification and recall responsibilities of 49 CFR part 573 for 6,964 of the affected tires. However, the agency cannot relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant tires

controlled at the time that it determined that a noncompliance existed in the subject tires.

Paragraph S5.5(f) of FMVSS No. 139 require in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches * * *

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different * * *

Cooper explains that the noncompliance is that, due to a mold labeling error, the sidewall marking on the reference side of the tires incorrectly describes the actual number of plies in the tread area of the tires as required by paragraph S5.5(f). Specifically, the tires in question were inadvertently manufactured with "TREAD 1 PLY NYLON + 2 PLY STEEL + 3 PLY POLYESTER; SIDEWALL 3 PLY POLYESTER." The labeling should have been "TREAD 2 PLY NYLON + 2 PLY STEEL + 3 PLY POLYESTER; SIDEWALL 3 PLY POLYESTER."

Cooper also explains that while the non-compliant tires are mislabeled, the tires do in fact have 2 Nylon tread plies and meet or exceed all other applicable Federal Motor Vehicle Safety Standards.

Cooper reported that this noncompliance was discovered during a review of the specified stamping requirements and visual inspection of tire stamping.

Cooper argues that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not create an unsafe condition and all other labeling requirements have been met.

Cooper points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

In summation, Cooper believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 16, 2011.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: May 11, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–11991 Filed 5–16–11; 8:45 am]

BILLING CODE 4910–59–P

under their control after Cooper notified them that the subject noncompliance existed. Those tires must be brought into conformance, exported, or destroyed.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Identification of Three Entities as Government of Libya Entities Pursuant to Executive Order 13566

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of three entities identified on May 5, 2011 as persons whose property and interests in property are blocked pursuant to Section 2 of Executive Order 13566 of February 25, 2011, "Blocking Property and Prohibiting Certain Transactions Related to Libya."

DATES: The identification by the Director of OFAC of the three entities identified in this notice, pursuant to Executive Order 13566 of February 25, 2011, is effective May 5, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *Tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *Tel.:* 202/622–0077.

Background

On February 25, 2011, the President issued Executive Order 13566, "Blocking Property and Prohibiting Certain Transactions Related to Libya" (the "Order") pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06).

Section 2 of the Order blocks all property and interests in property that

are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya.

On May 5, 2011, the Director of OFAC, identified, pursuant to Section 2 of the Order, three entities whose property and interests in property are blocked. The listing for these entities is as follows:

Entities

1. Libyan Jamahiriya Broadcasting Corporation, POB 333, Ahsaat Street, Tripoli, Libya; E-mail Address *info@ljbc.net;* alt. E-mail Address *info@en.ljbc.net;* Web site *http://www.ljbc.net;* alt. Web site *http://www.en.ljbc.net;* Telephone no. (218) (21) (4445926); Fax no. (218) (21) (3402107) [Libya2]

2. Dalia Advisory Ltd, 11 Upper Brook Street, London W1K 6PB, United Kingdom [Libya2]

3. Lafico Algeria Holding (a.k.a. Lafico Algeria), Street 19, Freres Addour, Bir Mourad Rais, Chafaa Adour, Algiers 16300, Algeria; E-mail Address *laficoalgeria@hotmail.com;* Telephone no. (213) (21) (541703); Telephone no. (213) (21) (541110); Fax no. (213) (21) (541704) [Libya2]

Dated: May 5, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–11962 Filed 5–16–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Lending and Investment

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before July 18, 2011.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Fred Phillips-Patrick on (202) 906–7295, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Lending and Investment.

OMB Number: 1550–0078.

Form Number: N/A.

Description: Current OTS regulations for the documentation of loans and investments for safety and soundness purposes are found at 12 CFR 560 and 562.1, 563.41, 563.170, and 590.4. OTS also requires certain loan disclosures to borrowers with respect to adjustable rate mortgage loans (12 CFR 560.210) in accordance with regulations issued by the Federal Reserve Board (12 CFR 226.19(b) and 226.20(c)).

OTS uses the information during the examination process to ensure that savings associations are complying with applicable rules and regulations as well as engaging in safe and sound lending practices.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 731.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 266,489 hours.

Dated: May 11, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–11977 Filed 5–16–11; 8:45 am]

BILLING CODE 6720–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,
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Part II

Department of Energy

Federal Energy Regulatory Commission

Okanogan Public Utility District No. 1 of Okanogan County, WA; Notice of Availability of Draft Environmental Assessment; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12569–001]

Okanogan Public Utility District No. 1 of Okanogan County, WA; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 **Federal Register** [FR] 47897), the Office of Energy Projects has reviewed Okanogan Public Utility District No. 1 of Okanogan County's (Okanogan PUD) application for license for the Enloe Hydroelectric Project (FERC Project No. 12569), located on the Similkameen River near the city of Oroville in Okanogan County, Washington. Part of the project would occupy a total of 35.47 acres of federal lands administered by the U.S. Bureau of Land Management.

Staff prepared this draft environmental assessment (EA), which analyzes the potential environmental effects of relicensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For further information, contact Kim Nguyen by telephone at (202) 502–6105, or by e-mail at *kim.nguyen@ferc.gov.*

Dated: May 9, 2011.

Kimberly D. Bose,

Secretary.

Environmental Assessment for Hydropower License

Enloe Hydroelectric Project—FERC Project No. 12569—Washington

Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, 888 First Street, NE., Washington, DC 20426

[May 2011]

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Acronyms and Abbreviations

μg microgram
AHS Archaeological and Historical Services
APE area of potential effect
BLM U.S. Bureau of Land Management
BMP best management practice
°C degrees Celsius
cfs cubic feet per second
Colville Confederated Tribes of the Colville Reservation
Commission Federal Energy Regulatory Commission
CSMP Construction Sediment Management Program
Corps U.S. Army Corps of Engineers
CRITFC Columbia River Inter-tribal Fish Commission
CRWG Cultural Resources Working Group
CWA Clean Water Act
dB decibel
DO dissolved oxygen
EA environmental assessment
EFH essential fish habitat
Enloe Project or project Enloe Hydroelectric Project
ESCP Erosion and Sediment Control Plan
ESA Endangered Species Act
FERC Federal Energy Regulatory Commission
FPA Federal Power Act
FTE full-time equivalent
FWS U.S. Department of the Interior, Fish and Wildlife Service
g the acceleration due to gravity (32.2 feet per second^2)
GWh gigawatt-hour
HAER Historic American Engineering Record
HPMP Historic Properties Management Plan
Interior U.S. Department of the Interior
kg kilogram
kV kilovolt
KOP key observation point
L liter
mg milligram
mm millimeter
Ministry of Environment British Columbia Ministry of Environment
msl mean sea level
MW megawatt
MWh megawatt-hour
National Register National Register of Historic Places
NERC North American Electric Reliability Council
NHPA National Historic Preservation Act of 1966
NMFS National Marine Fisheries Service
Okanogan PUD Public Utility District No. 1 of Okanogan County
Okanogan Shoreline Program Okanogan County's Shoreline Master Program
OTID Oroville-Tonasket Irrigation District
PA Programmatic Agreement
Park Service National Park Service
Reclamation U.S. Bureau of Reclamation
RM river mile
SCORP State Comprehensive Outdoor Recreation Plan
SD1 Scoping Document 1
SD2 Scoping Document 2
Scenic Trail Pacific Northwest National Scenic Trail
State Parks Commission Washington State Parks and Recreation Commission
TCP traditional cultural property
TDG total dissolved gas
TMDL total maximum daily load
UCR Upper Columbia River
USGS U.S. Geological Survey
Vegetation Plan Vegetation Mitigation and Monitoring Plan
Washington DFW Washington Department of Fish and Wildlife
Washington DNR Washington Department of Natural Resources
Washington DOE Washington Department of Ecology
Washington PC Washington Parks Commission
Washington RCO Washington Recreation and Conservation Office
Washington SHPO State Historic Preservation Office
Water Trail Committee Greater Columbia Water Trail Steering Committee
WSMA Washington State's Shoreline Management Act of 1971

Executive Summary

Proposed Action

On August 22, 2008, the Public Utility District No. 1 of Okanogan County, Washington (Okanogan PUD) filed an application seeking a license with the Federal Energy Regulatory Commission (Commission or FERC) for the proposed 9.0-megawatt (MW) Enloe Hydroelectric Project (Enloe Project or project) to be located on the Similkameen River near Oroville in Okanogan County, Washington. The project would occupy 35.47 acres of federal lands administered by U.S. Bureau of Land Management (BLM).

Project Description and Proposed Facilities

The Enloe dam and development was originally constructed for hydroelectric generation between 1919 and 1923. The project operated from 1923 to 1958 when it was decommissioned. The original project included an intake, penstock, and powerhouse located 850 feet downstream of the dam on the west bank of the Similkameen River. On September 13, 1996, the Commission issued an order to Okanogan PUD to redevelop the Enloe Project using the existing dam and rehabilitating the original intake, penstock, and powerhouse. However, on February 23, 2000, that order was rescinded.

Okanogan PUD proposes again to redevelop the Enloe Project by using the existing concrete gravity arch dam impounding a 76.6-acre reservoir, and constructing a new penstock intake structure and above-ground steel penstocks carrying flows from the intake to the new powerhouse located 370 feet downstream of the dam on the east bank of the Similkameen River. The existing

dam crest elevation of 1,044.3 feet would be increased by installing new 5-foot-high crest gates which would increase the reservoir to 1,049.3 feet elevation and the surface area to 88.3 acres. The powerhouse would contain two vertical Kaplan turbine/generator units with a total installed capacity of 9.0 MW. The project would also include a substation adjacent to the powerhouse, and a 100-foot-long, 13.2-kilovolt primary transmission line connecting the substation to an existing distribution line. The project would also include about 1.5 miles of new and upgraded access roads. The Enloe Project would operate automatically in a run-of-river mode, with a normal operating water level of the reservoir between 1,048.3 and 1,049.3 feet mean sea level.

Proposed Environmental Measures

Okanogan PUD proposes the following environmental measures to protect, mitigate, and enhance water quality, aquatic, terrestrial, recreation, aesthetic, and cultural resources during construction and operation of the project.

During construction:

- Implement a Construction Sediment Management Program (CSMP), an Erosion and Sediment Control Plan (ESCP), and a Spill Plan;
- Implement a Blasting Plan;
- Employ best management practices (BMPs) including flagging and fencing wetland areas;
- Provide biological monitoring;
- Implement a Noxious Weed Control Program;
- Survey disposal sites and control noxious weeds prior to spoil disposal;
- Revegetate spoil disposal sites;
- Schedule construction activities in the summer and early fall to minimize effects on overwintering birds and bald eagles;
- Conduct pre-disposal site surveys for wildlife and schedule vegetation clearing to avoid wildlife conflicts;
- Survey for Ute ladies-tresses prior to, during, and postconstruction to identify locations and avoid effects;
- Monitor and avoid known archaeological sites listed in the National Register of Historic Places (National Register) during construction of project facilities; and
- Develop and implement a Safety During Construction Plan and limit public access.

During project operation:

- For water quality:
  - Design and place the intake structure and channel to minimize sediment transport;
  - Place the powerhouse tailrace below Similkameen Falls so that it discharges to and circulates water in the plunge pool downstream of the falls, preventing stagnation and consequently water quality degradation of the pool habitat;
  - Provide aeration in the powerhouse draft tubes to maintain dissolved oxygen (DO) levels; and
  - Monitor water quality, including water temperatures, DO, and total dissolved gases (TDG) in the tailrace for a five-year period.
- For aquatic resources:
  - Ensure that logs and woody debris can pass over the dam and transporting large debris off-site if needed;
  - Place two clusters of boulders in the Similkameen River upstream of the reservoir to improve mountain whitefish habitat and recreational fisheries;
  - Include trashracks with 1-inch bar spacing on the project intake(s) so that smaller fish would be able to pass safely through the trashrack and larger fish would be discouraged or prevented from passing through the trashracks and turbines;
  - Design and place the tailrace to avoid effects on fish;
  - Install and monitor entrainment and mortality of fish at the tailrace barrier nets;
  - Operate run-of-river and implementing agency-recommended ramping rates downstream of the project during project start-up and shut-down;
  - Improve spawning, rearing, and summer thermal refugia downstream of the powerhouse tailrace in an existing side channel;
  - Supplement gravel in the river reach downstream of the tailrace to increase the amount of gravel in the river downstream of Enloe dam and improve spawning habitat;
  - Develop and implement a biological review process including the establishment of a Technical Review Group (TRG) comprising agencies and the Confederated Tribes of the Colville Reservation (Colville); and
  - Develop a fish monitoring database for organizing and storing monitoring data related to aquatic resources for all proposed studies.
- For terrestrial resources, design the project transmission line to minimize effects on raptors and other birds and implement a Vegetation Plan that includes:
  - Returning the abandoned shoreline road to natural conditions;
  - Planting riparian vegetation along the abandoned road and along and upstream of the east and west banks of the reservoir;
  - Installing grazing control measures;
  - Monitoring restored areas and planting additional willows if needed; and
  - Developing an environmental training program to inform employees about sensitive habitats.
- For recreation resources, implement a Recreation Management Plan that includes:
  - Installing barricades, fencing, and a stock watering tank as part of the Fence Plan;
  - Providing public access downstream of Enloe dam on the east bank;
  - Transferring ownership rights of the trestle bridge to Okanogan County for the development of a future public, non-motorized, recreational use trail;
  - Improving the existing informal boat ramp upstream of Enloe dam;
  - Restoring the wooded area on the east bank and conducting annual cleanup activities of the wooded area and along the Ditch Road;
  - Developing an interpretive publication, including a map illustrating public access and recreation sites;
  - Developing interpretive displays by placing an information board near Enloe dam; and interpretive signage near the parking, picnic area, and near the access bridge to the abandoned powerhouse;
  - Removing existing trash and conducting annual cleanup;
  - Providing parking, picnic tables, primitive campsites, and a vault toilet on the east bank upstream of Enloe dam;
  - Maintaining existing signage, safety cables, and grab ropes upstream of the dam;
  - Installing safety and warning signs and a log boom across the channel to protect boaters; and
  - Coordinating with BLM and other landowners on how to prevent public access to the old powerhouse.
- For aesthetic resources, implement an Aesthetics Management Plan that includes:
  - Using visually-compatible colors and building materials for facilities along the east bank;
  - Consulting with the Colville and other stakeholders regarding restoration;
  - Using non-reflective surfaces where possible during construction; and
  - Grading and repairing slopes with native plants following removal of buildings.
- For cultural resources, finalize a draft May 2009 Historic Properties Management Plan (HPMP) that includes:
  - Soliciting for a new owner of the historic Enloe powerhouse, and failing that, demolishing the structure and providing interpretive signage using visually-compatible colors and building materials for facilities along the east bank;
  - Reviewing and reaching agreement on the HPMP and incorporating

information into a Programmatic Agreement (PA);

○ Monitoring effects of shoreline fluctuation on archaeological sites in shoreline areas and mitigating, as needed;

○ Determining if there would be effects on archaeological sites around project recreation areas; and

○ Developing an inadvertent discovery plan.

On October 28, 2010, Okanogan PUD filed additional information regarding ongoing consultations with Washington Department of Ecology (Washington DOE) and Washington Department of Fish and Wildlife (Washington DFW) for the 401 Water Quality Certification process. In this filing, Okanogan and Washington DFW and DOE have developed the following understanding with regards to the bypassed reach:

- Providing 30 cubic feet per second (cfs) minimum flows from mid-July to mid-September, and 10 cfs rest of the year to the pool in the bypassed reach;
- Monitoring DO and water temperature in the bypassed reach;
- Initiating an adaptive management program to enhance DO and monitor water temperature in the bypassed reach if water quality standards are not met;
- Providing downramping rates in the bypassed reach; and
- Determining means and withdrawal location for minimum flows released to the bypassed reach.

Alternatives Considered

This draft environmental assessment (EA) considers the following alternatives: (1) No-action—the project would not be constructed and there would be no changes or enhancements at the site; (2) Okanogan PUD's proposal—as outlined above; and (3) a staff alternative—Okanogan PUD's proposal with staff's additions and modifications.

Under the staff alternative, the project would include Okanogan PUD's proposed measures, as outlined above, with the exception of placing boulder clusters in the project forebay and entrainment and resident fish monitoring. In addition, the staff alternative would include: (1) A Spoil Disposal Plan; (2) a water quality monitoring plan that includes: Selecting water quality monitoring locations, filing of reports at the end of year 5, and conducting additional temperature, DO, and TGD monitoring beyond the 5-year period, if needed; (3) consultation with the TRG prior to implementation of the Blasting Plan, the woody debris plan, the proposed side-channel enhancement plan, the proposed gravel supplementation program, and the Spill Plan; (4) consultation with Interior and Washington DFW during final design of the intake structure and trashracks; (5) a project compliance monitoring plan; (6) revision of the Vegetation Plan to include filing monitoring reports annually for first 5 years and in year 8 and providing the Commission, FWS, BLM, and Washington DFW with these reports and filing for Commission approval, any proposals for further restoration measures; (7) incorporation of the land occupied by the side-channel enhancement and length of the project access road from the Loomis-Oroville Road to the powerhouse into the project boundary; (8) retention of dead trees along the reservoir and provisions for 10 artificial perch poles; (9) preparation of an Ute ladies'-tresses survey plan after consultation with FWS, BLM, and Washington DFW and an additional plan to avoid or minimize adverse effects on the Ute ladies'-tresses if they are identified in the project areas; (10) consultation with stakeholders on the final Recreation Management Plan; (11) a plowing schedule for winter months; (12) a recreation use monitoring plan developed in consultation with BLM; (13) a fire suppression program; (14) removal of the one small, deteriorated building on Okanogan PUD land at the north end of the proposed Enloe dam recreation area; (15) consultation with BLM and local emergency response agencies on the Safety During Construction Plan; (16) creation of a river access point at Miner's Flat; (17) consultation with BLM and the Colville to develop details on how the facilities and laydown or construction areas would blend into the existing landscape; and (18) a revised HPMP to include provisions for: Further consideration of the potential effects of capping site 45OK532, a description of the proposed side-channel enhancement site, two separate defined APEs that delineate the proposed Enloe project and the proposed side-channel enhancement site, consultation with the Cultural Resources Working Group regarding the resolution of adverse effects on the historic Enloe powerhouse, re-evaluating the Oroville-Tonasket Irrigation Canal for National Register-eligibility, completing determinations of eligibility for unidentified cultural resources on BLM lands, periodic review of the HPMP, a site monitoring program, cultural interpretative and education measures, and revising the APEs to accommodate modifications to the project boundary.

Public Involvement and Areas of Concern

Before filing its license application, Okanogan PUD conducted pre-filing consultation under the traditional licensing process. The intent of the Commission's pre-filing process is to initiate public involvement early in the project planning process and encourage citizens, governmental entities, tribes, and other interested parties to identify and resolve issues prior to an application being formally filed with the Commission.

After the license application was filed, we conducted scoping to determine what issues and alternatives should be addressed. On December 16, 2008, we distributed Scoping Document 1 (SD1) to interested parties, soliciting comments, recommendations, and information on the project. An environmental site review of the project was held on January 15, 2009. Two scoping meetings were held in Oroville, Washington, on January 14 and 15, 2009, to receive oral comments on the project. Based on discussions during the environmental site review and scoping meetings and written comments filed with the Commission, we issued a revised scoping document (SD2) on May 7, 2009. On December 28, 2009, we issued a notice that the application was ready for environmental analysis and requested conditions and recommendations.

The primary issues associated with licensing the project are the effects of project construction and operation on geology and soils; water quality; aquatic, terrestrial, and cultural resources; threatened and endangered species; and recreation, land use, and aesthetic resources.

Staff Alternative

Aquatic Resources

Measures proposed in the ESCP, CSMP, Spill Plan, Blasting Plan, and Safety During Construction Plan would help prevent adverse effects from erosion and sedimentation that may result from construction and operation of the project, and would help prevent adverse effects on geology and soils and water quality.

Run-of-river operation would minimize effects on aquatic resources. Locating the tailrace downstream of Similkameen Falls would reduce TDG and enhance conditions for aquatic resources in the Similkameen downstream of the falls. In addition, designing the tailrace in a manner to provide circulation in the pool and aerating the draft tubes would ensure

adequate DO for aquatic resources downstream of Similkameen Falls.

Providing minimum flows in the bypassed reach would provide some refuge for resident fish in the plunge pool downstream of Enloe dam. The 1-inch trash rack spacing on the intake trashrack, and installation and monitoring of a tailrace net barrier would minimize adverse affects on aquatic resources.

The construction of the side channel, gravel enhancement, riparian planting projects, and improved water quality due to reductions in TDG and enhanced DO levels are expected to have long-term benefits for holding, spawning, and rearing fish, particularly anadromous salmonids, and should increase anadromous salmonid productivity in the Similkameen River downstream of the project.

Terrestrial Resources

Measures in the Vegetation Plan, including grazing controls, noxious weed control, vegetation monitoring, employing BMPs, providing biological monitor during construction, retaining dead trees and installing artificial perch poles for bald eagle perching habitat, and employee training would prevent adverse effects on riparian and wetland areas which provide habitat for wildlife, as well as mitigate for adverse effects during construction of the project.

Threatened and Endangered Species

The Similkameen River below Similkameen Falls is designated critical habitat for the threatened UCR steelhead, the only fish species known to occur in project affected waters that is listed under the Endangered Species Act (ESA). Proposed measures to reduce TDG, increase DO through draft tube aeration, supplement spawning gravel, transport large woody debris, and construct the side-channel enhancements would improve spawning and rearing habitat in the river downstream of the falls and increase productivity. The biological review process, fisheries monitoring, and ongoing refinement would provide long-term benefits for UCR steelhead and UCR steelhead designated critical habitat.

Additional surveys for the threatened Ute ladies'-tresses prior to, during, and postconstruction would either confirm that the species does not occur in areas affected by the project or guide the development of avoidance or mitigative measures. The survey results and filing, with the Commission for approval, proposed measures to avoid or mitigate impacts to listed species; implementation of the Vegetation Plan, including noxious weed control, employing BMPs during construction, employee training, and provision of a biological monitor during construction would protect potential Ute ladies'-tresses habitat in areas affected by the project and at the proposed side channel enhancement site.

Recreation and Land Use

Implementation of the Recreation Management Plan would improve existing recreational facilities and opportunities. The Safety During Construction Plan, as well as the Fence Plan, would help keep visitors to the project away from the construction activities and reduce user conflicts between recreationists and cattle grazing activities.

Inclusion of the entire Oroville-Tonasket Irrigation District Ditch Road as a project feature and bringing it into the project boundary would ensure maintenance of the entire road for the purpose of providing public access to the campground, boat launch, picnic areas, and access trail to the river below the dam.

Aesthetic Resources

Okanogan PUD's proposal to use visually-compatible colors and building materials, use non-reflective surfaces where possible, and consult with the Colville during restoration activities, would provide some protection for visual resources. The staff alternative with additional recommendations including coordination with stakeholders to include specific approaches for blending existing and proposed Enloe Project facilities into the existing landscape character; revegetating, stabilizing, and landscaping the new construction areas and areas immediately adjacent; grading, planting native vegetation, repairing slopes damaged by erosion, and preventing future erosion; monitoring restored areas; and conducting maintenance activities would provide additional protection.

Cultural Resources

Revising and implementing the May 2009 HPMP, with staff's additional measures, would ensure protection of historic properties over the license term.

No-Action Alternative

Under the no-action alternative, environmental conditions would remain the same, and no enhancement of environmental resources would occur. BLM stated that it would require Okanogan PUD to remove the dam and all associated facilities from the public lands under the existing right-of-way permit if a license is be issued. We discussed dam removal under cumulative effects in section 3.5.

Conclusions

Based on our analysis, we recommend licensing the project as proposed by Okanogan PUD with some staff modifications and additional measures.

In section 4.2 of the EA, we estimate the likely cost of alternative power for each of the alternatives identified above. Our analysis shows that during the first year of operation under Okanogan PUD's proposed alternative, the project would cost $106,470, or $2.40/megawatt-hours (MWh), less than the likely alternative cost of power. Under the staff alternative, the project power would cost $83,920, or $1.89/MWh, less than the likely cost of alternative power.

We chose the staff alternative as the preferred alternative because: (1) The project would provide a dependable source of electrical energy for the region (44.4 gigawatt-hours annually); (2) the project could save an equivalent amount of fossil fuel-fired electric generation and capacity, which may help conserve non-renewable energy resources and reduce atmospheric pollution, including greenhouses gases; and (3) the recommended environmental resources proposed by Okanogan PUD, as modified by staff, would adequately protect and enhance environmental resources affected by the project. The overall benefits of the staff alternative would be worth the cost of proposed and recommended environmental measures.

We conclude that issuing a new license for the project, with the environmental measures we recommend, would not be a major federal action significantly affecting the quality of the human environment.

Draft Environmental Assessment

Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, Washington, DC

Enloe Hydroelectric Project

Project No. 12569–001—Washington

1.0 Introduction

1.1 Application

On August 22, 2008, the Public Utility District No. 1 of Okanogan County, Washington (Okanogan PUD) filed an application seeking a license with the Federal Energy Regulatory Commission (Commission or FERC) for the 9.0-megawatt (MW) Enloe Hydroelectric Project (Enloe Project or project) located on the Similkameen River at river mile (RM) 8.8 near the city of Oroville, Okanogan County, Washington (figure

1). The project would occupy 35.47 acres of federal lands administered by U.S. Bureau of Land Management (BLM). The project would generate an average of 45 gigawatt-hours (GWh) of energy annually.

Enloe dam was originally constructed for hydroelectric generation between 1919 and 1923. The project operated from 1923 to 1958 when it was decommissioned. The original project included an intake, penstock, and powerhouse located 850 feet downstream of the dam on the west bank of the Similkameen River. On September 13, 1996, the Commission issued an order to Okanogan PUD to redevelop the Enloe Project using the existing dam and rehabilitating the original intake, penstock, and powerhouse. However, on February 23, 2000, that order was rescinded.

Okanogan PUD proposes to again redevelop the Enloe Project by using the existing concrete gravity arch dam impounding a 76.6-acre reservoir; and constructing new penstock intake structure, and above-ground steel penstocks carrying flows from the intake to the new powerhouse located 370 feet downstream of the dam on the east bank of the Similkameen River.

1.2 Purpose of Action and Need for Power

1.2.1 Purpose of Action

The Commission must decide whether to issue a license to Okanogan PUD for the Enloe Project and what conditions should be placed on any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that the project will be best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes for which licenses are issued (such as flood control, irrigation, or water supply), the Commission must give equal consideration to the purposes of (1) energy conservation; (2) the protection of, mitigation of damage to, and enhancement of fish and wildlife resources; (3) the protection of recreational opportunities; and (4) the preservation of other aspects of environmental quality.

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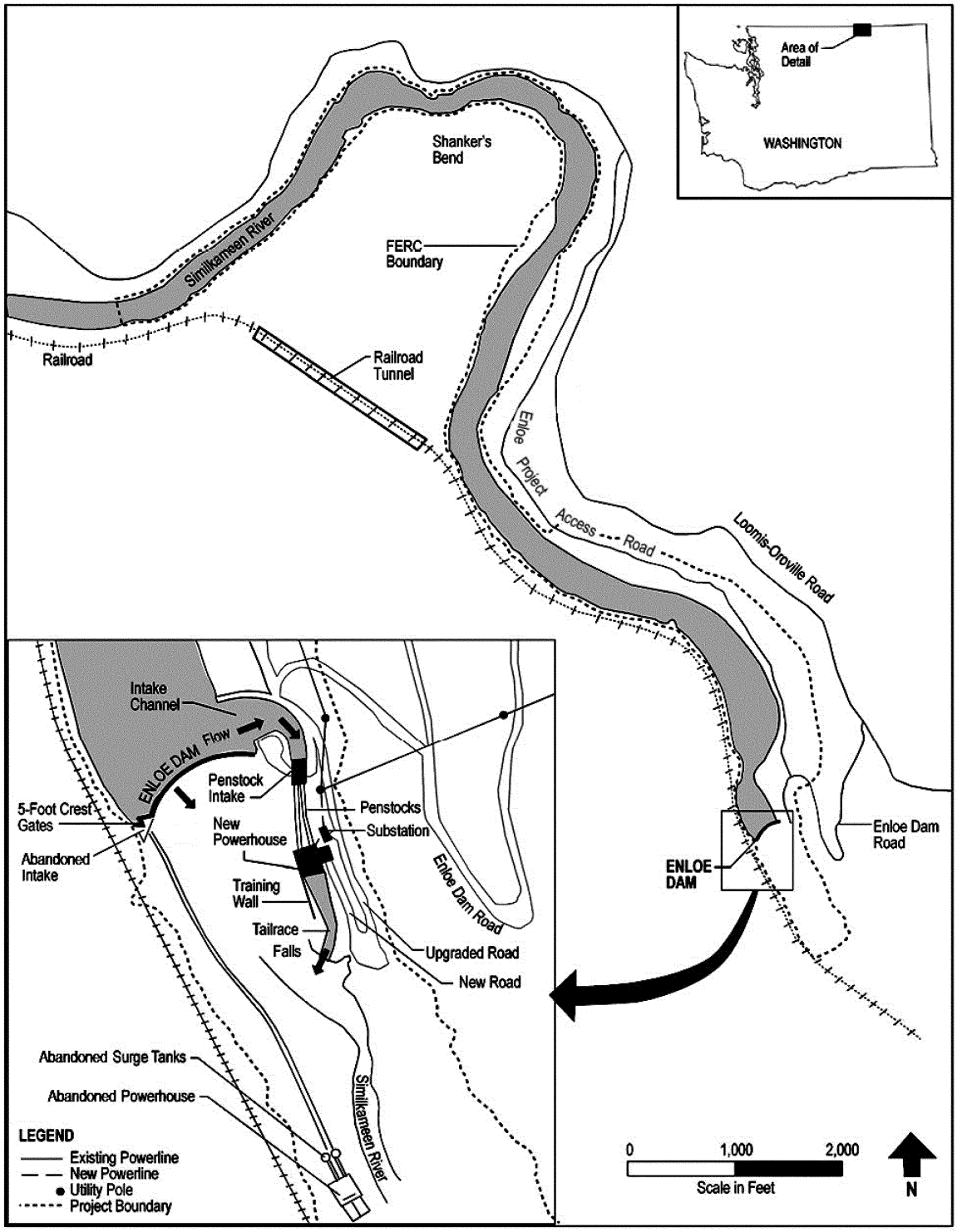

Figure 1. Location of the Enloe Hydroelectric Project (Source: Okanogan PUD, 2008a, as modified by staff).

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Issuing a license for the Enloe Project would allow the Okanogan PUD to generate electricity for the term of the license, making electrical power from a renewable resource available to its customers.

This draft environmental assessment (EA) assesses the effects associated with construction and operation of the project and alternatives to the proposed project. It also includes recommendations to the Commission on whether to issue a license, and if so, includes the recommended terms and

conditions to become a part of any license issued.

In this draft EA, we assess the environmental and economic effects of construction and operation of the project as proposed by Okanogan PUD, and with our recommended measures. We also consider the effects of the no-action alternative. Important issues that are addressed include the protection of geology and soils, water quantity and quality, cultural resources, aesthetics resources, and recreation and land use during project construction and operation.

1.2.2 Need for Power

The Enloe Project would provide hydroelectric generation to meet part of Okanogan PUD's power requirements, resource diversity, and capacity needs. The project would have an installed capacity of 9.0 MW and generate approximately 44.4 GWh per year.

The North American Electric Reliability Council (NERC) annually forecasts electrical supply and demand nationally and regionally for a 10-year period. The Enloe Project is located in the Northwest subregion of the Western Electricity Coordinating Council region of the NERC. According to NERC's 2010 forecast, winter peak demands and annual energy requirements for the Northwest subregion are projected to grow at rates of 1.1 percent and 1.2 percent, respectively, from 2010 through 2019 (NERC, 2010). NERC projects resource capacity margins (generating capacity in excess of demand) will remain above the target reserve margins of 18.6 percent for summer and 20.0 percent for winter throughout the 2010–2019 period. Over the next 10 years, WECC estimates that about 6,285 MW of additional capacity will be brought on line.

We conclude that power from the Enloe Project would help meet a need for power in the Northwest subregion in both the short and long term. The project would provide power that displaces non-renewable, fossil-fired generation and contributes to a diversified generation mix. Displacing the operation of fossil-fueled facilities may avoid some power plant emissions and creates an environmental benefit.

1.3 Statutory and Regulatory Requirements

A license for the Enloe Project would be subject to numerous requirements under the Federal Power Act (FPA) and other applicable statutes. We summarize the major regulatory requirements in table 1 and describe them below.

TABLE 1—MAJOR STATUTORY AND REGULATORY REQUIREMENTS FOR THE ENLOE HYDROELECTRIC PROJECT

[Source: Staff]

Requirement	Agency	Status
Section 18 of the FPA (fishway prescriptions).	NMFS, FWS	NMFS and FWS filed reservations of authority on February 26, 2010.
Section 4(e) of the FPA (land management conditions).	Interior	No section 4(e) conditions have been filed.
Section 10(j) of the FPA	Washington DFW, FWS, NMFS	Washington DFW, FWS, and NMFS all filed section 10(j) recommendations on February 26, 2010.
Clean Water Act—Water Quality Certification.	Washington DOE	Application for certification was received on February 25, 2011; action on the application due by February 25, 2012.
Endangered Species Act Consultation.	NMFS, FWS	Commission staff is initiating formal consultation with both agencies.
Coastal Zone Management Act Consistency.	Washington DOE	By letter dated September 25, 2009, Washington DOE waived its requirement for compliance with its Coastal Zone Management Program for the project.
National Historic Preservation Act	Advisory Council on Historic Preservation; Washington Department of Archaeology and Historic Preservation.	The Commission designated Okanogan PUD as a non-federal representative for conducting section 106 consultation on September 26, 2005. Okanogan PUD filed a Historic Properties Management Plan on June 16, 2009.
Pacific Northwest Power Planning and Conservation Act.		The project is not located within the designated protected area of the Columbia River Basin and would be in compliance with specific provisions to be considered in the licensing or relicensing of non-federal hydropower projects.
Magnuson-Stevens Fishery Conservation and Management Act.	NMFS	Licensing the project could adversely affect Chinook salmon essential fish habitat. Commission staff is initiating formal consultation with NMFS.

Notes: 401 WQC—401 Water Quality Certificate
BLM—U.S. Bureau of Land Management
Commission—Federal Energy Regulatory Commission
FPA—Federal Power Act
FWS—U.S. Department of the Interior, Fish and Wildlife Service
Interior—U.S. Department of the Interior
NMFS—National Marine Fisheries Service
Okanogan PUD—Public Utility District No. 1 of Okanogan County
Washington DFW—Washington Department of Fish and Wildlife
Washington DOE—Washington Department of Ecology

1.3.1 Federal Power Act

1.3.1.1 Section 18 Fishway Prescriptions

Section 18 of the FPA states that the Commission is to require construction, operation, and maintenance by a licensee of such fishways as may be prescribed by the Secretaries of Commerce or the U.S. Department of the Interior (Interior). The National Marine Fisheries Service (NMFS) by letter dated February 26, 2010, and the U.S. Department of the Interior, Fish and Wildlife Service (FWS) by letter dated February 26, 2010, request that a reservation of authority to prescribe fishways under section 18 be included in any license issued for the project.

1.3.1.2 Section 4(e) Conditions

Section 4(e) of the FPA provides that any license issued by the Commission for a project within a federal reservation shall be subject to and contain such conditions as the Secretary of the responsible federal land management agency deems necessary for the adequate protection and use of the reservation. Interior, on behalf of the U.S. Bureau of Land Management (BLM), filed recommended terms and conditions by letter dated February 26, 2010, and did not prescribe any conditions pursuant to section 4(e) of the FPA.

1.3.1.3 Section 10(j) Recommendations

Under section 10(j) of the FPA, each hydroelectric license issued by the Commission must include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, or enhancement of fish and wildlife resources affected by the project. The Commission is required to include these conditions unless it determines that they are inconsistent with the purposes and requirements of the FPA or other applicable law. Before rejecting or modifying an agency recommendation, the Commission is required to attempt to resolve any such inconsistency with the agency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

NMFS, FWS, and Washington Department of Fish and Wildlife (Washington DFW) all timely filed, on February 26, 2010, recommendations under section 10(j), as summarized in table 23, in section 5.4, *Recommendations of Fish and Wildlife Agencies.* In section 5.4, we also discuss how we address the agency recommendations and comply with section 10(j).

1.3.2 Clean Water Act

Under section 401 of the Clean Water Act (CWA), a license applicant must obtain certification from the appropriate state pollution control agency verifying compliance with the CWA. On February 24, 2010, Okanogan PUD applied to the Washington Department of Ecology (Washington DOE) for a 401 Water Quality Certificate (WQC) for the Enloe Project. Washington DOE received this request on February 25, 2010. Washington DOE has not yet acted on the request. Washington DOE action is due by February 25, 2011.

On October 28, 2010, Okanogan PUD filed a status report on its negotiations with Washington DOE and Washington DFW regarding possible conditions for the WQC for the Enloe Project, and on November 10, 2010, it filed supplemental information regarding the basis for the potential conditions. In this filing, measures for aquatic resources would include:

- A minimum flows of 30 cfs from mid-July to mid-September, and 10 cfs rest of the year to the pool below Enloe dam.
- Monitoring water temperature in the bypassed reach for a period of time postconstruction; and adopting an adaptive management program to enhance DO and water temperatures should monitoring indicate that water quality standards are not being met.
- Determining appropriate thresholds for downramping rates immediately downstream of Enloe dam based on monitoring and field observations prior to operations.
- Selecting an appropriate minimum flow release location in consultation with fisheries resource agencies (Washington DOE, Washington DFW, Interior, NMFS, BLM, and the Colville), and making appropriate project modifications to provide minimum flow releases.

1.3.3 Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. NMFS notified the Commission in its February 26, 2010, filing that one ESA-listed threatened species of anadromous fish is known to occur in the Similkameen River below Enloe dam: The upper Columbia River (UCR) steelhead distinct population segment. Designated critical habitat includes the Similkameen River below Similkameen Falls (the falls). There is no critical habitat designation upstream of Similkameen Falls.

FWS lists five additional ESA-listed species of fish, wildlife, and plants that occur in Okanogan County, Washington, including the bull trout (threatened), Canada lynx (threatened), grizzly bear (threatened), northern spotted owl (threatened), and Ute ladies'-tresses (threatened). There is no designated critical habitat for any of these species within the Enloe Project boundary. Our analyses of project impacts on threatened and endangered species are presented in section 3.3.5, *Threatened and Endangered Species,* and our recommendations in section 5.2, *Comprehensive Development and Recommended Alternative.*

We conclude that licensing the project would have no effect on bull trout, Canada lynx, grizzly bear, and northern spotted owl.

We conclude that licensing the project would adversely affect federally listed UCR steelhead because proposed project construction and habitat enhancement projects could result in short-term increases in turbidity and sedimentation and the risk of injury or mortality to eggs, fry, juveniles, or adults by instream use of equipment. Construction of the tailrace could result in injury or mortality to eggs, fry, juveniles, or adults caused by capture and transport, relocation, and blasting. UCR steelhead injury or mortality could result from fish swimming into draft tubes and hitting the turbine runner during project operation. We conclude, however, that the proposed project would not appreciably diminish the value of designated UCR steelhead critical habitat for both survival and recovery of this species and the proposed enhancement measures would provide some long-term beneficial effects. Consequently, we will request formal consultation with NMFS pursuant to section 7 of the ESA.

Potential habitat for Ute ladies'-tresses exists along the reservoir and in the side channel enhancement area. No populations of this species were discovered during Okanogan PUD's rare plant surveys, but there are agency concerns about the adequacy of the surveys. If Ute ladies'-tresses grows in the habitat identified at the edge of the reservoir, operation of the proposed crest gates would inundate the population. If this species occurs at the side-channel enhancement site, construction, operation, and maintenance of the proposed facility could adversely affect the plants, but it may be possible to adjust the facility's footprint so that the plants are not affected.

In response to agency recommendations for additional surveys, Okanogan PUD proposes to survey areas that could potentially provide habitat for Ute ladies'-tresses for an additional 3 years as part of its proposed Vegetation Mitigation and Monitoring Plan (Vegetation Plan). Thereafter, potential habitat for Ute ladies'-tresses would be resurveyed only if site management changes occur that could affect that habitat. Okanogan PUD's proposed surveys would either confirm that Ute ladies'-tresses does not occur in areas that would be affected by the project or would guide the development of avoidance or mitigative measures for this species. Therefore, licensing the project with the

recommended protection, mitigation, and enhancement measures would not be likely to adversely affect Ute ladies'-tresses.

1.3.4 Coastal Zone Management Act

Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),[1] the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of Okanogan PUD's certification.

By letter dated September 25, 2009, the Washington DOE waived its requirement for compliance with its Coastal Zone Management Program for the project. Therefore, no consistency certification is required.

1.3.5 National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966 (NHPA) [2] and its implementing regulations,[3] requires that every federal agency "take into account" how each of its undertakings could affect historic properties. Historic properties are districts, sites, buildings, structures, traditional cultural properties, and objects significant in American history, architecture, engineering, and culture that are eligible for inclusion in the National Register of Historic Places (National Register). To meet the requirements of section 106, the Commission intends to execute a Programmatic Agreement (PA) for the protection of historic properties from the effects of the construction, operation, and maintenance of the Enloe Project. The terms of the PA would ensure that Okanogan PUD addresses and treats all historic properties identified within the project's areas of potential effects (APEs) for the proposed project and the side-channel enhancement site through implementation of a revised Historic Properties Management Plan (HPMP).

1.3.6 Pacific Northwest Power Planning and Conservation Act

Under section 4(h) of the Pacific Northwest Power Planning and Conservation Act, the Northwest Power and Conservation Council developed the Columbia River Basin Fish and Wildlife Program to protect, mitigate, and enhance the operation of the hydroelectric projects within the Columbia River Basin. Section 4(h) states that responsible federal and state agencies should provide equitable treatment for fish and wildlife resources, in addition to other purposes for which hydropower is developed, and that these agencies should take into account, to the fullest extent practicable, the program adopted under the Pacific Northwest Power Planning and Conservation Act.

The program directs agencies to consult with federal and state fish and wildlife agencies, appropriate Indian tribes, and the Council during the study, design, construction, and operation of any hydroelectric development in the basin.

To mitigate harm to fish and wildlife resources, the Council has adopted specific provisions to be considered in the licensing or relicensing of non-federal hydropower projects (appendix B of the Program). The specific provisions that apply to the proposed project call for: (1) Specific plans for fish facilities prior to construction; (2) assurance that the project would not degrade fish habitat or reduce numbers of fish; (3) assurance all fish protection measures are fully operational at the time the project begins operation; (4) timing construction activities, insofar as practical, to reduce adverse effects on wintering grounds; and (5) replacing vegetation if natural vegetation is disturbed.

Our recommendations in this EA (sections 2.2 and 2.3) are consistent with the applicable provisions of the program, listed above. Further, a condition of any license issued would reserve the Commission's authority to require future alterations in project structures and operations to take into account, to the fullest extent practicable, the applicable provisions of the program.

As part of the Program, the Council has designated more than 40,000 miles of river (protected area) in the Pacific Northwest region as not being suitable for hydroelectric development. The project is not located within a protected area.

1.3.7 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act requires federal agencies to consult with NMFS on all actions that may adversely affect essential fish habitat (EFH). The Pacific Fishery Management Council manages the fisheries for coho, Chinook, and Puget Sound pink salmon and has defined EFH for these three species. Salmon EFH includes all those streams, lakes, ponds, wetlands, and other water bodies currently or historically accessible to salmon in Washington, except areas upstream of certain impassable human-made barriers (Pacific Fisheries Management Council, 2010), and longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for several hundred years). The historically accessible reaches of the Similkameen River (RM 0 to the falls) are EFH for Chinook salmon.

Based on our analysis in this EA of the proposed action as specified in the license application, we conclude that licensing the project would be likely to adversely affect EFH for the UCR Chinook salmon for the same reasons we conclude that licensing the project would adversely affect the UCR steelhead and its designated critical habitats (see section 1.3.3, *Endangered Species Act*). Consequently, we will request that NMFS provide any EFH recommendation along with its biological opinion regarding listed anadromous fish.

1.4 Public Review and Consultation

The Commission's regulations (18 CFR, section 4.38) require that applicants consult with appropriate resource agencies, tribes, and other entities before filing an application for a license. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, ESA, NHPA, and other federal statutes. Pre-filing consultation must be complete and documented according to the Commission's regulations.

1.4.1 Scoping

Before preparing this EA, we conducted scoping to determine what issues and alternatives should be addressed. Scoping Document 1 (SD1) was issued on December 16, 2008. Two scoping meetings were noticed on December 16, 2008, and held on January 14 and 15, 2009, in Oroville, Washington. A court reporter recorded all comments and statements made at the scoping meetings, and these are part of the Commission's public record for the project. In addition to comments provided at the scoping meetings, the following entities provided written comments:

[1] 16 U.S.C. 1456(c)(3)(A) (2006).

[2] 16 U.S.C. 470 *et seq.* (2006).

[3] 36 CFR Part 800 (2009).

Commenting entity	Date filed
Washington DFW	February 6, 2009.
National Park Service (Park Service)	February 9, 2009.
Richard Terbasket	February 12, 2009.
FWS	February 13, 2009.
BLM	February 17, 2009.
Columbia River Inter-Tribal Fish Commission (CRITFC)	February 17, 2009.
NMFS	February 17, 2009.
Washington DOE	February 17, 2009.
U.S. Bureau of Indian Affairs (BIA)	February 17, 2009.
U.S. Environmental Protection Agency (EPA)	February 17, 2009.
Lower Similkameen Indian Band	February 20, 2009.
Confederated Tribes of the Colville Reservation (Colville)	February 23, 2009.
Arnold N. Merchand	February 23, 2009.

A revised scoping document 2 (SD2), addressing these comments, was issued on May 7, 2009.

1.4.2 Interventions

On October 29, 2008, the Commission issued a notice that Okanogan PUD had filed an application for a license for the Enloe Project. This notice set December 29, 2008, as the deadline for filing protests and motions to intervene. In response to the notice, the following entities filed motions to intervene, none in opposition:

Intervenor	Date filed
Greater Columbia Water Trail Coalition (Water Trail Committee)	October 31, 2008.
American Whitewater	November 4, 2008.
Washington Department of Natural Resources (Washington DNR)	November 26, 2008.
Washington DFW	November 26, 2008.
American Rivers	December 8, 2008.
Washington DOE	December 11, 2008.
CRITFC	December 29, 2008.
Interior	December 29, 2008.
NMFS	December 30, 2008.
Colville[4]	April 10, 2009.

1.4.3 Comments on the License Application

A notice requesting conditions and recommendations was issued on December 28, 2009. The following entities commented:

Commenting agency and other entity	Date filed
British Columbia Ministry of Environment (Ministry of Environment)	February 18, 2010.
Chloe O'Loughlin, Canadian Parks and Wilderness Society—British Columbia Chapter	February 24, 2010.
Colville	February 26, 2010.
Interior (including FWS and BLM)	February 26, 2010.
NMFS	February 26, 2010.
Washington DFW	February 26, 2010.
American Rivers, American Whitewater, the Center for Environmental Law and Policy, the North Cascades Conservation Council (Cascade Chapter), Water and Salmon Committee of the Sierra Club, and the Columbia River Bioregional Education Project (American River *et al.*).	February 26, 2010.
U.S. Department of Agriculture, Forest Service (Forest Service)	February 27, 2010.
CRITFC	March 1, 2010.

Okanogan PUD filed reply comments on April 9, 2010.

2.0 Proposed Action and Alternatives

2.1 No-Action Alternative

The no-action alternative is license denial. Under the no-action alternative, the project would not be built, and the environmental resources in the project area would not be affected.

2.2 Applicant's Proposal

2.2.1 Proposed Project Facilities

The proposed Enloe Project would consist of: (1) An existing 315-foot-long, 54-foot-high concrete gravity arch dam with an integrated 276-foot-long central overflow spillway; (2) three 5-foot-high automated steel flap crest gates; (3) an existing 76.6-acre reservoir (narrow channel of the Similkameen River) with a storage capacity of 775 acre-feet at a surface elevation of 1,049.3 feet above mean sea level (msl); (4) a 190-foot-long intake canal on the east abutment of the dam diverting flows into the penstock intake structure; (5) a 35-foot-long by 30-foot-wide penstock intake structure; (6) two above-ground 8.5-foot-diameter, 150-foot-long steel penstocks carrying flows from the intake to the powerhouse; (7) a powerhouse containing two vertical Kaplan turbine/generator units with a total installed capacity of 9.0 MW; (8) a 180-foot-long tailrace channel, downstream of the

[4] Late intervention; no action has been taken on this petition.

falls; (9) a substation adjacent to the powerhouse; (10) a 100-foot-long, 13.2-kilovolt (kV) primary transmission line connecting the substation to an existing distribution line; (11) about 1.5 miles of new and upgraded access roads; and (12) appurtenant facilities. The project would generate an average of 45 GWh of electricity annually.

2.2.2 Project Safety

As part of the licensing process, the Commission would review the adequacy of the proposed project facilities. Special articles would be included in any license issued, as appropriate. Commission staff would inspect the licensed project both during and after construction. Inspection during construction would concentrate on adherence to Commission-approved plans and specifications, special license articles relating to construction, and accepted engineering practices and procedures. Operational inspections would focus on the continued safety of the structures, identification of unauthorized modifications, efficiency and safety of operations, compliance with the terms of the license, and proper maintenance. In addition, any license issued would require an inspection and evaluation every 5 years by an independent consultant and submittal of the consultant's safety report for Commission review.

2.2.3 Proposed Project Operation

The Enloe Project would operate automatically in a run-of-river mode, regardless of water year (wet, dry, or average). Under a run-of-river mode of operation, all project outflows would approximate all project inflows at any point in time, such that there would be minimal fluctuation of the reservoir surface elevation.[5] The existing dam crest elevation of 1,044.3 feet would be increased by re-installation of 5-foot-high crest gates which would increase the reservoir to 1,049.3 feet elevation. Automated crest gates would be installed that would automatically adjust to regulate spills and maintain a nearly constant reservoir elevation relative to reservoir inflow. Okanogan PUD plans to maintain reservoir levels between elevation 1,048.3 feet and elevation 1,049.3 feet (top of crest gates) when inflows are equal to, or less than, the maximum hydraulic capacity of the units (1,600 cfs). This is estimated to occur approximately 70 percent of the time. Discharge through the units would be approximately equal to inflow based on the maintenance of reservoir levels. When inflows are between 1,600 and 16,500 cfs, which is estimated to occur approximately 29 percent of the time, the reservoir elevation would be maintained between elevation 1,049.3 feet and elevation 1,050.3 feet. When inflows exceed 16,500 cfs, which is only estimated to occur approximately 1 percent of the time, the crest gates would be fully lowered and the water level would be controlled at the spillway. During low flow conditions, less than 500 cfs, the project would operate in run-of-river mode with one unit running. In this operational mode, a stable water level of the reservoir and stable flow in the downstream reach would be maintained. Under these conditions, the rate of change in the outflow from the reservoir would follow the natural rate of change on the inflow to the reservoir.

2.2.4 Proposed Environmental Measures

Okanogan PUD proposes the following environmental measures.[6]

Geology and Soil Resources

- Develop and implement the Erosion and Sediment Control Plan (ESCP) to minimize the effects of construction, repair, and operation of the dam and intake, penstocks, powerhouse, tailrace, impoundment, access roads, powerline, and construction camp (WQ–06).
- Develop and implement a Construction Sediment Management Program (CSMP) to minimize sediment disturbance and maximize sediment containment during construction (WQ–08).

Water Quality

- Monitor water temperatures at three locations for a period of 5 years to determine if the operation of crest gates causes an increase in the water temperatures in the reservoir when compared with upstream of the reservoir (WQ–01).
- Locate the powerhouse tailrace so that it discharges to and circulates water in the plunge pool downstream of Similkameen Falls, preventing stagnation and consequently water quality degradation of the pool habitat (WQ–02 and FISH–09).
- Provide aeration in the powerhouse draft tubes during low flow summer months and monitor for the first 5 years to determine the optimum time to provide aeration (WQ–03).
- Monitor total dissolved gas (TDG) and DO at the project intake and in the pool below Similkameen Falls for a period of 5 years to assess TDG and DO under project operations (WQ–04).
- Design a broad, shallow intake structure and channel to minimize sediment disturbance in the reservoir near the intake (WQ–05).
- Develop and implement at project initiation a Spill Plan to reduce potential effects from accidental spills when heavy machinery is operating near the river and reservoir (WQ–07).

Aquatic Resources

- Implement the Blasting Plan and use best management practices (BMPs) to avoid and minimize the potential effects on aquatic resources, including federally listed or sensitive species (FISH–01).
- Place two clusters of boulders in riffles or in plane-bed sections of the Similkameen River upstream of the reservoir to improve mountain whitefish habitat and recreational fisheries (FISH–02).
- Ensure that logs and other large woody debris can pass over the dam spillway during the annual flood and, if needed, transport some large woody debris around the dam and place it in the river downstream of the dam to provide fish habitat (FISH–03).
- Design the intake trashrack with 1-inch bar spacing so that smaller fish would be able pass safely through the trashrack and larger fish would be discouraged or prevented from passing through the trashracks and turbines (FISH–04).
- Monitor seasonal variation in entrainment susceptibility; observe trauma and mortality caused by entrainment, and monitor reservoir fish populations to relate the entrainment observations with the fish distribution and abundance in the reservoir (FISH–05).
- Install tailrace barrier nets in the powerhouse draft tubes to prevent fish in the tailrace from swimming upstream into the draft tubes during low flows and an inspection and maintenance plan to ensure that the tailrace barrier operates effectively (FISH–06).
- Monitor barrier nets with video cameras to observe if adult salmonids are able to enter the draft tubes past the barrier nets (FISH–07). Develop and implement a written operation plan, a post construction evaluation and monitoring plan, and an inspection and maintenance plan.[7]

[5] A perfectly constant water level would be difficult to achieve because natural events, such as wave action, would likely cause slight fluctuations in the reservoir surface elevation regardless of operational controls.

[6] We used Okanogan PUD's classification of their environmental measures presented in the license application, and they are indicated in parentheses after each measure.

[7] Okanogan PUD proposes to develop and implement the recommended-written operation plan for the tailrace barrier (April 19, 2010) from

• Operate the project in a run-of-river mode so that there are no detectable changes in flows below Similkameen Falls (FISH–08). Avoid flow fluctuations that might affect downstream resources by complying with ramping rate restrictions as recommended by resource agencies.[8] Monitor ramping rate compliance utilizing an existing Washington DOE gage on the Similkameen River.

• Design and place the tailrace to avoid effects on fish that use the plunge pool below Similkameen Falls (FISH–09 and WQ–02).

• Enhance an existing side channel to improve spawning, rearing, and summer thermal refugia downstream of the powerhouse tailrace (FISH–10).

• Implement a gravel supplementation program to increase the amount of gravel in the river downstream of Enloe dam and improve spawning habitat (FISH–11).

• Develop a biological review process, including a Biological Resource Program, and consultation with the Technical Review Group (TRG) comprising the Colville, BLM, Washington DOE, Washington DNR, NMFS, FWS, and Washington DFW (FISH–12).

• Develop a fisheries monitoring database for organizing and storing monitoring data related to aquatic resources (FISH–13).

Terrestrial Resources

• Implement the Vegetation Plan to minimize effects on riparian and wetland vegetation, including goals, the species to be used, methods, and benchmarks of success for botanical resources (BOTA–01).[9]

• Plant riparian vegetation along the west and east banks of the reservoir shoreline to mitigate the temporary loss of habitat while fringe riparian vegetation establishes along the new water line (BOTA–02).

• Return the existing shoreline road to natural conditions to improve wildlife habitat along the reservoir and eliminate the current interruption between the shoreline and upland habitat (BOTA–03, also analyzed as part of REC–13).

• Plant woody riparian species in the riparian area along the abandoned road corridor (BOTA–04).

• Plant woody riparian vegetation along the east and west banks of the reservoir downstream of Shanker's Bend and upstream of the reservoir (BOTA–05).

• Install grazing control measures, including fencing, to protect riparian plantings and sensitive areas from cattle grazing (BOTA–06, also analyzed as part of REC–1).

• Monitor restored areas annually for 5 years and then once again at year 8, and plant additional willows if performance criteria are not met; provide annual reports of the monitoring results to the U.S. Army Corps of Engineers (Corps) and Washington DOE (BOTA–07).

• Employ BMPs during construction to protect riparian and wetland vegetation, including measures such as flagging and temporarily fencing any wetland and riparian vegetation in the vicinity of the project that would reduce or avoid accidental impacts, and limiting construction and maintenance-related disturbance of sensitive habitats to the extent possible to protect these resources (BOTA–08).

• Develop and implement an environmental training program to inform employees and contractor employees who work on the project site or related facilities during construction and operation about the sensitive biological resources associated with the project area (BOTA–09).

• Provide a biological monitor to check construction sites on a weekly schedule to ensure that protected areas are not disturbed and that fencing and other control measures are intact (BOTA–10).

• Implement the Noxious Weed Control Program to control weeds along roads and construction sites (BOTA–11).

• Survey disposal sites and control noxious weeds by implementing control measures prior to spoil disposal (BOTA–12).

• Hydroseed disposal sites using native upland species, following completion of spoil disposal (BOTA–13).

• Strategically place and install the project transmission line to reduce the adverse effects on raptors and other birds (WILD–01).

• Concentrate construction activities to occur in summer and early fall to minimize effects on overwintering birds and bald eagles (WILD–02).

• Conduct pre-disposal site survey for wildlife and time the clearing of vegetation at spoil disposal sites to minimize wildlife impacts (WILD–03).

Threatened and Endangered Species

• Conduct surveys for Ute ladies'-tresses prior to, during, and postconstruction to either confirm that the species does not occur in the areas affected by the project or guide the development of avoidance or mitigative measures (BOTA–14).

Recreation and Land Use

• Implement the Recreation Management Plan, which includes measures for recreation and safety of and access to the project areas (REC–13).

• Revise and implement the Fence Plan in coordination with the Recreation Management Plan to include: (a) Installation of barricades and fencing on the east side of the dam and the area below the dam; (b) use of non-barbed wire at the recreation area; and (c) installation of a stock watering tank north of the proposed recreation site as an alternative source of drinking water for all grazing cattle with rights to this area (REC–01).

• Provide public access downstream of Enloe dam on the east bank by developing a trail to the river below the dam (REC–02).

• Transfer to Okanogan County ownership rights to the trestle bridge that is located on the west side of the river downstream of the dam with certain conditions (REC–03).[10]

• Improve the existing informal boat ramp located on the east bank upstream of the dam (REC–04).

• Clean up and restore wooded area on east bank of the reservoir (REC–05).

• Develop an interpretive publication, in collaboration with Okanogan County, the Greater Columbia Water Trail Steering Committee (Water Trail Committee), and other interested parties, that would include a map illustrating public access and recreation sites (REC–06).

• Remove existing trash and conduct annual cleanup activities within the wooded area on the east bank of the reservoir and along the Oroville-Tonasket Irrigation District (OTID) Ditch Road leading from the Loomis-Oroville Road to the dam site (REC–07).

• Develop a parking area and install a vault toilet, accessible to persons with disabilities, on the east bank and upstream of Enloe dam included in (Okanogan PUD, 2009b) (REC–08).

• Install picnic tables, at least one of which should incorporate universal design principles, near the parking area taking advantage of existing trees for shading (REC–09).

NMFS, Interior, and Washington DFW (February, 26, 2010).

[8] Okanogan PUD proposes to comply with recommended ramping rates (April 9, 2010) from NMFS, Department of Interior, and Washington DFW recommendations (February 26, 2010).

[9] The Vegetation Plan (BOTA–01) contains the measures BOTA–2 through BOTA–7, BOTA–11, REC–01, and AES–04.

[10] Land ownership rights were transferred to Okanogan County in 2007.

• Develop primitive campsites near the parking and picnic area (REC–10).

• At a minimum, install one interpretive sign near the parking and picnic area and one sign near the abutment of the old powerhouse access bridge, below Similkameen Falls (REC–11).

• Place an information board near Enloe dam to depict public access areas and information concerning visitor use of the project area (REC–12).

• Maintain the existing signs and system of safety cables and grab ropes above the dam, install dam safety/warning signs for boaters, and install a log boom across the powerhouse intake channel to protect boaters (SAFETY–01).[11]

• Coordinate with BLM and other land owners, as appropriate, to identify options for preventing public access to the old powerhouse (SAFETY–03).

• Develop and implement a Safety During Construction Plan and allow limited public access to the project during construction (SAFETY–02).

Aesthetic Resources

• Use visually-compatible colors and building materials for construction occurring on the east bank (AES–01).

• Consult with the Colville and other stakeholders during restoration activities (AES–02).

• Use non-reflective surfaces where possible during construction (AES–03).

• Grade and repair all slopes where buildings are removed and plant native grasses and other riparian vegetation (AES–04).

Cultural Resources

• Solicit a new owner for the existing historic powerhouse (HIST–01).

• If a qualified owner is not identified for the existing historic powerhouse, demolish the existing historic powerhouse (HIST–02).

• Install interpretive panels about the existing historic powerhouse (HIST–03).

• Review and reach agreement on the HPMP and incorporate information into a PA (HIST–04).

• Monitor shoreline areas to prevent effects on archaeological sites due to reservoir fluctuations (ARCH–01).

• Avoid known National Register-eligible archaeological sites to prevent effects during construction (ARCH–02).

• Monitor eligible sites during construction activities to avoid effects on these sites (ARCH–03).

• Develop and implement an inadvertent discovery plan, specifying required actions and procedures if a site is discovered during construction and including training staff and construction workers about the potential for discovery of archaeological deposits (ARCH–04).

• Determine if there would be effects on archaeological sites in the vicinity of recreational facilities (ARCH–05).

As we've said, on October 28, 2010, Okanogan PUD filed additional information regarding ongoing consultations with Washington DOE and Washington DFW for the 401 Water Quality Certification process (letter from Dan Boetter, Director, Regulatory and Environmental Affairs, Okanogan PUD, Okanogan, Washington, to Kimberly Bose, Secretary, FERC, Washington, DC, October 28, 2010). In this filing and for the bypassed reach, Okanogan PUD proposes to:

• Provide minimum flows of 30 cfs from mid-July to mid-September, and 10 cfs rest of the year to the pool below Enloe dam.

• Monitor DO and water temperature in the bypassed reach for a period of time postconstruction; and adopt an adaptive management program to enhance DO and water temperatures should monitoring indicate that water quality standards are not being met.

• Determine appropriate thresholds for downramping rates immediately downstream of Enloe dam based on monitoring and field observations prior to operations.

• Select an appropriate minimum flow release location in consultation with fisheries resource agencies (Washington DOE, Washington DFW, Interior, NMFS, BLM, and the Colville), and make appropriate project modifications to provide minimum flow releases.

In this draft EA, staff will consider measures in this filing as Okanogan PUD's minimum flow proposals, and will analyze their effects on environmental resources.

2.2.5 Modifications to Applicant's Proposal—Mandatory Conditions

To date, no mandatory conditions were submitted under sections 4(e) or 18 of the FPA, or section 401 of the CWA.

2.3 Staff Alternative

Under the staff alternative, the project would include the majority of Okanogan PUD's proposed measures, with the exception of placement of boulder clusters in the plane bed section of the Similkameen River upstream of Shanker's Bend and entrainment and resident fish monitoring, along with the following modifications and additions:

Geology and Soil Resources

• Develop and implement a Spoil Disposal Plan after consultation with BLM and other interested parties.

Water Quality

• Develop and file with the Commission, in consultation with the TRG, a water quality monitoring plan including: Selecting the monitoring locations; filing a report at the end of year 5 documenting the results of monitoring and recommendations for the need for continued monitoring development; and conducting water temperature, TDG, and DO monitoring for a period longer than 5 years if needed.

Aquatic Resources

• Revise Okanogan PUD's preliminary Blasting Plan to include preparing a final Blasting Plan after consultation with the TRG.

• Revise Okanogan PUD's proposed large woody debris transport plan to include consultation with the TRG to determine when such transport would be required, the methods to be used for collection and transport of the wood, and the best locations for release of the woody debris downstream of the dam.

• Revise Okanogan PUD's proposed side-channel enhancement plan to include consultation with the TRG to develop the side-channel enhancement plan and file the plan with the Commission, with copies to the agencies, at least 180 days prior to implementation. Implement the plan and incorporate the lands associated with the side channel enhancements in the project boundary (approximately 0.75 acre 5 miles downstream of the dam).

• Revise Okanogan PUD's proposed gravel supplementation program to include consulting with the TRG to develop the gravel enhancement plan.

• Revise Okanogan PUD's Spill Plan to include consultation with BLM and Washington DOE.

• Revise and file with the Commission Okanogan PUD's proposal to design a narrow-spaced intake trashrack to include consulting with Interior and Washington DFW during the final design of the intake structure and trashracks to ensure that fish protection features are included in the final design.

• Develop a project operations compliance and monitoring plan, in consultation with the TRG, to be filed for Commission approval.

Terrestrial Resources

• Revise the Vegetation Plan to file monitoring reports annually for 5 years

[11] All SAFETY measures were proposed by Okanogan PUD in the response to additional information request filed on February 27, 2009.

and in year 8, and provide these reports to the Commission, FWS, BLM, and Washington DFW, and filing for Commission approval, any proposals for further restoration measures.

• Retain dead trees along the reservoir unless they become a hazard and provide 10 artificial perch poles.

Threatened and Endangered Species

• Prepare a Ute ladies'-tresses survey plan after consultation with FWS, BLM, and Washington DFW, and if plant surveys identify the threatened Ute ladies'-tresses in areas that would be affected by the project, file for Commission approval, an additional plan developed, after consultation with FWS, BLM, and Washington DFW, to avoid or minimize adverse effects.

Recreation and Land Use

• Revise the proposed Recreation Management Plan (REC–13) in coordination with the Aesthetics Management Plan and the HPMP, and include consultation with stakeholders. Finalize and implement the interpretive publication as part of the Recreation Management Plan.

• Add to the Recreation Plan an established plow schedule to allow visitors winter access to project lands and waters.

• Develop and implement a recreation use monitoring plan to include consultation with BLM.

• Develop and implement a Fire Suppression Program in consultation with BLM.

• Revise the Safety during Construction Plan to include consultation with BLM and local emergency response agencies.

• Add approximately 5.0 acres to the project boundary incorporating the entire length of the public access road from the Loomis-Oroville Road to Enloe dam to ensure public access throughout the length of any license issued for the project.

• Develop a river access point at Miner's Flat and incorporate approximately 1 acre into the project boundary.

• Remove the one small, deteriorated building on Okanogan PUD land at the north end of the proposed Enloe dam recreation area.[12]

Aesthetics

• Revise the proposed Aesthetics Management Plan in coordination with the Recreation Management Plan and the HPMP to include consultation with the Colville, BLM, and other stakeholders.

• Develop specific approaches concerning the blending of the existing and proposed Enloe Project facilities into the existing landscape character.

• Include these measures at the laydown or construction material storage areas that have yet to be determined.

Cultural Resources

• Revise Okanogan PUD's May 2009 HPMP to include provisions for: (1) Further consideration of the potential effects of capping site 45OK532; (2) a description of the proposed side-channel enhancement site; (3) two separate defined APEs that delineate the proposed Enloe project and the proposed side-channel enhancement site; (4) consultation with the Cultural Resources Working Group (CRWG) regarding the resolution of adverse effects on the historic Enloe powerhouse; (5) re-evaluating the Oroville-Tonasket Irrigation Canal for National Register-eligibility; (6) completing determinations of eligibility for unidentified cultural resources on BLM lands; (7) periodic review of the HPMP; (8) a site monitoring program; (9) cultural interpretative and education measures; and (10) revising the APEs to accommodate modifications to the project boundary, if any.

2.4 Staff Alternative With Mandatory Conditions

To date, no mandatory conditions were submitted under section 4(e) or section 18 of the FPA, or section 401 of the CWA. NMFS and Interior, however, request reservation of authority under section 18.

2.5 Removal of Existing Hydroelectric Facilities Including Enloe Dam

BLM stated that it would require Okanogan PUD to remove the dam and all associated facilities from the public lands under the existing right-of-way permit if a license is not be issued. Removing Enloe dam would affect many resources. We discuss the effects on these resources in section 3.2.

3.0 Environmental Analysis

In this section, we present: (1) A general description of the project vicinity; (2) an explanation of the scope of our cumulative effects analysis; and (3) our analysis of the proposed action and other recommended environmental measures. Sections are organized by resource area (aquatic, recreation, etc.). Under each resource area, historic and current conditions are first described. The existing condition is the baseline against which the environmental effects of the proposed action and alternatives are compared, including an assessment of the effects of proposed mitigation, protection, and enhancement measures, and any potential cumulative effects of the proposed action and alternatives. Staff conclusions and recommended measures are discussed in section 5.2, *Comprehensive Development and Recommended Alternative* of the EA.[13]

3.1 General Description of The River Basin

Located in north-central Washington about 2 miles south of the Canadian border, the Enloe Project is situated in a narrow constriction of the Similkameen River Valley, about 3.5 miles northwest of the city of Oroville (figure 1). The project is located predominantly on land administered by the BLM. The Similkameen River is tributary to the Okanogan River just south of Oroville, Washington; the Okanogan in turn flows into the Columbia River east of Brewster, Washington. The Similkameen River drains the east slopes of the Cascade Mountains in northern Washington and southern British Columbia, Canada. The majority (79 percent) of the drainage basin lies within Canada.

Similkameen Falls is located about 370 feet below Enloe dam, and forms a 33-foot-long and 20-foot-high barrier impassible to anadromous fish. Above the dam lies a shallow reservoir with a mean depth of 8.4 feet at the existing dam crest elevation of 1,044.3 feet msl and a maximum depth of 55.6 feet (MaxDepth, 2006); the reservoir is filled with an accumulated sediment volume of approximately 2.43 million cubic yards (MaxDepth, 2006). The existing reservoir is approximately 2 miles long and averages about 250 feet in width.

Topography in the project vicinity has been significantly affected by glaciations and is moderately steep and rugged. In the lower part of the river canyon, steep slopes adjacent to the river are interspersed with relatively flat benches of alluvial or glacial origin. The upper portions of the river canyon are steep and rocky. The mountains of the Okanogan Highlands lie to the east and the North Cascades to the west. Elevations range from 1,000 feet at the mouth of the Similkameen River at Oroville to greater than 3,600 feet at the summits of surrounding mountains.

The climate in the lower Similkameen River Basin is typical of eastern

[12] Measures were proposed by Okanogan PUD in the response to additional information request filed on February 27, 2009.

[13] Unless otherwise indicated, our information is taken from the application for license for this project (Okanogan PUD, 2008a) and additional information filed by Okanogan PUD (2009a–d).

Washington, with cool, moist winters and hot dry summers. The Cascade Mountains act as a barrier to the movement of maritime and continental air masses, creating the generally dry conditions observed in the project vicinity. Average annual precipitation is approximately 11 inches. River flows peak in late spring to early summer when warm temperatures melt the extensive winter snowpacks at the higher elevations in the basin. Low flows occur in late-fall/mid-winter when cold temperatures minimize runoff.

3.2 Scope of Cumulative Effects Analysis

According to the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (40 CFR, section 1508.7), cumulative effect is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

Based on our review of the license application, written and oral comments from scoping, other filings related to the project, and preliminary staff analyses, we have identified water quantity and water quality, aquatic resources including federally listed threatened and endangered fish species, as resources that could be cumulatively affected by the proposed project in combination with other actions and other hydroelectric development on the Similkameen River.

3.2.1 Geographic Scope

The geographic scope of the analysis defines the physical limits or boundaries of the proposed action's effects on the resources. Because the proposed action would affect the resources differently, the geographic scope for each resource may vary. For water resources and aquatic resources, including federally listed threatened and endangered fish species, we have identified the Similkameen River Basin as our geographic scope of analysis.

3.2.2 Temporal Scope

The temporal scope of our cumulative effects analysis in the EA includes a discussion of past, present, and future actions and their effects on these resources. Based on the potential term of a license, we will look 30 to 50 years into the future, concentrating on the effect on the resources from reasonably foreseeable future actions. The historical discussion is limited, by necessity, to the amount of available information. We identified the present resource conditions based on the license application, agency comments, and comprehensive plans.

During scoping, Washington DFW, FWS, EPA, BLM, Park Service, U.S. Bureau of Indian Affairs, and CRITFC requested the Commission to consider the effects of the proposed Shanker's Bend Project (Project Number P–12804) in our cumulative effects analysis because it would be located upstream of the Enloe Project. Washington DFW stated that the Shanker's Bend Project is not a run-of-river project; therefore, the Enloe Project would not be a run-of-river project either, and would benefit from the analysis of the Shanker's Bend Project. FWS requested that proposed project operations of the Enloe Project include an analysis of how the proposed Shanker's Bend Project would alter the project operations as defined in the final license application. BLM understands that the Shanker's Bend Project is currently under consideration/study and may be operated in conjunction with Enloe dam; it recommended that the cumulative effects on resources and recreation uses be analyzed. BLM also recommended that the Commission analyze the cumulative effects of other dams operated down-river. CRITFC stated that the Shanker's Bend Project is a "reasonably foreseeable action" and that the Commission must consider a cumulative effects analysis of the Shanker's Bend Project with the Enloe Project.

The Commission issued a preliminary permit to the Okanogan PUD for the Shanker's Bend Project in 2008. The purpose of a preliminary permit is to preserve the right of the permit holder for a period of three years to have the first priority in applying for a license for the project that is being studied. Because a permit is issued only to allow the permit holder to investigate the feasibility of a project while the permittee conducts investigations and secures necessary data to determine the feasibility of the proposed project and to prepare a license application, it grants no land-disturbing or other property rights. Until such time as an application for license is filed with the Commission, there is no project proposal to consider. Whether Okanogan PUD decides to file a development application in the future and whether the Commission would issue a license for this project is speculation and not a reasonably foreseeable action at this time.

Dam Removal Alternative

BLM stated that it would require Okanogan PUD to remove the dam and all associated facilities from the public lands under the existing right-of-way permit if a license is not issued. Removing Enloe dam would affect many resources.

Effects on Water Quality

Approximately 2.43 million cubic yards of sediment are stored behind Enloe dam (MaxDepth, 2006). Much of this sediment is contaminated with high levels of arsenic, cadmium, copper, and other metals. Removal of the dam would release these contaminated sediments to the Similkameen and Okanogan rivers and eventually the Columbia River. Dredging and disposing of the sediments from the reservoir prior to dam removal risks resuspension and transport of some of these sediments to downstream areas. Even if the sediments were dredged prior to dam removal, significant amounts of sediment could remain on the reservoir bottom and would eventually reach the river and be transported downstream.

Effects on Aquatic Resources

The release of the contaminated sediments currently stored behind Enloe dam could have substantial effects on spawning habitat, eggs, fry, juvenile and adult anadromous and resident fish. This effect could seriously damage Chinook salmon essential fish habitat (EFH) and UCR steelhead critical habitat. The duration of the effects of this release of sediments would depend largely on flow and volume of material captured in the channel as bedload. Equilibrium would eventually be achieved, and removing Enloe dam would eventually provide for the free flow of gravel, large woody debris, and sediments downstream of the current dam location. Increased gravel input below Similkameen Falls would improve the spawning habitat for anadromous fish. Increased input of large woody debris downstream of the falls would also benefit anadromous and resident fish by providing habitat structure. Dam removal would also affect the nature of the current reservoir by returning it to a riverine state. Water velocity in the reservoir area would increase, while water temperature may be slightly cooler. Slower water habitats along the edges of the reservoir would disappear as the water recedes into a more defined channel. Fish species composition would shift, as the

available habitat may select for fish that prefer faster moving, cooler water.

Dam removal would have no effect on anadromous fish passage in the Similkameen River. There are no anadromous fish found directly downstream of the dam due to the presence of Similkameen Falls, which acts as a natural barrier to anadromous fish passage. If the dam were removed, resident fish would be able to move freely from the current reservoir reach, downstream to the rest of the river.

Effects on Terrestrial Resources

The change in water surface elevation with dam removal would result in the loss of existing wetland and riparian habitat along the reservoir. The death of large trees in the existing riparian forest community would provide cavities and snags that would be valuable wildlife habitat components. Over time, riparian and wetland vegetation would re-colonize the edge of the river, replacing the lost habitat.

The decrease in the water surface elevation would likely make the existing potential Ute ladies'-tresses habitat along the reservoir too dry to support the plant. New potential habitat for this species would likely be created, but the extent of the new habitat is unknown.

Effects on Recreation

Removing Enloe dam would change the recreational opportunities associated with the site. Returning the reservoir above the dam into a free-flowing river would affect a variety of recreation opportunities including: Fishing, boating, hiking, camping, and wildlife watching. Dam removal will change angling opportunities by changing fisheries habitat from reservoir to riverine and the associated fish species available to anglers. Similarly, some boaters seek flat water experiences (motor or paddle) while others prefer whitewater. Opportunities to engage in flat water experiences are available at nearby Lakes Wannacut, Palmer, and Osoyoos. Hiking and camping experiences are influenced by nearby water bodies through the sounds of rushing water or the opportunity to swim in a reservoir. Additionally, the flora and fauna associated with the site would change, thus modifying the species available for nature study.

Effects on Aesthetics Resources

Removal of Enloe dam would change the aesthetic character associated with the site. The current reservoir lakebed would be dewatered, changing the character of the former lakebed to a vegetative environment with a free-flowing river. Fall flows would remain at the falls. This new view would be seen from the Loomis-Oroville road and the Pacific Northwest National Scenic Trail (Scenic Trail).

Effects on Cultural Resources

Removing the National Register-listed Enloe dam would result in an adverse effect on this historic property. Additionally, removal of the dam could result in the exposure of currently inundated and as yet unidentified cultural sites, including properties of traditional religious and cultural importance to the Colville. This action could expose these resources to the public, resulting in illicit artifact collection and site vandalism.

Effects on Socioeconomics

Dam removal would likely result in a negligible effect on the recreation and tourism industry in Okanogan County. Currently, fishing occurs primarily in the lower reaches of the Similkameen River, below the Enloe dam. Creation of aesthetic and recreation resources due to a shift from a reservoir to a riverine environment would indirectly affect recreational use of the project resources and associated expenditures (such as, a fee for a fishing license) and therefore, the local economy should continue to benefit from these expenditures.

With dam removal, there would be no loss of property value to residents because the majority of land ownership within the Enloe Project boundary is administered by federal or State agencies and there are no residents that border the Enloe dam.

3.3 Proposed Action and Action Alternatives

In this section, we discuss the effect of the project alternatives on environmental resources. For each resource, we first describe the affected environment, which is the existing condition and baseline against which we measure effects. We then discuss and analyze the site-specific and cumulative environmental issues.

Only the resources that would be affected, or about which comments have been received, are addressed in detail in this EA. We present our recommendations in section 5.2, *Comprehensive Development and Recommended Alternative*.

3.3.1 Geologic and Soil Resources

3.3.1.1 Affected Environment

The complex structure and lithology along the Similkameen River above and below Enloe dam reflect its position at the boundary of several distinct physiographic and lithological regions. The dam is located within the Cordilleran fold and thrust belt (Bayer, 1983) of northwestern North America. In this region, successive episodes of accretion, volcanic-arc mountain building, and back-arc deposition have created a complex physiography.

Enloe dam is situated on the Similkameen River near the boundary of the Cascade Range and Columbia mountains physiographic provinces where they converge around the 49th parallel, separating the Canadian Interior plateaus from the Lava plateaus of eastern Washington and Oregon, western Idaho, and northern California.

Geology

Along the narrow valley section of the Similkameen River downstream of Palmer Lake and upstream of Enloe dam, the uplands are composed primarily of Triassic-Permian metasedimentary and metavolcanic rocks of the Kobau Formation, interspersed with Jurassic metavolcanic, intrusive, and sedimentary rocks, Eocene conglomerate and Eocene intrusive dacite. Much of the valley and sideslopes are mantled in Quaternary glacial drift. The complicated structure is the result of late Triassic or early Jurassic accretion of Paleozoic and Mesozoic volcanic archipelagos accompanied by regional metamorphism and plutonism, subsequent overlayering of late Cretaceous and early Tertiary volcanic and sedimentary rocks, and Quarternary erosion and deposition resulting from continental glaciation.

In the immediate vicinity of the impoundment, highly deformed Triassic/Permian metamorphic rocks of the Kobau and Spectacle formations are unconformably overlain by Jurassic/Cretaceous metaconglomerate and metavolcanic rocks of the Ellemeham Formation. These are in turn again unconformably overlain by Eocene sandstone and conglomerate, and the latter are again unconformably overlain by Quaternary glacial drift, colluvium, and alluvial deposits.

Within the impoundment itself, from Shanker's Bend downstream to approximately 1,600 feet above the dam, the Similkameen River lies at the boundary of the Kobau and Ellemeham formations (between 1,600 feet above and 1,000 feet below the dam). The stretch of the river flows over Eocene sandstone and conglomerate. Enloe dam is located above the falls on resistant Eocene granitic-clast conglomerate. Downstream of the dam and falls, the river again flows over Triassic/Permian metamorphic rocks of the Kobau and Spectacle Formations.

Soils

Most of the soils present within or adjacent to the proposed project boundary are classified as Nighthawk loam or Nighthawk extremely stony loam. Ewall loamy fine sand and Lithic Xerochrepts–Nighthawk complex soils and riverwash and rock outcrop areas are also present within or adjacent to the project boundary.

Nighthawk loam soils are formed in glacial till deposited over shale and are present just upstream of the dam and upstream of Shanker's Bend. These soils are deep and well drained. Nighthawk loam soils with 3 to 8 percent slopes are characterized by slow runoff and present a slight erosion hazard. Nighthawk loam soils with 8 to 15 percent slopes are characterized by medium runoff and present a high to very high erosion hazard.

Nighthawk extremely stony loam soils are generally formed in glacial till and are located adjacent to the dam and powerhouse and a portion of Shanker's Bend. These soils are deep and well drained. Nighthawk extremely stony loam soils with 8 to 25 percent slopes are characterized by medium runoff and present a high to very high erosion hazard. When slopes reach 25 to 65 percent, these soils are characterized by rapid to very rapid runoff and present a high to very high erosion hazard.

Ewall loamy fine sand soils are formed in glacial outwash sand and are located in a small area immediately downstream of Shanker's Bend. These soils are deep and excessively drained. Ewall loamy fine sand soils with 0 to 15 percent slopes are characterized by slow runoff, and present a slight erosion hazard and a high soil-blowing hazard.

Lithic Xerochrepts soils are generally shallow and well drained and are located downstream of the dam. Lithic Xerochrepts-Nighthawk complex soils with 15 to 45 percent slopes are characterized by medium runoff and present a moderate erosion hazard.

Areas classified as riverwash and rock outcrops are also present within or adjacent to the project boundary. Riverwash consists of coarse sand and gravelly alluvium. Rock outcrop areas contain little or no shallow soil material.

Geologic Hazards

Enloe dam is located in an area of historically low seismicity. Peak ground acceleration with a 2 percent probability of occurrence in 50 years is approximately 0.16 times the force of gravity (g) and peak ground acceleration with a 10 percent probability of occurrence in 50 years is approximately 0.07 g (U.S. Geological Survey (USGS), 2002). Localized faults have been mapped in upland areas adjacent to Similkameen Valley. An active fault is present in the conglomerate bedrock approximately 100 feet downstream of the proposed tailrace outlet. The fault does not displace overlying glacial drift, which indicates that it has not been active in more than 10,000 years.

No significant historical earthquakes (magnitude 5.5 or intensity VI or larger) have been recorded within 50 miles of the dam since 1568 (USGS–NEIC, 2007 a, b).

During geological field mapping conducted in December 2006, some seepage was detected along joints and bedding planes in the conglomerate and sandstone that form the east abutment of the dam (Christensen Associates, 2007). Okanogan PUD proposes to grout and stabilize these areas during the construction of proposed facilities.

Some of the soils adjacent to the Similkameen River present high to very high erosion potential. Nighthawk extremely stony loam soils that occur on slopes in excess of 8 percent have a high to very high erosion hazard. Nighthawk extremely stony loam soils are present upstream of Shanker's Bend, adjacent to portions of Shanker's Bend, and on either side of the river adjacent to the dam, and proposed intake location. Landslide or mass wasting hazards are most likely to occur in these areas; however, no signs of recent instability were noted during the December 2006 geological field investigations (Christensen Associates, 2007).

3.3.1.2 Environmental Effects

Okanogan PUD's proposed land-disturbing activities associated with the construction of project facilities (new crest gates on Enloe dam, new east-bank approach channel, new intake structure, new intake canal, new penstock intake, new penstocks, new powerhouse, new tailrace channel, a short section of new road, modifications to existing project roads, and improvements to existing recreation areas) could cause erosion and sedimentation.

Okanogan PUD proposes to develop and implement the ESCP (WQ–06) to minimize the effects of land-disturbing activities associated with construction of new facilities, as well as modifications and improvements to existing facilities. The plan would also be implemented during project operation and maintenance. Okanogan PUD also proposes to develop and implement the CSMP (WQ–08) to minimize sediment disturbance and maximize sediment containment during construction. In response to agencies' comments and recommendations, Okanogan PUD developed a Spill Response Plan and a Storm Water Pollution Prevention Plan (see section 3.3.2.2, *Water Quality*). The resource agencies recommend that the sediment excavated for project construction be tested for arsenic, copper, cadmium, zinc, and lead; and that the sediments be stored on site until test results are known so that sediments can be disposed of properly.

BLM recommends that Okanogan PUD develop and implement a Spoil Disposal Plan prior to any construction activities that may affect the BLM-administered public lands. The plan would address disposal and/or storage of waste soil and/or rock materials (spoils) generated by road maintenance, slope failures, and construction projects. A Spoil Disposal Plan would include provisions for the following: (1) Identifying and characterizing the nature of the spoils in accordance with applicable BLM regulations; (2) identifying sites, including locations of the public lands, for the disposal and/or storage of spoils so contamination of water by leachate and surface water runoff can be prevented; and (3) developing and implementing stabilization, slope reconfiguration, erosion control, reclamation, and rehabilitation measures.

Our Analysis

As we've said, land-disturbing activities associated with project construction, operation and maintenance, and soils within the project area are susceptible to soil erosion and sedimentation. Excavated materials could possibly contain higher levels of arsenic, copper, cadmium, zinc, and lead than is acceptable under the criteria of the U.S. EPA's Maximum Contaminant Level.

Okanogan PUD's proposal to finalize and implement the ESCP (WQ–06) and the CSMP (WQ–08) would lessen the potential effects associated with land-disturbing activities during project construction, modifications, and improvements of project facilities, as well as during project operation and maintenance.

Our analysis of the Spill Response and Storm Water Pollution Prevention Plans are discussed in section 3.3.2.2, *Water Quality*.

BLM recommends that Okanogan PUD consult with BLM for the development and implementation of a Spoil Disposal Plan prior to any construction activities that may affect the BLM-administered public lands. This plan would ensure that there would be little or no effects from

excavated materials on water quality or the surrounding environment within the project boundary.

3.3.2 Water Quantity and Quality

3.3.2.1 Affected Environment

The drainage area of the Similkameen River above Enloe dam is approximately 3,575 square miles most of which is in British Columbia. The headwaters of the Similkameen River Basin occur in rugged terrain along the international boarder and to the north. Much of the upper basin is used for timber harvest, mining, and grazing. The river valley widens near Princeton, British Columbia. Irrigation of agricultural land is a primary water use upstream of Nighthawk, Washington, located about 9 miles upstream of the project. Existing uses in Canada include aquatic and wildlife habitat, stock watering, domestic water supply, agriculture and mining.

Water Quantity

On average approximately 78 percent of the annual flow on the Similkameen River occurs from April through July (table 2). Minimum flows occur between late summer (August) and stay low through early spring (March) until the snowmelt season begins in April, peaking in late May or early June. The maximum average monthly flow was 24,900 cfs in June 1972, while the minimum average monthly flow was 191 cfs in September 2003.

TABLE 2—SUMMARY OF SIMILKAMEEN RIVER FLOWS AT THE USGS NIGHTHAWK GAGE NO. 12442500, 1929–2005

(Source: Okanogan PUD, 2008a)

Month	Mean	Median	Maximum daily	Minimum daily
October	697	576	8,430	161
November	938	681	14,400	160
December	798	576	12,400	120
January	659	540	5,270	120
February	682	551	7,790	120
March	746	600	5,260	290
April	2,086	1,390	26,400	297
May	2,086	1,390	26,400	539
June	8,597	7,580	44,800	1,160
July	2,965	2,220	15,800	408
August	916	764	3,770	195
September	596	514	2,430	164

Note: The Nighthawk gage is located about 7 miles upstream of the project with a drainage area of about 3,550 square miles.

The maximum recorded average daily flow was 44,800 cfs on June 1, 1972, when the peak instantaneous flow was estimated to be 45,800 cfs at a stage height of 18.0 feet above the approximate channel bottom. The minimum recorded daily flow was 65 cfs on January 3, 1974; this abnormally low flow was attributed to ice effects.

The mean annual flood (at the Nighthawk gage), between 1929 and 2005, was 16,100 cfs. Annual maximum mean daily discharges range from a low of 4,590 cfs (June 8, 1941) to a high of 44,800 (June 1, 1972). The water level recorded was 13 feet above the spillway crest at Enloe dam during the 1972 flood. The calculated return period of the 1972 flood is approximately 180 years.

Annual instantaneous peak flows at the Nighthawk gage have occurred almost exclusively (except on October 21, 2003) during spring and early summer for the period of record. The earliest recorded peak event occurred on April 26, 1934, while the latest occurred on June 23, 1967. The mean/median peak flow day for the period of record was May 28, although for the last 20 years (1987–2006), the mean/median peak flow day occurred about one week earlier (May 22). However, winter floods associated with the inland penetration of coastal storms have occasionally been of similar magnitude to these spring and early summer freshets. The winter floods, although less common, are usually associated with ice flows and snowmelt runoff.

Certified water rights on the Similkameen River are listed in table 3. Okanogan PUD holds senior water rights on the river, a 1,000-cfs water right with a priority date of 1912 for power generation purposes. The proposed project maximum hydraulic capacity is 1,600 cfs. Thus, Okanogan PUD would need to obtain an additional 600-cfs water right for non-consumptive use in order to divert the maximum hydraulic capacity for the project.

TABLE 3—SIMILKAMEEN RIVER WATER RIGHTS

(Source, Okanogan PUD, 2008a)

Document No.	Status	Priority (year)	Flow (cfs)	Acre-feet/year	Purpose	Acres irrigated	Owner
CCVOL1P243	Certificate (Change)	1912	1,000		PO		Okanogan PUD
S3–22053C	Certificate	1973	1.5	372	IR, SW	80	Private
S4–26618C	Certificate	1980	1	202	IR, SW	50	Private
SWC00723	Certificate	1930	0.5	—	IR	12	Private
SWC03557	Certificate	1948	0.05	—	IR	7.5	Private
SWC06242	Certificate	1955	0.05	—	DS, IR	3	Private
SWC09018	Certificate	1955	2	400	IR	100	Private
SWC09834	Certificate	1966	1.4	280	IR	70	Kernan Farms

TABLE 3—SIMILKAMEEN RIVER WATER RIGHTS—Continued

(Source, Okanogan PUD, 2008a)

Document No.	Status	Priority (year)	Flow (cfs)	Acre-feet/year	Purpose	Acres irrigated	Owner
Total of all Certificates:			6.5	1,254		322.5	

Notes: DS—Domestic
IR—Irrigation
SW—Stock water
PO—Power

Enloe reservoir occupies a narrow, channelized basin and has a very high inflow/volume ratio; therefore, the reservoir is more river-like than lake-like in character. The mean hydraulic residence time is estimated to be about 2.4 hours for the mean annual flow of 2,290 cfs, 45 minutes for the mean annual peak flow of 16,100 cfs, 7.3 hours for the mean September flow of 596 cfs, and more than 20 hours for flows less than 200 cfs (table 4).

TABLE 4—ENLOE RESERVOIR CHARACTERISTICS AT EXISTING AND PROPOSED OPERATIONS AND SPILLS

(Source: Okanogan PUD, 2008a)

Location	Reservoir elevation (feet msl)	Reservoir length (miles)	Reservoir shoreline length (miles)	Reservoir surface area (acres)	Reservoir mean depth (feet)	Reservoir maximum depth (feet)	Reservoir volume (acre-feet)
At existing dam crest elevation	1,044.3	2.0	4.1	60.1	8.4	54.3	507
At mean annual flow of 2,290 cfs	1,046	2.1	4.2	67.1	9.1	56.0	613
During proposed low-flow project operations	1,048.3	2.2	4.8	76.6	10.1	58.3	775
During spill periods	1,050.3	2.3	4.9	88.3	10.6	60.3	938

Most of the bed-surface substrate is medium sand, with a typical (median) diameter of 0.4 millimeter (mm); gravel is present at the upstream end of the reservoir near Shanker's Bend and at depth within the accumulated sediment. The volume of stored sediment is estimated to be around 2.4 million cubic yards.

Groundwater in this sub-basin is primarily supplied from glacial and alluvial deposits in the lower valley areas. The Similkameen River once flowed southward through the valley now occupied by Palmer Lake and Sinlahekin Creek. During the last glaciation, the river was rerouted through several temporary channels until it finally settled into its current channel as the glacier retreated. Glacial and alluvial deposits in the original channel and the temporary channels are several hundred feet thick with moderate to high yield aquifers. The alluvial and glacial deposits are composed largely of fine sand, silt, and clay, with some thin lenses of coarse sand and gravel. Permeability and yields can be quite high.

In places where there is a lack of glacial or alluvial deposits, groundwater is scarce. Subsurface rock consists of metamorphic, granitic, and consolidated sedimentary rock with low permeability and porosity.

During low flow periods, very little flow is added to the river between the USGS Nighthawk gage (RM 15.8) and the Washington DOE flow gage at RM 5.0, indicating that groundwater discharge is not a significant contributor to flow in the lower Similkameen River. The City of Oroville withdraws its municipal water supply from a well field located at the confluence of the Similkameen and Okanogan rivers. The wells are considered to be in continuity with the Similkameen River. Groundwater would not be affected by the project regardless of its location relative to the river or degree of continuity because the project would operate in a run-of-river mode and would not affect flows or recharge.

Water Quality

This section describes existing water quality in the lower Similkameen River and focuses on water quality characteristics that could be influenced by project construction and operation: Temperature, DO concentration, total dissolved gas concentration, and contaminants associated with river sediments.

Water Temperature

Water temperatures in the Similkameen River upstream of the project can exceed freshwater aquatic life criteria during the summer months, and water temperatures generally increase from upstream to downstream. Okanogan PUD conducted water temperature monitoring in the project area from late spring through early fall of 2006 to characterize potential project effects on the water temperature regime. The monitoring study was designed to measure changes in water temperatures in the Similkameen River as it flowed through the project area.

One of the designated uses for the Similkameen River is salmonid spawning, rearing, and migration. The aquatic life maximum water temperature criterion set by Washington DOE to protect this use is 17.5 degrees Celsius (°C), measured by the 7-day average of the daily maximum temperatures (7-DADMax). When a water body's temperature is warmer than the criterion and that condition is due to natural conditions, human actions (considered cumulatively) may not cause the 7-DADMax temperature of that water body to increase more than 0.3 °C. In applying this standard to hydroelectric projects, Washington DOE has interpreted natural conditions to be

the water temperature regime before construction of any dams or other human influences.

Washington DOE has identified the Similkameen River below Enloe dam as a water body requiring special protection for salmonid spawning and incubation (Okanogan PUD, 2008a). This special criterion identifies a maximum 7-DADMax temperature of 13 °C at the initiation of spawning for salmon and at fry emergence for salmon and trout. A maximum 0.3 °C increase also applies to the seasonal criteria for spawning and incubation. This requirement is applied to the Similkameen River from February 15 through June 15.

The 2006 monitoring results showed that the Similkameen River exceeded the 17.5 °C criterion both upstream and downstream from Enloe dam from late June through mid-September, with additional exceedances in late-September (figure 2). The highest temperature of 26.9 °C was recorded both at China Rock (RM 12.2) upstream from the project site, and at the bridge in Oroville (RM 5.3) downstream from the project site.

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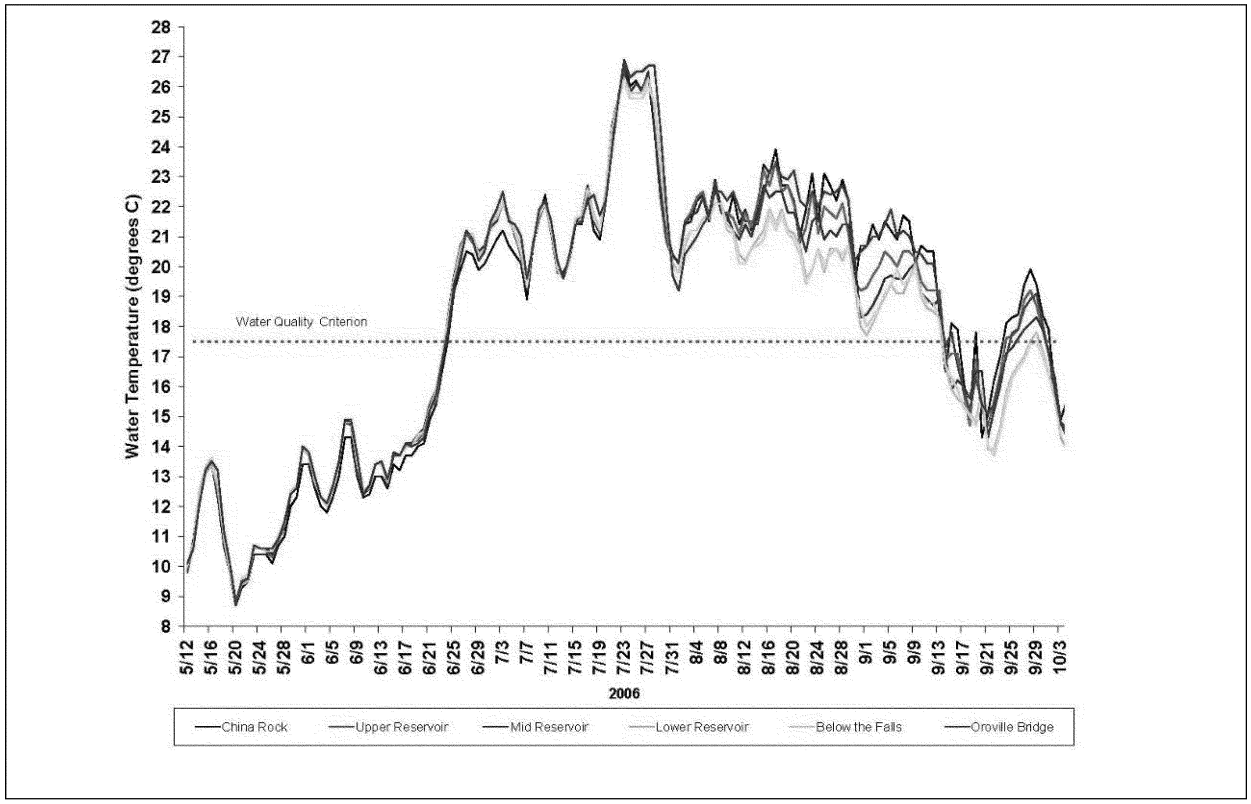

Figure 2. Daily maximum temperatures at the 2006 monitoring locations (Source: Okanogan PUD, 2008a).

Comparisons of 7-DADMax temperatures at different monitoring stations indicate that water temperatures did not increase through the project area by more than 0.3 °C at any time during the 2006 monitoring season, and all stations showed a similar trend in temperatures. The 7-DADMax temperatures decreased after August 4, although remained above the 17.5 °C criterion for most of the remainder of the monitoring period.

Figure 3 plots the 7-DADMax temperatures at the upper end of the reservoir (RM 10.3) and the lower end of reservoir (RM 9.1).

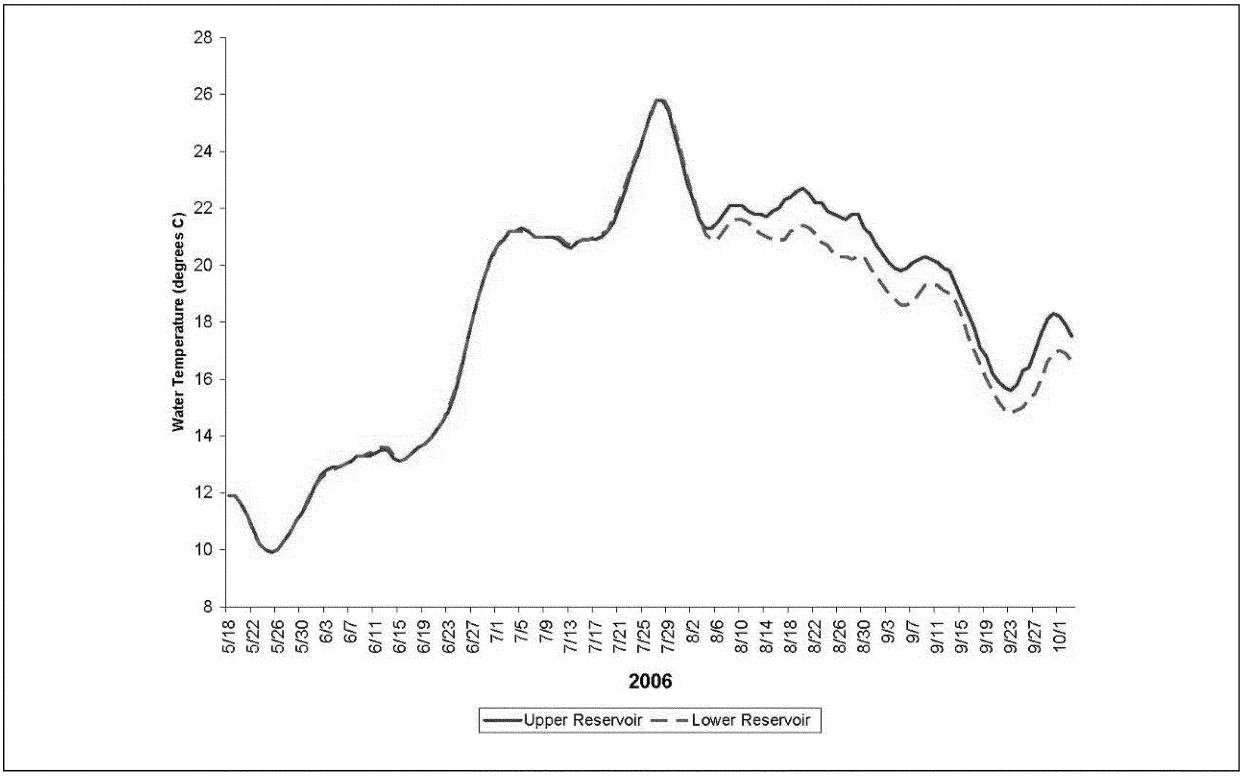

Figure 3. 7-DADMax temperatures in the lower end of the Enloe reservoir (RM 9.1) and at the upper end of the reservoir (RM 10.3) (Source: Okanogan PUD, 2008a).

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Dissolved Oxygen

The Water Quality Standards for Surface Waters for Washington state that the 1-day minimum DO concentration for salmonid spawning, rearing, and migration is 8.0 milligram per liter (mg/L) (Chapter 173–201A Washington Administrative Code). When a water body's DO concentration is lower that this criterion and that condition is due to natural conditions, human actions considered cumulatively may not cause the concentration to decrease more than 0.2 mg/L.

Okanogan PUD measured DO profiles on September 14 and 15, 2006, in the vicinity of Enloe dam. All measurements were above the 8.0 mg/L minimum water quality standard. As expected, the DO concentrations were higher where colder water was encountered in the morning hours below the dam and at China Rock upstream of the reservoir. Warmer water and lower DO concentrations were measured in the afternoon hours in the reservoir pool above the dam.

Total Dissolved Gases

The Water Quality Standard for Surface Waters for Washington State requires that TDG shall not exceed 110 percent of saturation at any point of sample collection (Chapter 173–201A Washington Administrative Code). The TDG criteria contained in the standards do not apply when the stream exceeds the 7-day, 10-year frequency flood. The standards provide allowances for the criteria to be adjusted to aid fish passage over hydroelectric dams when consistent with a Washington DOE approved gas abatement plan. However, this allowance does not apply to the Enloe Project because it would not provide spill to aid fish passage.

TDG concentrations measured between May 26 and 30, 2006, were below the 110 percent saturation water quality criterion in the lower reservoir (RM 9.1) and between Enloe dam and the falls (RM 8.9), but exceeded the criterion below the falls (RM 8.8) and below the railroad trestle at the mouth of the canyon downstream from the project area (RM 6.7). Flows ranged between 10,700 cfs at Nighthawk and 12,100 cfs at Oroville on May 26, 2006, to 8,780 cfs at Nighthawk and 9,640 cfs at Oroville on May 30, 2006. TDG levels increased by 3 to 7 percent of saturation after flowing over Enloe dam but remained below the water quality criterion, with mean hourly TDG levels ranging from 106.1 to 108.7 percent of saturation between the dam and the falls.

TDG increased substantially after flowing over the falls, increasing by an additional 12 to 14 percent of saturation. Downstream of the falls, mean TDG levels ranged from 118.5 to 120.7 percent of saturation. This TDG increase below the falls is due to the additional turbulence caused by the falls and the plunging flow into a deep pool where the increased pressure causes bubbles to dissolve. Near the railroad trestle located about 2.2 miles downstream of the falls, the mean TDG saturation was slightly lower (115.3 to 116.2 percent of saturation), but still remained above the criterion. Table 5 provides the results of Okanogan PUD's TDG sampling.

A generalized longitudinal profile adapted from a 1934 USGS survey indicates that the river drops 46 vertical feet in the 1.6-mile reach upstream from the dam. This steep gradient suggests that historically turbulent flows in the reservoir reach before impoundment likely created aeration and may have contributed to increased TDG saturation above the 110 percent criterion during high flows. Thus, TDG saturation above 110 percent was likely a naturally occurring condition below the falls before the dam was built.

Contaminated Sediments

Contamination from historical mining operations in the Similkameen River watershed has resulted in arsenic concentrations exceeding water quality criteria in samples from Chopaka Bridge in British Columbia (RM 36.1) and Oroville, Washington (RM 5.0) (Peterschmidt and Edmond, 2004; Johnson, 2002). Washington DOE has completed a total maximum daily load (TMDL) evaluation and prepared a draft plan to address the arsenic contamination. The loading capacity for the river was set equal to the natural background concentration of arsenic (i.e., 0.4 to 0.6 microgram per liter total recoverable arsenic), because arsenic levels naturally exceed water quality criteria. The greatest amount of arsenic loading identified by the TMDL evaluation was caused by resuspension of sediments in the vicinity of Palmer Creek at RM 20, approximately 10 miles upstream from the project area.

TABLE 5—SUMMARY OF TOTAL DISSOLVED GAS MEASUREMENTS NEAR ENLOE DAM FROM MAY 26–30, 2006

[Source: Okanogan PUD, 2008a]

Time and location	One-hour mean TDG saturation (percent)			
	May 26 and 27	May 28	May 29	May 30
a.m.:				
Lower reservoir	103.4	101.9	102.0	101.1
Between dam and the falls	107.6	.....	106.2	106.8
Below the falls	129.7	119.6	118.9	118.5
Below railroad trestle	116.2	115.9	115.6	115.3
p.m.:				
Lower reservoir	102.0	103.3	103.3	102.5
Between dam and the falls	108.7	.....	106.1	106.8
Below the falls	120.7	120.6	120.0	119.4
Below railroad trestle	116.2	116.1	115.8	116.0

An analysis of shallow sediment core samples for trace metals, performed for the Colville, confirmed arsenic contamination in the Similkameen River and Palmer Creek upstream from Nighthawk, Washington. Copper also exceeded a Colville sediment quality standard in several samples, and cadmium exceeded the standard in one sample.

There are no established state regulatory criteria for chemical contaminants in freshwater sediments; however, several sediment quality values have been used to indicate potential toxic effects to aquatic life. The current Colville Tribal Code contains sediment cleanup levels both for the protection of human health and for the protection of sediment-dwelling organisms. The Colville adopted cleanup screening levels for eight metals, including arsenic, cadmium, and copper. Washington DOE also set non-regulatory sediment quality values and cleanup screening levels for freshwater sediment (Michelson, 2003, in Okanogan PUD, 2008a). Okanogan PUD collected sediment samples in 2007 that were analyzed for pesticides, arsenic, cadmium, and copper. The sample results, along with the Colville criteria and Washington DOE non-regulatory sediment quality values are presented for comparison in table 6.

TABLE 6—SUMMARY OF PRELIMINARY ENLOE DAM SEDIMENT TRACE METALS RESULTS

[Source: Okanogan PUD, 2008a, as modified by staff]

PMX sample ID	River mile (RM)	ARI sample ID	Depth (feet)	Milligrams per kilogram (mg/kg)		
				Arsenic	Cadmium	Copper
Shallow Core Samples:						
EDSG01	10.6	07–16068–LK08A	0 to 1	15.7	[a] 0.3U	22.3
EDSG02	10	07–16069–LK08B	0 to 1	23.5	0.3U	33.3
VanVeen Grab Samples:						
EDSG03	9.4	07–16070–LK08C	0 to 0.5	11.2	0.2	18.4
EDSG05	9.0	07–16071–LK08D	0 to 0.5	20.4	0.3U	27.9
EDSG06	9.0	07–16072–LK08E	0 to 0.5	10.0	0.3U	17.1
EDSG08 [b]	9.0	07–16073–LK08F	0 to 0.5	9.2	0.3U	17.2
Freeze Core Samples:						
EDSC04–0–4	9.0	07–16099–LK13A	0.0 to 5.0	8.8	0.2U	16.3
EDSC04–4–8	9.0	07–16100–LK13B	5.0 to 6.6	29.3	0.4	47.5
EDSC04–8–12	9.0	07–16101–LK13C	6.6 to 8.0	10.3	0.2U	16.2
EDSC08–0–4 [c]	9.0	07–16102–LK13D	0.0 to 5.0	7.0	0.2U	13.6
EDSC08–8–12 [d]	9.0	07–16103–LK13E	6.6 to 8.0	8.6	0.2U	16.0
Surface Grab Samples Below Enloe Dam (RM 8.9):						

TABLE 6—SUMMARY OF PRELIMINARY ENLOE DAM SEDIMENT TRACE METALS RESULTS—Continued

[Source: Okanogan PUD, 2008a, as modified by staff]

PMX sample ID	River mile (RM)	ARI sample ID	Depth (feet)	Milligrams per kilogram (mg/kg)		
				Arsenic	Cadmium	Copper
07–16081–LK11A	8.7	SR–1	0.0 to 0.1	24.8	0.3	31.8
07–16082–LK11B	8.2	SR–2	0.0 to 0.1	9.3	0.3U	16.0
07–16083–LK11C	7.6	SR–3	0.0 to 0.1	10.6	0.2U	15.9
07–16088–LK11H[e]	7.6	SR–8	0.0 to 0.1	10.4	0.3U	14.4
07–16084–LK11D	6.8	SR–4	0.0 to 0.1	9.1	0.3U	15.1
07–16085–LK11E	6.6	SR–5	0.0 to 0.1	8.2	0.3U	12.8
07–16086–LK11F	6.1	SR–6	0.0 to 0.1	9.5	0.3U	15.1
07–16087–LK11G	5.7	SR–7	0.0 to 0.1	13.1	0.3U	17.3
Freshwater Sediment Quality Values:						
Sediment Quality Standard[f]				20	0.6	80
Cleanup Screening Level[f]				51	1	830
Cleanup Screening Level[g]				9.79	0.99	31.6
Probable Effect Concentration[h].				33	4.98	149

Notes:
[a] Results with "U" were not detected in the sample at the accompanying detection limit.
[b] Duplicate of EDSG06.
[c] Duplicate of EDSC04–0–4.
[d] Duplicate of EDSC04–8–12.
[e] Duplicate of SR–3.
[f] Michelsen, 2003.
[g] Colville, 2003.
[h] MacDonald *et al.,* 2000.

Cadmium was detected in 3 of 15 samples, but in all cases was below the Colville criterion and Washington DOE sediment quality values (table 6). Pesticides were not detected in any sample.

Copper was detected in all samples, and in all cases was below sediment quality values. Three samples exceeded the Colville copper criterion, but were below the sediment quality standard proposed by Michelsen (2003).

Arsenic exceeded the Colville criterion in 11 of the 15 samples; and 4 of 15 exceeded Washington DOE's lower sediment quality value. All arsenic concentrations were below levels known to cause adverse effects; however, several of the arsenic concentrations were in the range where there could be a potential for adverse effects. Samples from the 2007 study contained higher concentrations of each trace metal than corresponding samples from the 2002 study (Johnson, 2002). This was likely due to the 2007 sediment samples containing more fine organic particles mixed with the sand and silt.

Fine organic particles were most evident in the 2007 study in a freeze core sample taken from between 5.0 and 6.6 feet deep near the site of the new intake structure. This sample had a darker color, finer texture, an organic odor, visible organic material in various stages of decomposition, and higher concentrations of arsenic and copper. This core sample was collected from the area of the reservoir where buried sediments are most likely to be disturbed during project construction. To a lesser degree, deposits of fine organic material were observed in a patchy distribution in areas throughout the reservoir and on sandbars downstream from Enloe dam.

In addition to the analysis of contaminant concentrations in the sediment, the same contaminants were analyzed in the water column using the Dredging Elutriate Test to mimic water column concentrations that could occur if sediments were disturbed by dredging (table 7). As with the bulk sediment samples, pesticides were not detected in any elutriate sample. Cadmium was detected at the detection limit in several samples, but was well below the water quality criteria in all samples. Arsenic was detected in all samples, but was also well below the water quality criteria. Copper was detected in all samples, and exceeded both chronic and acute criteria in 5 of the 8 primary samples. All elutriate samples exceeded the arsenic and copper concentrations in the ambient water sample from mid-reservoir.

TABLE 7—SUMMARY OF PRELIMINARY ENLOE DAM SEDIMENT ELUTRIATE RESULTS

[Source: Okanogan PUD, 2008a]

PMX sample ID	ARI sample ID	Depth (feet)	Microgram per liter (µg/L)		
			Arsenic	Cadmium	Copper
Shallow Core Samples:					
EDSG01	07–16494–LK86A	0 to 1	12.5	0.2	12.1
EDSG02	07–16495–LK86B	0 to 1	29.1	0.2	28.2
VanVeen Grab Samples:					
EDSG03	07–16496–LK86C	0 to 0.5	5.6	[a] 0.2U	4.6

TABLE 7—SUMMARY OF PRELIMINARY ENLOE DAM SEDIMENT ELUTRIATE RESULTS—Continued

[Source: Okanogan PUD, 2008a]

PMX sample ID	ARI sample ID	Depth (feet)	Microgram per liter (μg/L)		
			Arsenic	Cadmium	Copper
EDSG05	07–16497–LK86D	0 to 0.5	20.9	0.2	28.1
EDSG06	07–16498–LK86E	0 to 0.5	7.5	0.2U	9.9
EDSG08 [b]	07–16499–LK86F	0 to 0.5	6.4	0.2U	6.5
Freeze Core Samples:					
EDSC04–0–4	07–16099–LK13A	0.0 to 5.0	5.3	0.2U	4.7
EDSC04–4–8	07–16100–LK13B	5.0 to 6.6	53.6	0.2	52.2
EDSC04–8–12	07–16101–LK13C	6.6 to 8.0	6.3	0.2U	4.6
EDSC08–0–4 [c]	07–16102–LK13D	0.0 to 5.0	5.1	0.2U	3.4
EDSC08–8–12 [d]	07–16103–LK13E	6.6 to 8.0	7.7	0.2U	6.2
Ambient Water Sample:					
07–16054–LK07A	EDW01	3.5	3.6	0.2U	0.9
Water Quality Criteria:					
Acute, aquatic life			360	[e] 1.82	[e] 9.2
Chronic, aquatic life			190	[e] 0.64	[e] 6.5

Notes:
[a] Results with "U" were not detected in the sample at the accompanying detection limit.
[b] Duplicate of EDSG06.
[c] Duplicate of EDSC04–0–4.
[d] Duplicate of EDSC04–8–12.
[e] Criteria adjusted for 52 mg/L hardness (Washington DOE, 2005).

3.3.2.2 Environmental Effects

Water Quantity

The existing dam has an uncontrolled spillway that passes all inflow. Okanogan PUD proposes to install new crest gates on the dam and install an intake channel adjacent to the dam crest to divert river flows to a new powerhouse and tailrace that would return flows to the Similkameen River approximately 480 feet downstream of the dam. The tailrace would discharge downstream of the falls, which is located approximately 370 feet downstream of the dam. Okanogan PUD proposes to operate the project in a run-of-river mode with no water storage for hydropower purposes; however, it has agreed to comply with interim ramping rate recommendations by Interior, Washington DFW, NMFS, and American Rivers *et al.* (see section 3.3.3.2, *Aquatic Resources, Environmental Effects*).

Okanogan PUD proposes to provide minimum flows of 10 or 30 cfs in the 370-foot-long bypassed reach. American Rivers *et al.* recommends flow releases to the bypassed reach to adequately protect aquatic resources in the river and other designated beneficial uses in accordance with Washington state law for the Similkameen River.[14] According to the code, this would consist of a minimum flow of 400 cfs during winter months up to a high flow of 3,400 cfs in the late spring/early summer.

Our Analysis

Because the project would operate in a run-of-river mode with only minor flow variation caused by ramping rate restrictions, there would be no effect on the flow regime downstream of the project, compared to historical conditions. The issue of minimum flow releases for the bypassed reach is discussed below in this section and in sections 3.3.3.2, *Aquatic Resources, Environmental Effects,* and 3.3.7.2, *Aesthetic Resources, Environmental Effects.*

Water Quality

Water Temperature (WQ–01)

Okanogan PUD proposes to operate the crest gates to maintain the reservoir levels between elevation 1,048.3 feet and 1,050.3 feet msl 99 percent of the time. The proposed crest gate operation would result in a small increase in the reservoir surface area (less than 12 percent) and larger increases in reservoir average depth (20 percent) and volume (21 percent) up to 10 months a year and may affect water temperature in the project reservoir. Okanogan PUD proposes to monitor water temperature at three locations for 5 years to determine if the crest gate operation causes an increase in the 7–DADMax water temperature in the reservoir compared to the river upstream of the reservoir.

Interior, NMFS, and American Rivers *et al.* comment that increased reservoir size and area would result in more exposure to the sun, which would result in higher water temperatures above the dam and downstream of the dam, potentially affecting anadromous fish habitat. Interior recommends a study of the effects of the Enloe Project on water temperature. NMFS recommends that water temperatures be monitored for 5 years with annual reporting, and American Rivers *et al.* requests more information about the effects of the project on temperature and water quality.

The British Columbia Ministry of Environment (Ministry of Environment) comments that the project would not adversely affect water temperature in Canadian waters and that water quality standards would not be compromised as a result of project operations. The Ministry of Environment supports Okanogan PUD's measures to monitor water temperature in the reservoir and compensate for the potential decrease in production by including habitat enhancements, tailrace relocation, and entrainment studies.

[14] Washington Administrative Code WAC 173–549–020 *Establishment of minimum instream flows.*

Our Analysis

Results of vertical temperature profile measurements (September 14 and 15, 2006) show that water temperature varied less than 0.6 °C from near surface to near bottom of the existing reservoir, indicating virtually no stratification in the reservoir during late summer (Okanogan PUD, 2008a). Comparisons of 7-DADMax temperatures indicated that water temperatures did not increase through the project area by more than 0.3 °C at any time during the 2006 monitoring study (see figure 2), and decreased throughout the project area after reaching peak levels in late July. Based on these results, it appears that solar radiation did not warm the existing reservoir pool any more than the relatively shallow river reaches, with similar temperature patterns among all stations. Substantial warming probably did not occur because the existing reservoir is narrow and river-like in character. The proposed project would increase the reservoir surface area by about 27 percent, comparing the existing reservoir at dam crest elevation to the proposed reservoir level during low-flow operations (see table 4). The actual increase in area would be from 60 to 76 acres, and the reservoir would remain a relatively small, narrow reservoir, unlikely to experience significant additional solar warming. In addition, the reservoir mean depth and volume would increase (table 4), which would act to counter any solar warming, in that more heat input would be required to effect a change in temperature. Okanogan PUD also proposes planting riparian vegetation along the reservoir to provide shading (discussed in section 3.3.4.2, *Terrestrial Resources*). Additional shading would reduce the amount of surface water exposed to solar warming. All these factors would act to minimize any heat gain and prevent any increase in water temperatures during the summer low-flow months. The greatest increase in reservoir size would occur during high-flow spill periods (table 4), but reservoir residence time would be short (only 45 minutes at the mean annual peak flow of 16,100 cfs), so there would be little opportunity for solar warming, even if warm, sunny conditions occurred during high-flow periods, which is not common.

Studies conducted in the Similkameen River downstream of the dam indicate that water temperatures naturally increase during the summer with potential for lethal effects on salmonids (Okanogan PUD, 2008a). Based on our analysis, we conclude that construction and operation of this run-of-river hydroelectric project would have little effect on the existing water temperature pattern in the river, or affect compliance with water quality standards for water temperature.

Okanogan PUD would monitor water temperature for at least the first 5 years following license issuance to determine if the proposed increase in reservoir elevation and surface area are having an influence on water temperature in the reservoir and Similkameen River downstream of the dam. This measure would provide a water quality benefit. Development of the monitoring sites would be done after consultation with the TRG. The annual data resulting from this study could be used for adaptive management purposes and to design any required mitigation for any adverse effects on water temperature that may be observed. It would be appropriate for the Okanogan PUD to file a report with the Commission at the end of five years evaluating the need for continued monitoring and/or measures would ensure that the water quality is maintained at a level that will support aquatic resources at the project.

Dissolved Oxygen (WQ–02 Through WQ–04)

Okanogan PUD proposes to inject air into the turbine draft tubes to increase DO in the plunge pool/tailrace, which may be used by anadromous fish as a holding pool and thermal refugia during the critical summer season (figure 4). The aeration vents would not be used during high spring flows when high TDG is a concern and DO concentrations are not low. Okanogan PUD would monitor DO levels during the first 5 years of project operations to determine the optimal time after high flows have receded in the early summer to provide aeration in the draft tubes.

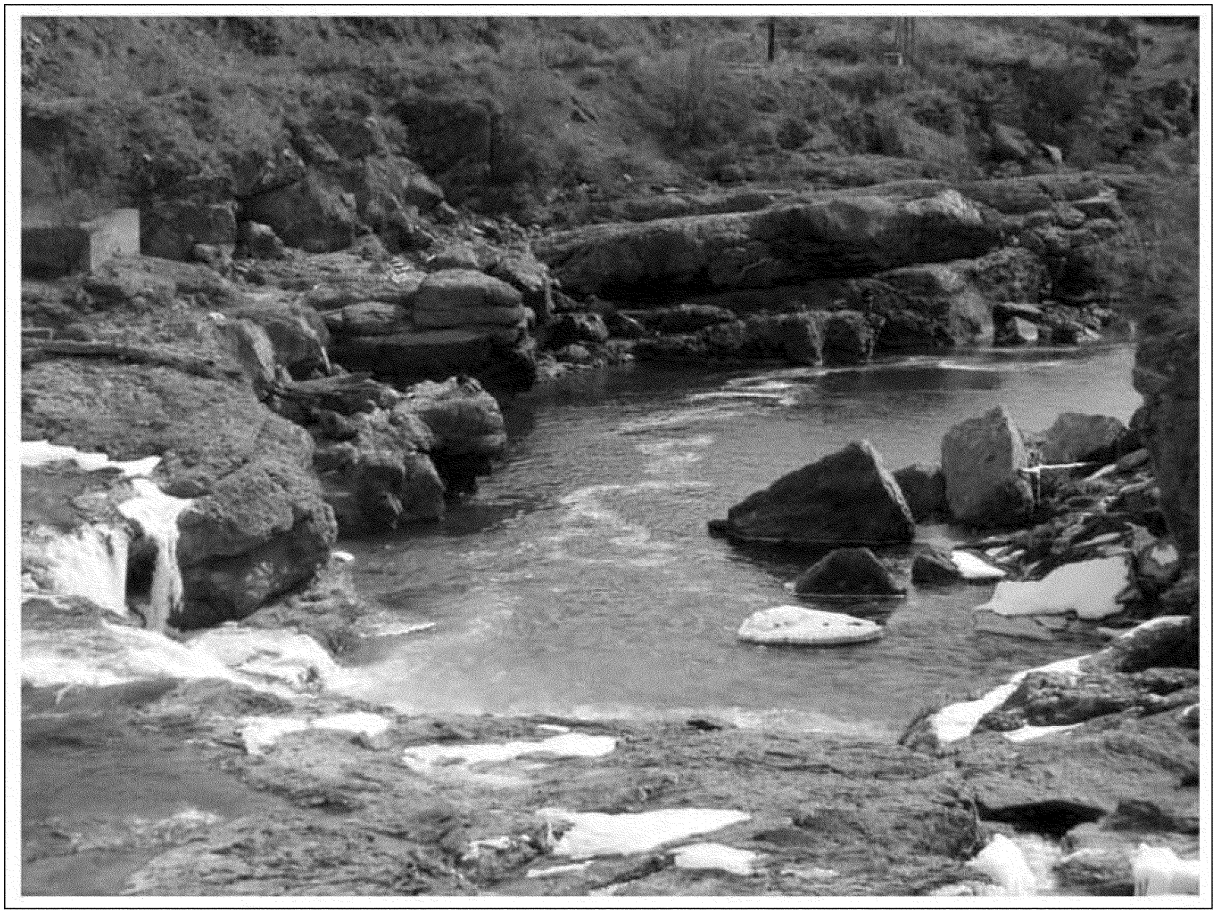

Figure 4. Plunge pool below Similkameen Falls (Source: Okanogan PUD, 2009c).

Okanogan PUD proposed to locate the project tailrace so that the discharged water circulates in the plunge pool below the falls. The average annual tailrace flows, as simulated by Okanogan PUD, would be similar in wet and normal water years (table 8).

NMFS recommends that at the start of project operations, Okanogan PUD should monitor DO concentrations at the powerhouse intake and below the falls and continue monitoring for the term of the license.

TABLE 8—SIMULATED AVERAGE ANNUAL TAILRACE FLOW FOR THREE NORMAL AND THREE WET WATER YEARS

[Source: Okanogan PUD, 2009c]

Normal years	Tailrace flow (cfs)	Wet years	Tailrace flow (cfs)
1989	842	1991	1,406
1993	896	1996	1,298
2000	1,051	1997	1,066

Our Analysis

During the warm summer months, DO is naturally low in the Similkameen River. DO levels upstream and downstream of the project can drop below 8 mg/L, which is the minimum state standard set to protect salmonid fisheries. Currently, water passing over Enloe dam goes over the falls, which increases the DO concentration by about 1 mg/L, although this may vary depending on river flow and water temperature. Under Okanogan PUD's proposal, water that is diverted for generation would be routed around the falls and would not be naturally aerated as now occurs. Okanogan PUD's proposal for draft tube aeration would ensure protection of DO, despite loss of aeration by diverting flows into the powerhouse rather than over the falls. Monitoring below the powerhouse would assess the effectiveness of this measure and would ensure that water discharged to the project tailrace would meet state standards of 8 mg/L DO or higher at all times.

Discharging powerhouse flows into the plunge pool would provide circulation to prevent stagnation and water quality degradation during the low flow summer months. The circulation pattern in the plunge pool may change as the tailrace flows would enter the pool approximately 90 feet downstream from the falls at an angle. However, this change in pattern should not affect water quality or substantially

affect fish distribution in the pool. During high flow periods when water is passing over the dam and the falls, as well as through the powerhouse, flow patterns in the plunge pool would be more similar to current conditions, although there would be some reduced flow over the falls, and thus potentially reduced TDG levels. DO levels would be high during high-flow periods and heavy spillage over the dam and falls.

Okanogan PUD's proposal to monitor DO levels during the first 5 years of project operations to determine the optimal time—after high flows have receded in the early summer—to provide aeration in the draft tubes would not meet the NMFS recommendation to monitor DO over the term of the license.

Monitoring DO during the first 5 years of operation would provide good information on possible project effects on DO, but if water quality standards are not met regularly, additional monitoring and alternative measures may provide additional useful information. Consultation with the TRG as to the need for an extension of the monitoring period, as well as in determining the location of the DO monitoring sites would ensure the proposal addresses the concerns of the agencies and the Commission.

Total Dissolved Gases (WQ–02 and WQ–04, FISH–09)

TDG concentrations measured between May 26 and May 30, 2006, were below the 110 percent saturation water quality criterion in the lower reservoir (RM 9.1) and between the dam and the falls (RM 8.9), but exceeded the criterion below the falls (RM 8.8) and below the railroad trestle at the mouth of the canyon downstream from the project area (RM 6.7). TDG concentrations increased substantially—an additional 12 to 14 percent of saturation—in water flowing over the falls. The increase in TDG below the falls is due to the additional turbulence caused by the falls and plunging flow into a deep pool where the increased pressure causes air bubbles to dissolve into solution.

Resident and anadromous fish can be negatively affected by supersaturated TDG levels. The tolerance of anadromous salmon and steelhead to TDG supersaturation varies greatly by life stage. Eggs appear to be quite resistant to high TDG levels, while yolk-sac fry are particularly vulnerable (Weitkamp and Katz, 1980). Juvenile fish appear more sensitive to TDG saturation with increasing size.

Okanogan PUD proposes to divert water from the reservoir, through the turbines, and discharge flows downstream of the falls into the plunge pool. Okanogan PUD would monitor TDG concentrations at the project intake and in the plunge pool below the falls for a 5-year period after license issuance to determine the effects of the proposed operations on TDG levels at these locations.

NMFS concurs with the proposal and adds that Okanogan PUD should maintain the ability to monitor TDG for the term of the license.

The Ministry of Environment comments that TDG levels are expected to decrease as a result of project operations, which may benefit downstream salmonids. American Rivers *et al.* requests more information about potential water quality effects, including potential effects on TDG during times of higher water temperatures.

Our Analysis

Water diverted for power production would be discharged into the plunge pool below the falls and would reduce spillage and plunging flows over the falls, in turn decreasing TDG levels. Some flows would continue over the falls when inflow to the reservoir exceeds 1,600 cfs and excess flow is spilled over the dam. During these conditions, powerhouse operation would continue and would act to reduce TDG concentrations downstream of the falls. The beneficial reduction in TDG would be directly related to the proportion of river flow that is diverted through the powerhouse. For normal water years, substantial reductions in TDG would be expected during all but a few days around the annual peak flow. The recently proposed minimum flow releases of 10 or 30 cfs from the dam would maintain a small flow release over the falls during periods when most of the river flow is diverted for power generation. This volume of flow, however, would be much lower than flows that now occur over the falls (see table 2), so there still would be reductions in TDG compared to existing conditions.

Normal turbine operation would not increase TDG except when air is introduced in the turbine draft tube to protect DO concentrations downstream during the summer months (see below). However, this would typically occur after high flows have receded and high TDG is no longer a concern.

Any changes in TDG levels would have the potential to affect resident juvenile UCR steelhead and other species in the plunge pool and in the lower Similkameen River year-round. Okanogan PUD proposes to monitor TDG at the powerhouse intake and in the plunge pool below the falls for a period of 5 years. These data would be used to monitor the effects of the project on TDG levels and to determine if alternative measures are needed. This measure would provide a water quality benefit; however, it would be appropriate for the Okanogan PUD to file if a report with the Commission at the end of five years evaluating the need for continued monitoring and/or measures would ensure that the water quality is maintained at a level that will support aquatic resources at the project.

It would also be appropriate for Okanogan PUD to select the sites for TDG monitoring in consultation with the TRG.

Sediment Management (WQ–05 and WQ–08)

A 2007 licensing study that included sediment elutriate analyses indicated that water quality standards for copper could be exceeded if sediment is disturbed during proposed project construction and operation (Okanogan PUD, 2008a). The shallowest part of the reservoir is adjacent to the proposed intake location, and there is concern that sediment in this location could be mobilized during excavation of the intake channel and by project operations. Okanogan PUD proposes to excavate as much of the intake channel as possible in the dry, because underwater excavation poses the greatest risk of mobilizing sediment. To contain any resuspended sediments that may occur, Okanogan PUD proposes to install a floating silt barrier to contain sediments around construction areas.

As we've said in section 3.3.1, *Geology and Soils Resources,* Okanogan PUD also proposes other measures to mitigate any effects of erosion and sediment mobilization during construction. Excavated material would be placed in a lined stockpile and tested for arsenic, copper, cadmium, zinc, and lead. Okanogan PUD would develop a sampling and analysis plan based on the chemical characteristics of representative samples from established stockpiles, and the results would be compared with relevant state criteria to determine if materials could be disposed of onsite, in a licensed solid waste landfill, or in a landfill licensed for the disposal of state-designated dangerous waste.

Okanogan PUD also proposes a Vegetation Plan that would include hydroseeding of the disposal sites, in addition to the seeding and other methods that would be used to revegetate all areas of exposed soil as per the site revegetation requirements.

Washington DOE recommends that the sediment excavated from the intake channel entrance be tested for arsenic, copper, cadmium, zinc, and lead, and the results compared to the MTCA Method A water quality criteria of the EPA's Maximum Contaminant Level. Washington DOE also recommends storing excavated material onsite until it is characterized, then dispose of it in an appropriate manner based on analysis results and including a sampling and analysis plan.

In response to the agency comments and recommendations, Okanogan PUD proposes to develop a Spill Response Plan and a Storm Water Pollution Prevention Plan to be filed with the Commission within one year of license issuance. The Spill Response Plan would be implemented at the beginning of project construction.

Our Analysis

Project construction has the potential to resuspend sediments during excavation of the intake channel and installation of other project facilities. This construction and any reservoir erosion due to fluctuating water levels could cause short-term turbidity plumes, release of contaminated sediments, and downstream sedimentation.

To avoid resuspension of sediments to the extent possible, Okanogan PUD would conduct as much of the excavation in the dry as possible. To avoid mobilizing resuspended sediments downstream of the reservoir during any instream excavations, Okanogan PUD would place a floating silt barrier to contain suspended sediments. We expect Okanogan PUD's other proposed measures, including the Spill Response Plan, the Storm Water Pollution Prevention Plan, testing excavated materials for arsenic, copper, and cadmium contamination, and employing BMPs, would reduce the risk for short-term degradation of water quality and aquatic habitat during construction, including critical habitat for UCR steelhead and EFH for Chinook salmon.

To estimate the likelihood of sediment transport occurring during project operations, Okanogan PUD constructed a two-dimensional hydraulic model of the reservoir using the program River 2D.[15] Models were developed for combinations of flow and forebay geometry, including: 2,200 cfs under existing and proposed conditions; 10,200 cfs under existing conditions; and 16,100 cfs under existing and proposed conditions. The modeled range of flows spans the range of flow magnitudes over which the 1–D impoundment hydraulic model predicted a transition from potential deposition to potential erosion. The model incorporates two assumptions: (1) Horizontal flow direction would not change with changes in bed topography, and (2) threshold velocities do not change with depth.

The volume and weight of potential erosion/deposition were estimated for each flow condition, assuming a characteristic grain size of approximately 0.6 mm, an erosion/transport threshold of 1 foot per second and a deposition threshold of 0.1 foot per second, and a constant bulk density of sand equal to 100 pounds per cubic foot. The results of the River 2D model are consistent with the expectation that the addition of the intake channel would change flow velocities within the reservoir near the intake. The intake channel causes the flow to veer southeast toward the intake at both 2,200 and 16,100 cfs.[16] The model also indicates that increased velocities would be likely just upstream of the pinch point that defines the upstream end of the forebay (the lower end of the reservoir immediately adjacent to the intake channel). The model predicts very high velocities in the intake channel at both modeled flow volumes, indicating that sediment transport and potential erosion would likely occur under the proposed operations.

The results of this model-based analysis suggest that the Enloe reservoir currently undergoes an annual cycle of erosion and deposition, and that the additional erosion and sediment deposition that would occur at relatively low flows due to project operations would be minimal, compared to the amount of erosion and deposition that occurs every year during peak flows. At higher flows, the additional erosion and deposition under proposed operations would also be minor.

Okanogan PUD acknowledges uncertainties associated with this analysis ; however, the general pattern shown by the model is probably reasonable. Sediment builds up in the forebay during relatively low flow portions of the year and is largely flushed out during annual peak flows. This general pattern would likely continue during proposed project operations, with increased levels of erosion and decreased levels of deposition occurring in the lower end of the reservoir near the dam and intake channel. The predicted small increases in reservoir erosion and decreases in deposition during proposed project operations indicate that some sediment deposition (sand and silt) would increase in the lower gradient reach of the lower Similkameen River (RM 0–4.7) (Okanogan PUD, 2008a). Increased deposition of fine sediment would modify aquatic habitat if measurable deposition was to occur, and could result in downstream contamination if the reservoir sediment transported downstream of the falls is contaminated. That potential, however, seems unlikely, because the River 2D model did not predict a significant increase in erosion, which would be required to mobilize contaminated sediment that has been deposited in the reservoir for many years. The mound of sediment observed in the lower end of the reservoir during low-flow bathymetric surveys is likely a transient feature that does not contain legacy sediments from early in the impoundment's history, and thus would not contain high contaminants levels (Okanogan PUD, 2008a).

Increased deposition of fine sediment in the lower Similkameen River could have a negative effect on the spawning and rearing areas used by anadromous salmonids and affect water quality for other downstream beneficial uses. The potential effects on listed species are discussed in section 3.3.5, *Threatened and Endangered Species.*

Spill Plan (WQ–07)

Okanogan PUD proposes to develop and implement a Spill Plan including spill prevention, containment, and clean-up plan at project initiation to reduce potential effects of accidental spill.

BLM recommends Okanogan PUD develop and implement, after consultation with the BLM, a hazardous substances plan (essentially same as Spill Plan) for oil and hazardous substance storage, spill prevention, and clean up prior to any activity that may affect the BLM-administered public lands. BLM recommends the plan address both construction and ongoing operations and maintenance of the proposed Enloe Project. At a minimum, the plan would: (1) Outline Okanogan PUD's procedures for reporting and responding to releases of hazardous substances, including names and phone numbers of all emergency response personnel and their assigned responsibilities; (2) outline Okanogan PUD's procedures for timely identification and remediation of spills, including procedures in the event that

[15] The River 2D model, methods, and results are detailed in Okanogan PUD (2008a), appendix e.2.3, section 4.2.6.

[16] The median annual flood discharge that would occur on average once every 2 years is 16,100 cfs.

personnel are not present on-site 24-hours a day; (3) identify and maintain a cache of spill cleanup equipment sufficient to contain any spill from the proposed Enloe Project; (4) call for Okanogan PUD to provide BLM with a report specifying the location of spill clean-up equipment on the BLM-administered public lands and the location, type, and quantity of oil and hazardous substances stored in the proposed Enloe Project area; and (5) require that Okanogan PUD inform BLM immediately as to the nature, time, date, location, and action taken for any spill affecting the BLM-administered public lands.

Our Analysis

In accordance with 40 CFR 112.1 of the EPA's regulations, a spill prevention control and countermeasure plan is required to be in place for any facility where unburied storage capacity exceeds 1,320 gallons of oil or a single container has a capacity in excess of 660 gallons. In addition to the on-site storage of lubricants and other oil products, transformers are likely oil-cooled and would be of sufficient capacity to exceed the 1,320 gallon threshold that would require a plan. The Spill Plan proposed by Okanogan PUD and further described by BLM would provide a quick reference to procedures and notifications in case of oil spills to reduce the possibility of oil or other hazardous substances reaching the BLM-administered land and the Similkameen River if a spill occurs. Development and implementation of the Spill Plan after consultation with BLM and Washington DOE would minimize the potential for petroleum products to enter the project waters in the event of a spill.

Minimum Flow Proposal

As we previously described in sections 1.3.2 and 2.2.4, by letter filed October 28, 2010, Okanogan PUD proposes minimum flows for the bypassed reach immediately downstream of Enloe dam. Okanogan PUD also proposes: A monitoring program for DO and water temperature for the bypassed reach for a period of time postconstruction; an adaptive management program to enhance DO and water temperatures should monitoring indicate that water quality standards are not being met; determining critical flow thresholds for downramping rates based on monitoring and field observations prior to operations; and determining a means for releasing minimum flows at Enloe dam.

Our Analysis

Okanogan PUD's proposal would provide a minimum flow of 30 cfs from mid-July to mid-September, and 10 cfs the rest of the year into the bypassed reach.

Providing a minimum flow of 10 and 30 cfs would ensure that some flow is passing over Enloe dam and falls at all times, even during the lowest flow months of the year when the project hydraulic capacity would allow diversion of the entire river flow for power generation. Effects on water quality would be related to potential changes in DO levels and water temperature. As we previously discussed, DO levels in the Similkameen River do not always meet the state standard of a minimum of 8 mg/L under existing conditions, although the falls act to aerate flows passing over them. Diversion of most of the river flow through the powerhouse during lower flow periods would reduce the aeration effect that now occurs over the falls. A study conducted by Okanogan PUD found that under current conditions, DO levels of water plunging over the falls increase by approximately 1.0 mg/L.[17] Maintaining some flow in the bypassed reach and over the falls would continue to provide some natural aeration in this project reach, although flows of 10 and 30 cfs are relatively low and may not contribute substantially to aeration below the project tailrace. Okanogan PUD's proposal to aerate the water in the project draft tubes would be able to increase DO levels by 1.0 mg/L or more and would be able to offset the loss of this natural increase in DO.

Water temperatures in the Similkameen River upstream and downstream of the project area are marginal for salmonid habitat under existing conditions, and often exceed state standards for salmonid spawning, incubation, and rearing. Effects of the proposed minimum flow on water temperature could occur by passage of a relatively low flow (10 and 30 cfs) in the bypassed reach, exposing it to solar radiation and warming during the summer months, further reducing the suitability of salmonid habitat in the river. On November 10, 2010, Okanogan PUD filed an analysis of the effects of the proposed minimum flow on water temperature, which concluded that the passage of that flow through the bypassed reach would not result in a measurable increase in water temperature at the base of the falls, even under the lowest river flow conditions.[18] Okanogan PUD, however, also concluded that a temperature increase of 0.5 to 1.0 °C could occur in the bypassed reach if the proposed minimum flow was allowed to pass over the entire face of Enloe dam in a thin sheet flow.[19] Passing the minimum flow through a pipe or a smaller gate to the base of the dam instead of providing it as a sheet flow over the dam could prevent this temperature increase. We find Okanogan PUD's analysis reasonable and we agree that passing this minimum flow would likely have a minor effect on water temperature downstream of the falls, assuming that the minimum flow is provided via a pipe or small gate at the dam.

Okanogan PUD's proposal for DO and temperature monitoring for a period of time postconstruction would allow for a characterization of the water quality in the bypassed reach under the proposed minimum flows of either 10 or 30 cfs. Consultation with the TRG to determine the length of DO and temperature monitoring in the bypassed reach, and adaptive management could help to develop means to protect water quality in this reach.

Similarly, Okanogan PUD had previously proposed to implement the ramping rates recommended by the resource agencies downstream of the tailrace. Additionally, they have proposed to identify critical flow thresholds for downramping rates in the bypassed reach to protect aquatic resources in the bypassed reach during project start-up and shutdown. The topography of the bypassed reach is such that there are areas where fish would likely be stranded if spillage over the dam is reduced at a rate that does not allow fish to successfully vacate these areas. The best way to determine these critical flow thresholds would be by field observations as proposed.

Okanogan PUD provided preliminary designs for alternative minimum flow release structures and stated that the preferred option would be a gate and release pipe using one of the two existing penstock intakes from the abandoned hydro station at the dam. This would minimize the potential for water temperature increases in the minimum flow releases. Okanogan PUD stated, however, that it and the resource agencies have not yet come to agreement on the final design of the flow release structure, and it proposes further consultations with the agencies to finalize the design. We agree that a flow

[17] See Okanogan PUD letter filed on November 10, 2010.

[18] See Okanogan PUD letter filed on November 10, 2010.

[19] State water quality standards are that a water temperature increase should not exceed 0.3 °C.

release structure consisting of a gate and pipe using one of the former penstock intakes would be the best option, because it would minimize any potential water temperature increases, would allow placement of the flow discharge at a point below the dam that would provide the greatest environmental benefit, and would provide the best control of the flows to be released. We also agree that the final design of this structure should be developed in consultation with the resource agencies (Washington DOE, Washington DFW, FWS, NMFS, BLM, and the Colville), prior to filing the design with the Commission for approval.

3.3.2.3 Cumulative Effects

Historical land use in the Similkameen River drainage includes a legacy of mining, timber harvest, grazing, and agriculture. Commercial mining has probably had the greatest impact on the Similkameen River water quality. One of the largest mines in the area was the Kaaba-Texas Mine, located several miles upstream of Enloe reservoir near the community of Nighthawk. The mine operated from the late 1890s until 1954 and discharged tailings directly into the Similkameen River until 1946. In 1999, the EPA removed and disposed of approximately 81,000 cubic yards of contaminated mine tailings from the mine site.

Today the dominant land use is agriculture, grazing, and recreation. A number of orchards, vineyards and a public golf course are located along the Loomis-Oroville Road. The area is unfenced open range generally leased for grazing.

The water quality of the Similkameen River has improved since the commercial mining has been discontinued in the drainage area above the project, and with the EPA efforts to remove contaminated mine tailings at the Kaaba-Texas Mine. However, much of the sediment contained in Enloe reservoir was deposited when upstream mining activities were active, and contains some arsenic, copper, and cadmium.

The construction and operation of the project could result in a number of effects that when added to conditions already present in the basin, could have negative environmental effects. Project construction of the intake channel has the potential to remobilize contaminated sediments. Petroleum products stored and used during construction and during project operations could be released to project waters. The increase in reservoir surface area increases the potential for slightly higher water temperatures in the reservoir. Erosion from project construction could cause increased turbidity and sedimentation. Measures proposed by Okanogan PUD and additional staff recommended measures, however, would minimize the effects on water quality and the potential for cumulative effects during the construction and operation of the proposed project.

3.3.3 Aquatic Resources

3.3.3.1 Affected Environment

The fisheries resources information presented in this section is a combination of recent and historical reports produced by state and federal resource agencies; investigations by universities and consulting groups; literature reviews; file materials from state and federal agencies; and ongoing studies. These materials were supplemented by information from Okanogan PUD studies that were conducted in consultation with NMFS, FWS, Washington DFW, Washington DOE, and the Colville from 2005 through 2008.

The Similkameen River is approximately 72 miles long and originates in the Cascade Mountains of British Columbia, Canada. The 27-mile reach of the Similkameen River between the U.S./Canadian border and the Okanogan River flows through semi-arid mountainous terrain. The licensing study area extends from the confluence of the Similkameen and Okanogan Rivers upstream to Shanker's Bend at RM 10.1. Enloe dam is located immediately upstream of the Similkameen Falls,[20] about 8.8 miles upstream from the confluence with the Okanogan River. Enloe dam is approximately 18 miles downstream of the U.S./Canadian border.

Downstream of the Dam

The river below the falls is divided into three reaches based on habitat conditions and channel morphology. Reach 1 (RM 0–4.7) is a low gradient (<0.1 percent), braided channel. The dominant substrates are cobble and gravel with areas of sand and boulders. The majority of salmonid spawning occurs in this reach, although gravel is relatively scarce—limiting the amount of spawning habitat. Reach 2 (RM 4.7–7.1) has a wider active channel than reach 1 and a few side channels. The gradient is low to moderate (0.1 to 2 percent; average 0.4 percent). The substrates are cobble, sand, and boulders. Reach 3 (RM 7.1–8.8) is a canyon reach. The channel gradient in reach 3 averages greater than 2 percent. Although the dominant substrate is bedrock, sand deposits occur in the center of the channel.

The Similkameen River supports anadromous and resident fishes below the falls. Native species in the lower river include summer-run Chinook salmon, sockeye salmon, UCR steelhead, bridgelip sucker, largescale sucker, mountain whitefish, longnose dace, northern pikeminnow, redside shiner, rainbow trout, and unidentified sculpin species (table 9). Non-native species include common carp, largemouth and smallmouth bass, and black crappie. The relative abundance (percent composition) of these species is shown in table 10.

TABLE 9—NATIVE AND NON-NATIVE FISHES IN THE SIMILKAMEEN RIVER BASED ON SNORKEL SURVEYS

(Source: Okanogan PUD, 2008a)

Common name	IEC beak (1984)	Okanogan PUD (1991)	ENTRIX (2006)	ENTRIX (2007) (upstream only)
Chinook salmon			D	
UCR Steelhead/rainbow trout	D & U in Canada	D	D	
Sockeye salmon/kokanee	U kokanee			
Bridgelip sucker	D	U	U	U (unidentified species)
Largescale sucker		D & U	D & U	U (unidentified species)
Sculpin spp.	D	D & U	D & U	U

[20] Also known as Coyote Falls.

TABLE 9—NATIVE AND NON-NATIVE FISHES IN THE SIMILKAMEEN RIVER BASED ON SNORKEL SURVEYS—Continued

(Source: Okanogan PUD, 2008a)

Common name	IEC beak (1984)	Okanogan PUD (1991)	ENTRIX (2006)	ENTRIX (2007) (upstream only)
Northern pikeminnow	D	U	D	U
Longnose dace	D & U			U
Redside shiner		U	D & U	U
Burbot		U		
Mountain whitefish	D	D & U	D	U
Chiselmouth				U
Peamouth				U
Smallmouth bass			U	
Largemouth bass		D & U	D & U	U
Black crappie	D	D		
Common carp				U
Yellow perch				U

Note: D = downstream of Enloe dam; U = upstream of Enloe dam.

TABLE 10—NUMBERS AND PERCENT COMPOSITION OF NATIVE AND NON-NATIVE FISHES IN THE RIVER DOWNSTREAM OF ENLOE DAM BASED ON SNORKEL SURVEYS

(Source: Okanogan PUD, 2008a)

Common name	Reach 1 RM 0–4.7		Reach 2 RM 4.7–7.1		Reach 3 RM 7.1–8.8		% of Total catch
	Aug	Sep	Aug	Sep	Aug	Sep	
Sucker spp.	29	314	53	176	0	1	22.0
Largemouth bass	42	25	12	7	0	0	3.3
Smallmouth bass	101	92	32	8	13	20	10.2
Sculpin spp.	3	6	1	3	0	0	0.5
Common carp	0	13	0	0	0	0	0.5
Minnow spp.	472	737	5	0	0	0	46.6
Northern pikeminnow	15	0	21	21	0	1	2.2
Juvenile UCR steelhead/rainbow trout	115	77	16	8	3	1	8.4
Adult UCR steelhead/ rainbow trout[a]	0	3	0	0	0	0	0.1
Sockeye salmon	0	13	2	0	0	0	0.6
Chinook salmon	0	33	0	0	0	0	1.3
Mountain whitefish	41	47	1	24	0	0	4.3
Totals	818	1,360	143	247	16	23	100

[a] The numbers of adult anadromous fish observed during the 2006 snorkel surveys were not considered representative of population strength because adult anadromous fish are most abundant in the river during their respective spawning migrations, and the survey occurred outside of the spawning migration period.

The summer-run Chinook salmon in the Similkameen River enter the river from July through late September. In its February 26, 2010 letter, NMFS stated that adults are known to hold in the plunge pool below the falls until spawning takes place in October through early November, peaking in mid-October from RM 0 to RM 8.8. There are no known spawning areas within the project area. Most of the Chinook salmon spawning occurs in the lower 5 miles of the river. Washington DFW counted 1,660 Chinook salmon redds in 2004 and 1,423 in 2005 in the lower Similkameen River. Based on these redd counts, Washington DFW estimated Chinook spawning escapement[21] to be approximately 4,169 fish in 2004 and 3,770 in 2005. Chinook fry emergence occurs in January through April; juveniles emigrate to the ocean within 1–4 months after emergence, when water temperatures begin to increase.

Washington DFW operates a Chinook salmon rearing and acclimation facility called Similkameen Pond at RM 3. Juveniles are released from the pond in mid-April to mid-May.

Sockeye salmon enter the Columbia River from late May to mid-June, and migrate into the Okanogan River. Sockeye salmon spawn primarily in the main stem of the Okanogan River upstream of Lake Osoyoos in Canada, typically in October. Fry emerge in March through May and move downstream to Lake Osoyoos. The juveniles rear in the lake for 1–2 years before emigrating to the ocean, usually in May. Although some sockeye have been reported in the lower Similkameen River, there is no sockeye spawning habitat in the river.

Chinook salmon and sockeye salmon pre-spawn mortalities in the Similkameen and Okanogan Rivers have been associated with high water temperatures. Dead female Chinook salmon were examined to estimate pre-spawn mortality in the Similkameen River from 2004–2006. Examinations in 2004 and 2005 indicated approximately 1 percent of females died prior to spawning. This percentage could vary

[21] Anadromous adults returning to spawn.

depending on the annual flow and temperature conditions.

High water temperatures can also delay upstream migration of the anadromous salmonids into the Okanogan River and can lead to the pre-spawn mortality noted above, or affect the timing of spawning. UCR steelhead, Chinook salmon, and sockeye salmon enter the cooler Similkameen River and migrate as far upstream as the falls during the summer months. The larger, deeper pools (e.g., the plunge pool below the falls) and areas with overhead structure (e.g., large woody debris, bridges) are the preferred holding habitat until temperatures in the Okanogan River decrease and these species can commence their spawning activities. These spawning delays can adversely affect reproductive success by extending incubation and fry emergence into time periods with less suitable conditions for survival, or by shortening the rearing period for juvenile fish prior to their emigration to the ocean.

During snorkel surveys, Okanogan PUD observed juvenile steelhead/rainbow trout in the side channels of reach 1 and 2, where water temperatures were several degrees cooler than the surrounding water. In dry years, flow in the side channels is intermittent, resulting in dewatered segments. Small amounts of large woody debris also occur in these reaches, and sections of the river have been channelized and diked, particularly near Oroville.

In its February 26, 2010, letter, Interior stated that historically significant runs of anadromous Pacific lamprey may have occurred in the project area, and the lamprey has had economic and cultural significance to local Native American tribes. Lamprey larvae are filter feeders that burrow into fine silty substrate in the lower velocity areas of streams (Wydoski and Whitney, 1979). Pacific lamprey remain in the larval stage for 5 to 6 years before they metamorphose and migrate to the ocean as predatory adults. The adult stage is generally short (less than 1 to 2 years) (Moyle, 2002).

Probable suitable Pacific lamprey spawning and rearing habitats are present in the Similkameen River below the dam; however, recent attempts to document adult lamprey have been unsuccessful. Washington DFW has documented unidentified larval lamprey in the hatchery ponds on reach 1, close to the confluence with the Okanogan River. In 2006, the Colville collected adult and juvenile lamprey from screw traps in the Okanogan River, downstream of Salmon Creek. Unconfirmed lamprey redds were observed in the middle reach of the Okanogan River in 2008.

Proposed Bypassed Reach

The 33-foot-long, 20-foot-high Similkameen Falls below Enloe dam is a natural barrier to upstream salmonid fish passage. The falls presents less of an impediment to Pacific lamprey since they use their oral disks to attach to surfaces allowing them to withstand higher current velocities. Fish habitat in the 370-foot-long, bedrock-boulder dominated bypassed reach between the dam and the falls is limited and it was believed that there are few, if any fish in this reach. A snorkel survey of the bypassed reach between Enloe dam and the head of Similkameen Falls was conducted in August 2006. No fish were observed. The dominant substrate is bedrock strewn with large boulders; smaller substrate occurred in sparse patches. There is no overhanging vegetation or large woody debris.

On September 15, 2010, another snorkel survey and hook and line sampling was conducted by Washington DOE and DFW biologists in the plunge pool downstream of Enloe dam, with participation by Okanogan PUD representatives and a biologist from the Colville (report included in filing from Donald H. Clarke, Counsel to Public Utility District No. 1 of Okanogan County, to Kimberly Bose, Secretary, FERC, November 10, 2010). Flow conditions did not allow a complete survey of the plunge pool, and only the east side of the pool was safely accessible to swimmers. Biologists observed small numbers of juvenile suckers, smallmouth bass, rainbow trout, and one sculpin, and two rainbow trout and a northern pikeminnow were captured by hook and line. No anadromous species were observed. Fish were observed actively feeding, indicating that the plunge pool is used as feeding habitat by resident fish species when flow conditions allow. Fish observed in the pool likely gained access to the pool by dropping downstream from upstream of Enloe dam.

Flow in the bypassed reach becomes extremely turbulent during high water. Fish in the bypassed reach and plunge pool would encounter extreme flow conditions during high flow, and may be flushed downstream of the falls unless they can access flow refugia within the plunge pool or elsewhere in the bypassed reach. Aquatic benthic macroinvertebrates would also be subject to high shear stress and scour during high flows.

Upstream of the Dam

Habitat in Enloe reservoir consists mostly of sand and silt substrate with some gravel. Cobble occurs at a few sites near the upstream end. From the middle of the reservoir to the upstream end the banks are also relatively steep. There is more shallow water habitat in this section of the reservoir, although the majority of habitat is still deep and open water. Overhanging vegetation that provides shade and cover is limited along the reservoir, and includes a few large willows. Small amounts of aquatic vegetation and a few patches of submerged grasses occur in the reservoir. Large woody debris is scarce; the most common habitat structure and cover were steep rock walls, submerged boulders, and partially submerged boulders along the shoreline.

There are fewer fish species in Enloe reservoir than in the river below the dam (tables 9 and 11). Native resident fishes in the reservoir include chiselmouth, peamouth, bridgelip sucker, largescale sucker, mountain whitefish, longnose dace, burbot, northern pikeminnow, redside shiner, and unidentified sculpin species. Non-native species include largemouth bass, smallmouth bass, yellow perch, and common carp. Native rainbow trout are found upstream of the project boundary in Canada but were not found in the project reservoir but were found in the bypassed reach.

Most of the species in Enloe reservoir are introduced, non-native fish that are better adapted to warmer, slower velocity habitat (table 11). Most fish captured in the reservoir were small and were found in shallow areas associated with the limited presence of cover (mostly vegetation). The larger fish, mostly northern pikeminnow, chiselmouth, and unidentified suckers, use open water areas of the reservoir. No rainbow trout and very few mountain whitefish were found in the reservoir, likely due to a combination of northern pikeminnow predation, warm water temperatures, and lack of cover. Introduced warmwater species, such as largemouth bass, yellow perch, and common carp, may be spawning in the reservoir littoral zones, but more likely are transported to the reservoir from upstream sources such as Palmer Lake.

TABLE 11—NUMBERS AND PERCENT COMPOSITION OF NATIVE AND NON-NATIVE FISHES IN THE RESERVOIR UPSTREAM OF ENLOE DAM

[Source: Okanogan PUD, 2008a]

Common name	2006							2007						
	Beach seine			Minnow trap			% of total catch	Beach seine		Minnow trap		Gill net		% of total catch
	July 7	Aug. 11	Sept. 14	July 7	Aug. 11	Sept. 14		March 22	July 24	March 22	July 24	March 22	July 24	
Suckers spp	22	1	0	0	1	0	10.2	0	2	1	0	0	2	6.7
Sculpin spp	2	0	0	0	0	1	1.3	0	0	1	0	0	0	1.3
Largemouth bass	53	16	0	0	0	0	29.4	0	16	0	0	0	0	21.3
Chiselmouth	0	0	0	0	0	0	0	0	0	0	0	0	8	10.7
Common carp	14	0	0	0	0	0	6.0	0	0	0	0	0	0	0
Minnow spp	68	28	1	4	4	3	46.0	0	1	0	1	0	0	2.7
Peamouth	0	0	0	0	0	0	0	0	0	0	0	0	2	2.7
Northern pikeminnow	0	0	0	0	0	0	0	0	0	0	3	0	16	25.3
Redside shiner	2	0	0	1	0	0	1.3	1	0	11	1	0	0	17.3
Longnose dace	0	0	0	0	0	0	0	3	3	0	0	0	0	8.0
Yellow perch	13	1	0	0	0	0	6.0	0	1	0	0	0	0	1.3
Mountain whitefish	0	0	0	0	0	0	0	0	2	0	0	0	0	2.7
Totals	174	46	1	5	5	4	100	4	25	13	5	0	28	100

Similkameen River aquatic benthic macroinvertebrate data were collected by Vinson (1994) from three riverine sites between the Canadian border and the project area at RMs 12, 16, and 17. Eighty-five taxa were collected; 10 taxa made up 80 percent of the total sample (table 12). The majority of macroinvertebrates collected were chironomid larvae (50.3 percent relative abundance). Ephemeroptera from the family Ephemerellidae accounted for 19 percent of the relative abundance; Trichopterans represented 9 percent.

TABLE 12—AQUATIC BENTHIC MACROINVERTEBRATE TAXA FOUND IN THE SIMILKAMEEN RIVER ABOVE ENLOE RESERVOIR

[Source: Okanogan PUD, 2008a]

Order	Family	Sub-Family	Genus	Portion of sample (%)	Cumulative %
Diptera	Chironomidae	Orthocladiinae		21.0	21.0
Diptera	Chironomidae	Chironominae		19.2	40.2
Ephemeroptera	Ephemerellidae		Ephemerella	11.0	51.2
Diptera	Chironomidae	Tanypodinae		8.0	59.2
Trichoptera	Hydropsychidae		Hydropsyche	7.1	66.3
Ephemeroptera	Baetidae		Baetis	5.4	71.7
Ephemeroptera	Ephemerellidae			2.6	74.3
Diptera	Chironomidae			2.1	76.4
Trichoptera	Brachycentridae		Brachycentrus	1.9	78.3
Oligochaeta	Tubificidae	Naidinae		1.8	80.1

There are no benthic macroinvertebrate data for Enloe reservoir or the river below Enloe dam. It is likely that the reservoir benthic macroinvertebrate community is less diverse than the riverine community. A significant increase in non-insect taxa that are tolerant of silt conditions, such as oligochaete worms and isopods, would be expected in the reservoir. The macroinvertebrate communities in reaches 2 and 3 below Enloe dam are likely similar to communities found in the upper Similkameen River. Reach 1 is a lower velocity, braided channel with more fine sediment deposition; as such, it is likely to have a higher percentage of taxa that burrow, swim, or sprawl, with a corresponding reduction in the percentage of macroinvertebrates that cling and/or crawl.

3.3.3.2 Environmental Effects

Effects of Project Construction (WQ–05 Through WQ–08, FISH–01, BOTA–03 and BOTA–04, BOTA–07 Through BOTA–13)

As proposed by Okanogan PUD, construction of the project access road, intake channel, penstock, and powerhouse would require excavation and placement of spoil using heavy equipment, blasting, and would be supported by staging and laydown areas and fuel and lubricant storage facilities.

Okanogan PUD proposes a Blasting Plan that includes environmental measures to minimize potential negative effects on anadromous and resident fish that are in the large pool at the base of the falls. The Blasting Plan incorporates the following mitigation measures to avoid adverse effects on anadromous and resident fish:

- Small charges would be set off with time delays to minimize peak vibration and avoid creating excessive pressure waves and noise. Threshold criteria for pressure waves and noise have been adopted in the Blasting Plan to avoid potentially harmful levels of pressure and noise.
- Impacts would be minimized by timing near- and in-water blasting to coincide with the lowest water levels (low flows) combined with lowest potential for fish occupation in the area.
- Blast scheduling would avoid periods when federally listed or sensitive fish species are present.
- Blasting adjacent to the river would take place prior to spring high flow or during fall low flow.

• The amount of time that near- or in-water construction and blasting occurs would be minimized when the downstream end of the tailrace channel is excavated. During this period, construction activities would be expedited to reduce the amount of time fish may be exposed to the effects of blasting activities.

• Impacts would be minimized or avoided by removing as many fish as practical from the area adjacent to the proposed blasting and installing an exclusion barrier downstream of the potentially affected area to prevent entry of additional fish into the affected area.

• Mechanical excavators with hydraulic rock hammer attachments would be used in lieu of blasting to trim the excavation, excavate rock in areas unsuitable for blasting, and to excavate loose rock. Okanogan PUD would remove residues from the blasting operation to the extent practical.

• Hydrophones would be used to monitor pressure waves from blasting that could affect fish.

• Creation of hydrostatic pressure waves greater than 100 kilopascals (or about 14.5 pounds per square inch), or noise levels exceeding 190 decibels (dB) would be avoided, as practical.

In response to a comment by Washington DFW, Okanogan proposes to station biological monitors in the field during blasting to observe mortalities or changes in fish behavior that might make them more susceptible to predation.

Our Analysis

Blasting

The large, deep plunge pool downstream of the falls is an important habitat feature for anadromous and resident fishes that is not found elsewhere in the Similkameen River. Blasting would expose fish in the plunge pool to short-term physiological stress, sublethal injuries, mortality, or predation. Okanogan PUD's proposed Blasting Plan, as described above, however, would minimize these impacts and be protective of the fishery.

Additionally, Okanogan PUD proposes to capture anadromous and resident fish in the pool and relocate them prior to blasting activities. This measure would physically remove fish from areas where they could experience negative impacts due to blasting and would be protective of these fishes. This measure could result in some negative effects to captured fish including net abrasion, short-term physiological stress, sublethal injuries, mortality, and increased predation during transport or as a result of relocation to less optimal habitat. Capture of all individuals in the plunge pool prior to blasting would be difficult given the size of the pool (400 feet long by 80 to 100 feet wide by ≥ 20 to 30 feet deep) and the turbulence created by the falls. Accordingly, some fish, particularly smaller fish such as juvenile UCR steelhead, would remain in the deep pool below the falls after removal efforts. After fish are removed from the plunge pool, Okanogan PUD proposes to use netting across the Similkameen River which would exclude fish from re-entering the blast zone.

Okanogan PUD proposes visual biological monitoring during construction of project facilities to observe mortalities or changes in fish behavior that might make them more susceptible to predation. As noted by Okanogan PUD, however, the physical characteristics of the plunge pool would make it difficult to effectively monitor the area of impact effectively. If biological monitors were to observe mortalities or changes in fish behavior, Okanogan PUD also does not specify what kind of mitigative or protective actions may be taken.

Direct or indirect effects of the blasting activities may cause mortality or injury to ESA listed UCR steelhead. Additional discussion of effects on the listed steelhead is included in section 3.3.5, *Threatened and Endangered Species.*

Because there is the potential for adverse effects on a listed species (UCR steelhead) and other high-value species (Chinook salmon), and that the PUD's proposed Blasting Plan does not resolve all issues related to blasting, it would be appropriate for Okanogan PUD to consult with the TRG in preparing a final Blasting Plan. Involving the agencies that comprise the TRG in the development of this plan would ensure that all appropriate protection measures are considered and included in the plan.

Sediment

In its comments in response to the REA notice, NMFS recommends that Okanogan PUD prepare and implement a Soil Erosion Control Plan to guide project construction, as well as operation and maintenance of the project. Interior recommends that Okanogan PUD develop and implement an Erosion and Sedimentation Management Plan.

In response to the agency comments and recommendations, Okanogan PUD developed a Spill Response Plan, and a Storm Water Pollution Prevention Plan. The Spill Response Plan would be implemented at project initiation. Construction plans would be developed prior to construction, and BMPs would be implemented during all construction activities.

To characterize the hydraulic transport of sediment through the project, Okanogan PUD performed a modeling effort using the River 2D model. Results of the modeling show that sediment in the Enloe reservoir undergoes an annual deposition and erosion cycle.[22] Currently, Enloe dam acts as a sediment trap during low flow portions of the year (May through December). Low flow periods correspond with low water velocities from which suspended sediments settle creating a mound of sediment in the project reservoir near the dam. This mound of sediment is washed downstream annually during high flow periods (January through April) when flows increase by a factor of 20 or more. This sediment is washed over the dam and is transported downstream.

Under Okanogan PUD's proposed project operations, sediment transport in the Similkameen River in the project vicinity would change slightly. Okanogan PUD would divert up to 1,600 cfs through the turbines during all months of the year. Sediment carried in this water would still be transported downstream of the dam, but would do so by traveling through the powerhouse as opposed to spilling over the dam. Flows during the high flow portion of the year (January through April), which range on average from 1,800 to 7,600 cfs, would exceed the hydraulic capacity of the project and would spill over the dam as now occurs, transporting sediment out of the project reservoir and into the river downstream of the powerhouse. Overall, proposed project operations would have a negligible effect on the current cycle of sediment transport in the Similkameen River.

Sediment deposited in the reservoir may be transported downstream during project construction and operation. This could result in both adverse and beneficial impacts to aquatic resources. Adverse impacts would include short-term turbidity plumes and sedimentation from construction activities, which could cause mortality of eggs, fry, and juvenile fish due to smothering or abrasion. Re-suspension of contaminated sediments containing elevated levels of copper or arsenic could also occur and lead to bioaccumulation of those contaminants in fish eggs or fry, and to acute levels in predatory fish and insectivores such as salmonids and bass. Additional sedimentation, however, could provide

[22] Results of the River 2D modeling are found in Appendix E.2.3 to the license application.

benefits to species that utilize sediment as their preferred habitat. Species potentially benefiting from any deposition of finer sediments would include the Pacific lamprey (which spends most of its life in freshwater submerged in fine sediment), western ridged mussel, western pearlshell mussel, western floater mussel, and the California floater.

Okanogan PUD proposes to develop and implement two measures to mitigate for possible sediment inputs into the Similkameen River due to project construction and operation: an ESCP and a CSMP. These measures are discussed in more detail in section 3.3.1.2.

As noted above, Okanogan PUD proposes a Spill Response Plan and a Storm Water Pollution Prevention Plan. The Spill Response Plan includes practices to minimize the chances or severity of spills of hazardous materials into or near the river. These practices include: Ensuring all hazardous materials are safely sealed; immediate cleaning-up of all spills according to manufacturer's recommended methods; properly disposing of waste generated during spill clean-up; and notifying state and local government agencies in the case of spills. The Storm Water Pollution Prevention Plan includes BMPs to prevent erosion in project areas and to protect water quality. The BMPs include: visibly marking land-clearing limits; controlling river flow rates; installing sediment controls such as straw bales, silt fences, and sandbags; stabilizing all disturbed soils; protecting slopes in the project area; stabilizing all channels and outlets; and controlling pollutants. The implementation of these plans would be protective of aquatic resources in the project area.

Okanogan PUD's proposals for an ESCP, a CSMP, a Spill Response Plan, and a Storm Water Pollution Prevention Plan would minimize short-term degradation of aquatic habitat during construction, including critical habitat for UCR steelhead and EFH for Chinook salmon.

Enhancement Measures for Resident Fish (FISH–02)

Okanogan PUD proposes to construct light-colored boulder clusters to improve mountain whitefish habitat and recreational fisheries in the river upstream of the reservoir.

Washington DFW and Interior do not recommend the proposed boulder clusters because they say that the mountain whitefish fishery above the dam is limited and restricted to the winter months. Interior also suggests that the boulder placement may create a further heat sink and increase water temperatures. Instead, these agencies as a part of the Fisheries Enhancement Plant and Resident Fish Habitat Management Plan, respectively, recommend annual stocking of catchable-size sterile, triploid rainbow trout to provide a greater recreational fishery opportunity. Okanogan PUD states that it would consider contributing up to $60,000 (the cost of the boulder clusters) towards a trout stocking program for the term of the license, if the other state and federal agencies, tribes, and other stakeholders agree.

The Colville, the Ministry of Environment, and the Canadian Parks and Wilderness Society have expressed concerns throughout the licensing process that Washington DFW and Interior's recommendation for introduced fish stocks of triploid rainbow trout would pose an unacceptable risk to resident fishes due to potential disease transfer and competition for food and space, while providing a limited contribution to the recreational fishery.

Our Analysis

Most of the fish in the reservoir are non-native species that are better adapted to warmer, slower velocity habitat than native coldwater salmonids. The project would raise the elevation of the reservoir by 4 feet, and therefore, would result in more lake habitat and less riverine habitat for coldwater resident fishes. Okanogan PUD's proposal to add boulder clusters upstream of the reservoir to provide habitat for resident fish would create a small amount of pool habitat behind the clusters that could be utilized by native mountain whitefish. However, very few whitefish (0 in 2006; 2 in 2007) have been found in the reservoir during recent surveys, likely due to a combination of northern pikeminnow predation, warm water temperatures, lack of cover, and the sand-silt substrate. Therefore, it is unlikely that the proposed boulder clusters would provide much of any benefit to the very limited mountain whitefish fishery in this section of the river.

The introduction of hatchery fish stocks would provide a limited and short-term contribution to the recreational fishery, because water quality and high water temperatures in the Similkameen River would only allow a fishery during the cooler months of the year. The stocked rainbow trout may not survive in the river during the warmer summer months. Stocked rainbow trout would also pose a threat to native fish stocks in the United States and Canada due to potential for disease transfer and competition for food and habitat. In addition, although fish occurring in the river upstream of the project may utilize the project reservoir at times, the proposed run-of-river operation of the reservoir would likely have no effect on these species and would not affect the riverine habitat upstream of the reservoir.

Large Woody Debris Transport (FISH–03)

Large woody debris is an important component of a healthy stream ecosystem. Large trees that fall into streams perform an important role in forming pools, regulating storage and routing of sediment, and trapping spawning gravel. Large woody debris also provides complex fish habitat that increases carrying capacity, high flow refugia for fish, and substrate for macroinvertebrates. Enloe dam prevents the supply and transport of all large woody debris from the upper Similkameen River Basin to the lower river, except during high flows. The lower river has low levels of large woody debris, and currently all wood that enters the reservoir from the upper basin is either passed over the dam during flood stage or removed from the reservoir and not returned to the river below the dam. Lack of large woody debris from the upper basin may contribute to a reduction in structural habitat complexity for fish and macroinvertebrates downstream of the dam.

Okanogan PUD proposes to allow large woody debris to pass over the spillway during the annual flood flows; allow natural downstream transport of the woody debris; and would transport some large woody debris around the dam and place it in the river downstream of the dam, if needed. Transport of large woody debris would occur once annually during the recession of the annual high flow.

Interior recommends a plan [23] for the collection and relocation (downstream transport) of large woody debris to be completed at least 1 year before the start of any land-disturbing or land-clearing activities.

Our Analysis

Okanogan PUD's proposal to allow natural wood passage over the dam during large flood events when the crest gates on the spillway would be fully open, and to supplement that supply of woody debris by transporting large wood impounded by the dam to the

[23] As a part of their recommended Fisheries Enhancement Plan.

river below the dam, would provide additional anadromous and resident fish and macroinvertebrate habitat and would increase productivity downstream of the dam. Development of a large woody debris transport plan after consultation with FWS, NMFS, Interior, Washington DFW, and the Colville would help to guide implementation of the measures, including providing direction on determining when such transport would be required, the methods to be used for collection and transport of the wood, and the best locations for release of the woody debris downstream of the dam.

Intake Trashrack, Entrainment Studies, and Fish Monitoring (FISH–04 and FISH–05)

Entrainment into the intakes and passage through the turbines could result in injury or mortality to resident reservoir fish that are attempting to move downstream. Additionally, larger fish could become impinged on the trashrack causing possible injury or mortality. Okanogan PUD proposes to install a modified intake trashrack adjacent to the existing dam overflow spillway with provisions for a low velocity approach channel, and a trashrack at the intake with narrow (1-inch) bar spacing to prevent entrainment of large fish. Okanogan PUD also proposes to generate with Kaplan turbines, which generally cause low mortality for any small fish entrained into the power flow. Okanogan PUD proposes to file detailed design drawings of the modified trashrack intake and the trashrack cleaning system no later than 180 days prior to start of construction. Okanogan PUD also proposes to monitor adult and juvenile impingement and entrainment effects and to conduct quarterly fish sampling over a 1-year period.

Interior and Washington DFW recommend filing detailed design drawings of an intake fish screen and a schedule to build the screen before the start of any land-disturbing or land-clearing activities, as well as a monitoring plan and corrective actions to minimize fish impingement and entrainment.

Our Analysis

Impingement

The proposed spillway would provide a 276-foot-long exit from the reservoir for any downstream moving fish. During high-flow periods, this route would have high approach velocities. By comparison, the proposed power intake is a much smaller outlet with a lower approach velocity. Diverting water from the spillway to the power intake would likely draw some fish toward the intake and away from passage over the spillway, potentially exposing these fish to impingement on the trashracks or entrainment through the turbines. However, the modified trashrack with 1-inch bar spacing proposed by Okanogan PUD would be designed so that smaller fish can pass safely through the racks without becoming impinged, and larger fish (greater than 6 inches in length) would be discouraged or prevented from passing through the racks and in turn the turbines.

Okanogan PUD calculated the average monthly water velocities [24] at the trashrack to examine impingement risk for larger fish. Estimated monthly average velocities at the trashrack ranged from 1.06 feet per second (fps) to 2.91 fps, depending on the intake flow and associated river flow and reservoir elevation. Swimming speeds of fish known to reside in the project reservoir were collected for comparison to water velocities at the trashrack, to examine if resident fish would be able to swim away from the trashrack, thus avoiding impingement. Nine of the fish species known to reside in the reservoir [25] are able to reach burst speeds [26] of between 4.6 and 10 fps (for adult life stages).[27] These species would be able to swim away from the trashracks in all months of the year, avoiding impingement. From April to July, predicted velocities at the trashrack would average 2.65 fps, which could result in impingement for two species known to reside in the reservoir. Northern pikeminnow and chiselmouth have burst swimming speeds of 2.5 fps, and thus would be susceptible to impingement if unable to avoid the intake flow. Fishes impinged would be subject to injury and mortality, which would be most likely to occur from April to July.

Entrainment

Reservoir sampling showed that most of the small, resident fish in the reservoir are found in shallow water areas with cover. Accordingly, very few small fish are expected to be in the area of the intake because of unsuitable habitat (deep open-water habitat with steep, almost vertical walls). Two native species—chiselmouth and northern pikeminnow—would have the greatest potential of occurring near the intake. Native suckers, mountain whitefish, and introduced species, such as largemouth bass, carp, and yellow perch, may also be present near the intake. Resident rainbow trout were not found between the U.S./Canadian border and Enloe dam during recent studies, and probably would not occur near the intake. Because the population density of fish in the reservoir is low, and the project would have narrow-spaced trashracks, the rate of entrainment at the project would likely be low resulting in undetectable effects of the population levels of resident fishes in the reservoir. Additionally, the survival rates of fish that would be susceptible to entrainment (those less than 6 inches in length) after passing through the turbines have been estimated to be 84% to 95%.[28]

Okanogan PUD proposes to monitor seasonal variation in entrainment susceptibility, entrainment mortality, and fish populations in the reservoir after project construction. Both entrainment levels and mortality of entrained fish are expected to be very low. Additionally, effects of project entrainment on reservoir populations are expected to be minor. Therefore, these data collection efforts likely would not produce useful data. Additionally, Okanogan PUD did not specify if these monitoring efforts would lead to adaptive management, if needed, to adjust the proposed measures to reduce any adverse effects associated with operation of the intake.

The agencies recommendation for a fish screen did not include any design details, so we are unable to determine how the performance of the proposed narrow-spaced trashrack would compare to a fish screen. However, Okanogan PUD's proposed trashrack would achieve the same goal of physically excluding the majority of fish approaching the intake. Fish screens cost much more than trashracks to build, install, and maintain. The proposed trashrack would achieve similar results at a much lesser cost than a fish screen. To ensure that the applicant's proposed narrow-spaced trashrack achieves similar exclusionary goals of a fish screen, it would be beneficial for Okanogan PUD to consult

[24] See Okanogan PUD AIR response filed on July 21, 2009. In this AIR response, Okanogan incorrectly stated that burst speed for largemouth bass is 2.1 fps. Appalachian Power Company (2009) collected critical swimming speeds for largemouth bass from 10 studies identified in the literature and were able to estimate that the burst speed of juvenile largemouth bass is between 3.2 to 4.3 fps, while adults would be capable of faster speeds.

[25] These species are bridgelip sucker, largescale sucker, unidentified sunfish species (genus Lepomis), common carp, yellow perch, rainbow trout, Kokanee salmon, and mountain whitefish.

[26] A speed that can be maintained for a short period of time, typically seconds.

[27] See Okanogan PUD AIR response filed on July 21, 2009.

[28] Survival rates were calculated by Okanogan PUD using the U.S. Department of Energy's Advanced Hydro Turbine System Program.

with the fisheries agencies during the final design of the intake structure and trashracks. By including some or most of the design features of a fish screen into the design of the narrow-spaced trashrack, fish protection would be provided concurrently with protection of the generating equipment from the influx of trash.

Tailrace Net Barrier and Tailrace Video Monitoring (FISH–06 and –07)

Operation of the project may attract upstream migrating fish into the turbine discharge flow. It is expected that this behavior could result in UCR steelhead or anadromous salmonids attempting to enter the draft tubes and swim through the draft tubes to an area near the turbine runner blades. Fish may be injured or killed by impact with the spinning runner blades during partial load operation when velocities downstream of the turbine may be low enough for the fish to reach the turbine runner. Okanogan PUD proposes to design (after consultation with NMFS), install, and operate a net barrier at the outlet of each draft tube. Okanogan PUD proposes to maintain the nets and to develop a written operation plan in consultation with NMFS. Okanogan PUD also proposes to monitor the effectiveness of the tailrace barrier nets through the use of underwater videography. Okanogan PUD would submit draft and subsequent design plans to NMFS; obtain NMFS' approval of design specifications for the tailrace barrier; and file a detailed design of the barrier nets with the Commission at least 180 days before the start of any land-disturbing or land-clearing activities. Okanogan PUD also proposes to develop and implement a postconstruction evaluation and monitoring plan and an inspection and maintenance plan.

NMFS recommends that when downstream oriented velocities in the draft tube are less than or equal to 27 feet per second (the highest burst swimming speed attainable by UCR steelhead) the tailrace barrier should be in place and operated as designed. NMFS states that development of the final detailed barrier designs (in consultation with NMFS), including expected approach velocities, be completed 180 days prior to the start of any land-disturbing activities. NMFS further recommends that these final designs include a hydraulic evaluation of the facilities; a written operation plan; a postconstruction evaluation and monitoring plan; a contingency plan in the event the proposed tailrace net barriers do not perform according to criteria; and an inspection and maintenance plan.

Washington DFW and Interior make similar recommendations regarding the need for the tailrace barriers and consultation; however, these agencies recommend the filing of detailed design drawings with the Commission at least 1 year before the start of any land-disturbing or land-clearing activities.

Our Analysis

Of the fishes that are found in the area where the tailrace would be located, UCR steelhead are the strongest swimmers, and therefore would be most likely to be able to access the draft tubes while the project is operating. Adult UCR steelhead are strong swimmers and are reported to have a burst speed of 27 feet per second (Bell, 1986). During full load operation, the water velocity immediately downstream of the turbine runner blades would exceed this burst speed, creating a velocity barrier that would prevent fish from reaching the area where injury or mortality could occur. Installation of a net barrier at the outlet of each draft tube, however, would provide a physical barrier to prevent injury to fish during periods of reduced generation, when water velocities would be lower than steelhead burst speed and too low to maintain the velocity barrier.

Okanogan PUD would use underwater video cameras during the peak presence of UCR steelhead, Chinook, and sockeye salmon during the first two years of operation, to monitor the openings of the net barriers. The video would be reviewed to document if adult salmonids are able to enter the area where barrier nets are deployed, and if so, if the nets effectively prevent fish from moving further upstream into the draft tubes, and if fish are able to safely exit the barrier net locations. This measure would allow Okanogan PUD to monitor the effectiveness of the tailrace barriers nets. It would also allow for adaptive management, so that the tailrace barriers nets location or design could be adjusted or operated in a more efficient or effective manner, if possible. The use of underwater videography would ensure that anadromous salmonids and resident fishes are protected from entering the draft tubes where mortality or injury could result.

It is expected that the final barrier design, the operation plan, postconstruction evaluation and monitoring plan, and the inspection and maintenance plan, to be developed after consultation with NMFS, and filed with the Commission for approval, would provide sufficient assurance that the proposed barrier net designs would provide adequate protection to fish downstream of the proposed powerhouse.

Run-of-River Operations (FISH–08)

Okanogan PUD proposes to operate the Enloe project in a run-of-river mode. The 370-foot-long bypassed reach would receive a minimum flow of 10 or 30 cfs (see below) during the lower flow months when river flow is equal to or less than the hydraulic capacity of the powerhouse. Powerhouse discharges would be returned to the river below the falls.

Our Analysis

The proposed run-of river operations would have no effect on water quantity above the dam or downstream of the project powerhouse at the base of the falls. This would be protective of the current fisheries habitat in the lower Similkameen River downstream of the falls, as river flows would be unchanged from current conditions.

Ramping Rates

Okanogan PUD proposes to implement interim ramping rates based on Washington State guidelines (Hunter, 1992) to protect aquatic resources downstream of the tailrace (table 13). The ramping rates would apply to changes in hourly water elevations associated with project operation during normal powerhouse start-up and shut-down. Temporary modifications to ramping rates may be needed to address operating emergencies or planned outage.

TABLE 13—PROPOSED RAMPING RATES

[Source: Hunter, 1992]

Season	Daylight [a]	Night [b]
February 16 to June 15	No ramping	2 inches per hour.
June 16 to October 31	2 inches per hour	1 inch per hour.

TABLE 13—PROPOSED RAMPING RATES—Continued

[Source: Hunter, 1992]

Season	Daylight [a]	Night [b]
November 1 to February 15	2 inches per hour	2 inches per hour.

Notes:
[a] Daylight is defined as the period from 1 hour before sunrise to 1 hour after sunset.
[b] Night is defined as the period from 1 hour after sunset to 1 hour before sunrise.

Interior, Washington DFW, NMFS, and American Rivers *et al.* recommend implementation of the ramping rates shown in table 13 for the protection of aquatic resources. These agencies recommend that temporary modifications of the ramping rates that may be needed due to operating emergencies or planned outages should be developed by mutual agreement among Okanogan PUD and the interested agencies and tribes. To expedite these discussions, Okanogan PUD requests that these agencies be required to appoint a single local representative who has the authority to address such operational issues. If the interim ramping rates are so modified, Okanogan PUD would notify the Commission, as soon as possible, but no later than 10 days after each such incident. A second issue regarding ramping rates was described in the applicant's recent filings, related to ramping rates immediately downstream of Enloe dam when spillage flows are reduced as the project powerhouse is brought on line. The September 2010 snorkeling survey conducted by Washington DFW and Washington DOE identified bedrock benches along the shoreline of the plunge pool that could strand fish if spillage over the dam was to be reduced at a rate where fish could not vacate that habitat before it is dewatered. As a result, Okanogan PUD now proposes to determine the critical flow thresholds related to dewatering of these bedrock benches, based on field observations, so that appropriate downramping of spillage flows can be made between those flow thresholds (letter from Donald H. Clarke, Counsel to Public Utility District No. 1 of Okanogan County, to Kimberly Bose, Secretary, FERC, October 28, 2010).

Our Analysis

Okanogan PUD proposes the interim ramping rates recommended by Interior, Washington DFW, NMFS, and American Rivers *et al.,* for the protection, mitigation of damages to, and enhancement of aquatic resources downstream of the powerhouse. Rapid flow reductions in a stream channel, especially in low gradient stream areas, have the potential to strand fish in dewatered areas including pools and side channels. Fry and juvenile fish less than 2-inches-long are most vulnerable to potential stranding due to weak swimming ability; preference for shallow, low velocity habitat such as edgewater and side channels; and a tendency to burrow into the substrate to hide. The magnitude of change can also affect habitat use and the production of macroinvertebrates that are vulnerable to drift or stranding. Side channels are particularly susceptible to dewatering and disconnection from the main channel as flows recede. As a result, young-of-the-year salmonids that prefer to rear in side channels (e.g., UCR steelhead) may be stranded.

Based on Hunter (1992), we expect that the interim downramping rates described in table 13 should protect Chinook salmon and UCR steelhead redds and fry, and juvenile Chinook salmon, UCR steelhead, sockeye salmon, and aquatic macroinvertebrates from stranding and mortalities associated with flow fluctuations downstream of the powerhouse. In addition, because the project would operate in a run-of-river mode, any reductions in powerhouse flow would result in an immediate increase in spillway flows, which would also enter the pool at the base of the falls at about the same time that powerhouse flows are reduced. Thus, the pool at the base of the falls and the Similkameen River downstream of this pool would not experience wide water level fluctuations under normal operations. This proposed operation and the proposed ramping rates would also protect UCR steelhead designated critical habitat and Chinook salmon EFH downstream of Similkameen Falls.

Recently proposed measures to limit downramping of spillage flows immediately downstream of Enloe dam would protect any resident species from potential stranding on bedrock benches along the shoreline of the plunge pool. Identifying the critical flow thresholds and associated water elevations in relation to the bedrock benches would allow development of actual ramping rates between those flow thresholds. Okanogan PUD proposes that these flow thresholds be determined by field observations and monitoring prior to initiation of project operations, but does not specify what the ramping rates would be once the flow thresholds are determined. It would be appropriate to determine the flow thresholds by field observations, because there have been no detailed surveys of the river bathymetry or instream flow modeling in the bypassed reach. Future ramping rates would still need to be determined, as appropriate rates in the bypassed reach may not necessarily be the same as those outlined in Hunter (1992). Therefore, a study plan would be required that would describe how the flow thresholds would be determined by field observation, and how future downramping rates for the bypassed reach would be developed. This study would need to be prepared in consultation with Washington DFW, Washington DOE, FWS, and the Colville, and filed with the Commission for approval.

Ramping Rate Compliance Monitoring

Okanogan PUD proposes to use the existing Washington DOE gage in the lower Similkameen River to monitor ramping rate compliance downstream of the powerhouse. Interior, Washington DFW, NMFS, and American Rivers *et al.* recommend that the location to measure compliance should be determined by Okanogan PUD in consultation with Interior, NMFS, Washington DOE, Confederated Tribes and Bands of the Yakama Indian Nation (Yakama Nation),[29] and the Colville, before project operation begins.

Our Analysis

The Washington DOE gage that Okanogan PUD proposes to use to monitor ramping rate compliance on the lower river is located in Oroville at river mile 5, nearly 4 miles downstream of the project site. Sites for monitoring compliance with ramping rates should be located in relatively close proximity to project discharges, so that gage heights recorded reflect the water surface elevations immediately downstream of the powerhouse. It is

[29] NMFS and Interior's 10(j) recommendation for compliance of the ramping rates included consultation with the Yakama Nation.

unlikely that the existing DOE gage in Oroville would meet these criteria, because any small fluctuations in discharge from this proposed run-of-river project would likely be attenuated in the 4 miles of river between the tailrace and the gage.

Interior, Washington DFW, NMFS, and American Rivers et al.'s recommendation that a monitoring site would need to be established as a result of consultation between those parties and Okanogan PUD would ensure that the location for monitoring ramping rate compliance would be near the project and would adequately measure the ramping rates. The result of this selection process could require the installation of a new monitoring gage on the Similkameen River near the project's tailrace. A plan detailing how Okanogan PUD would monitor compliance with their proposed ramping rates, including the location selected for doing so would be beneficial and would need to be filed with the Commission for approval.

Flow Continuation

Interior recommends development of a plan that would provide up to 48 hours of flow continuation in the event of emergency project shutdown at the unmanned, remotely operated powerhouse. Interior also recommends that the crest gates or flow continuation valves for each penstock be designed to open automatically to provide outflow into the lower river from a combination of the tailrace and spillway flows, so that river flow never drops below the level of inflow to the reservoir. Interior further recommends that the plan include detailed drawings and flow capacities for the proposed crest gates or flow continuation valves.

Our Analysis

In the case of an unplanned outage, the power plant control system would open the crest gates automatically to maintain tailwater elevation at the powerhouse to within the proposed ramping rate described above (table 13). This would ensure an uninterrupted flow of water downstream of the project tailrace. A small, short-term fluctuation in downstream flows could occur as flow through the powerhouse is reduced and flow over the spillway crest gates increases. The estimated travel time from the spillway to the pool below the falls depends on flow, but is estimated to be about 1 minute. Thus, any fluctuation in river flow downstream of the project would be of short duration and would be attenuated by water storage in the large pool below the falls and in the river channel further downstream. Therefore, the proposed crest gate operations, as described, would protect and maintain aquatic habitat downstream of the project, and there would be no need for a specific flow continuation plan as recommended by Interior. Flow continuation would occur as part of normal project operations, so downstream aquatic habitat, including UCR steelhead designated critical habitat and Chinook salmon EFH below Similkameen Falls, would be protected in the event of operating emergencies or planned outages.

Anadromous Fish Passage at Enloe Dam

Under the current proposed action, fish passage would not be provided at the dam, and the 370-foot long bypassed channel would be reduced to a minimum flow of 10 or 30 cfs during the low flow months when most of the river flow would be diverted through the powerhouse and returned to the river below the falls.

American Rivers *et al.,* BIA, and CRITFC commented that the issue of fish passage was not resolved in a previous license proceeding for this site; there is suitable anadromous habitat above the dam; and this issue needs to be resolved prior to issuance of a new license. CRITFC recommends that the applicant work with CRITFC's member tribes, the BIA and other parties to resolve the issue of historical anadromy by employing the best available scientific methods including paleolimnological, genetic and archeological studies. CRITFC and BIA also requested production potential estimates for salmon and UCR steelhead be included as part of a fish passage alternative in the current licensing proceeding. The BIA commented that cost estimates for designing, constructing, operating, and maintaining upstream and downstream fish passage facilities for the term of the license need to be developed in case such an action is required in the future.

The Colville, Okanogan Nation Fisheries Commission, Canadian Parks and Wildlife Society British Columbia Chapter, and the Ministry of Environment oppose introduction of anadromous fish passage above the falls based on the belief that historical anadromy never occurred above the falls, and introduction of anadromy would have negative impacts on resident fishes and other aquatic life due to disease transfer and competition for food and habitat; would provide a limited contribution to a recreational fishery in the upper river; and would violate traditional laws, the Coyote mythology that prohibits fish passage at the falls, and sacred principles of the Tribes (Vedan, 2002).

FWS has determined that it does not have sufficient information to support filing a Section 18 prescription for fishways for the Enloe Project at this time, because of the uncertainty of historical anadromy above the falls. Both FWS and NMFS recommend that upstream anadromous fish passage facilities not be required now, and have reserved their authority to require fish passage under Section 18 in the future.

Our Analysis

There are no documented accounts of Chinook salmon, sockeye salmon, UCR steelhead, or Pacific lamprey anadromy above Similkameen Falls. Aboriginal traditional beliefs suggest that Similkameen Falls historically blocked anadromy (Vedan, 2002). In an Annual Report of the Department of Indian Affairs for the Year Ended December 31st, 1890, the Indian agent reported that "at the mouth of the Similkameen River, in the United States Territory, are falls which prevent the ascent of salmon up the Similkameen...I have several times urged Indians to construct a fish ladder and thus provide themselves with a supply of salmon..." (Department of Indian Affairs, 1890, in Vedan, 2002).

More recently, conservation planners with knowledge of the affected area and fish populations have weighed in on the issue. The Okanogan Sub-basin Plan, which was prepared for the Northwest Power and Conservation Council, concluded that Similkameen Falls was an impassable historic barrier to upstream salmon migration (KWA Sciences *et al.,* 2004). The Similkameen watershed above Enloe dam was not included in their sub-basin salmon ecosystem analysis for this reason.

In 2007, the Upper Columbia Salmon Recovery Board issued the Upper Columbia Spring Chinook Salmon and Steelhead Recovery Plan. The Upper Columbia Salmon Recovery Board is composed of representatives from Chelan, Douglas, and Okanogan counties, the Colville, and the Yakama Nation. Their recovery plan does not identify upstream and downstream passage of fish at Enloe dam as being a short-term or long-term action that would contribute to the restoration of these fish stocks, based on the uncertainty of fish being able to ascend Similkameen Falls before the construction of Enloe dam (Chapman *et al.,* 1994).

Several entities including, Washington DFW, American Rivers *et al.,* and CRITFC believe that steelhead, Chinook salmon, sockeye salmon, and Pacific lamprey may be able to ascend

the falls and access the bypassed reach above Similkameen Falls under some flow conditions. No data, provided in this proceeding, however, have shown this to occur, or to be a likely possibility. Washington DFW has stated that it has anecdotal information that places anadromous fish above the falls, that UCR steelhead penetrated farther upstream of the falls before construction of Enloe dam, and that rainbow trout above the dam probably retain genetic similarity to UCR steelhead; however, Washington DFW did not provide such information confirming these assertions.

In an effort to understand the historical range of anadromous fishes in the Similkameen River, CRITFC commissioned Ford (2010a) to analyze sediment core samples collected in Palmer and Blue lakes upstream of Enloe dam. Sediment core samples were collected and analyzed for isotopic content. The core samples appear to contain isotopic signatures characteristic of marine-derived nitrogen, possibly indicating anadromy; however, the preliminary analyses were inconclusive and additional analysis is under way (Ford, 2010a, b; Myers, 2010). CRITFC recommends that additional studies similar to Ford (2010a) be required to attempt to resolve the issue of whether anadromy occurred upstream of the falls. While such studies may provide some indication of the former presence of anadromous fish upstream of the falls, Ford (2010b) states that such results by themselves would not provide "compelling evidence" that anadromous species once occurred above the falls.

CRITFC and BIA requested that production potential estimates for salmon and UCR steelhead be included as part of a fish passage alternative in the current licensing proceeding. The CRITFC letter included estimates that the habitat upstream of Enloe dam could support approximately 55,000 Chinook salmon and 98,000 steelhead spawners. Although undoubtedly there may be some suitable habitat for salmon and steelhead upstream of Enloe dam, based on available information in the literature, it appears that anadromous fish likely did not pass the Similkameen Falls in substantial numbers prior to the construction of Enloe dam. An occasional account of a sighting of an anadromous fish above the falls does not outweigh the lack of historic record describing a salmon and UCR steelhead fishery or population above the falls. Native American and First Nation belief that salmon were blocked from the upper reaches of the Similkameen River above the falls is additional support that salmon and UCR steelhead did not ascend the falls and enter the upper reaches of the river to spawn prior to the construction of Enloe dam.

Regardless of whether anadromous fish historically migrated to areas upstream of Similkameen Falls, if Okanogan PUD were to provide for fish passage at the project, anadromous fishes that have been known to occupy the plunge pool would be able to access habitat in the Similkameen River upstream of Enloe dam for spawning and rearing. Benefits to anadromous species could include an increase in the populations of these fish stocks, as they gain additional spawning and nursery habitat in the upper Columbia River basin. Other benefits to upstream aquatic habitat would be the influx of marine nutrients through the decay of salmon carcasses, which would benefit primary production and the entire food chain, potentially enhancing resident fish populations. Passing adult anadromous species upstream would also have the potential to enhance the sport fishery in the river, depending on regulations that would likely be put in place to protect stocks introduced to the upper Similkameen River.

The extent that these potential benefits might occur is not known, and the introduction of anadromy to the upper Similkameen River could also have negative impacts on both the anadromous and resident fishes in the river. Anadromous fishes reaching the upper river may or may not access suitable spawning and nursery habitat, as the reach immediately upstream of Enloe dam (the reservoir) is not high-quality salmonid habitat. While there may be suitable habitat upstream of the reservoir, juveniles of anadromous species that are successfully spawned and rear upstream of Enloe dam would also face an additional impediment to downstream migration, the Enloe Project, which fish in the lower Similkameen River would not face. Although the project may be required to provide downstream fish passage facilities if anadromous species are introduced upstream, such facilities are seldom 100 percent effective, so fish from the upper river would be exposed to potential delay, injury, and mortality. Resident species could be adversely affected by the introduction of anadromous species by the potential for disease transfer and competition for food and habitat between resident and anadromous species.

Location of the Tailrace (FISH–09)

UCR steelhead, Chinook salmon, and sockeye salmon enter the cooler Similkameen River and migrate as far upstream as Similkameen Falls during the summer months. The large, deep plunge pool below Similkameen Falls is used as holding habitat until temperatures in the Similkameen and Okanogan rivers decrease and these species can begin their spawning activities (figure 4). Chinook salmon arrive in the plunge pool in July and August, and hold prior to spawning in the lower river. Sockeye salmon use the pool in August and September while also holding prior to spawning in the fall. Sockeye and Chinook salmon generally leave the pool by the end of September. Juvenile sockeye and Chinook salmon are not known to utilize the pool area. Adult UCR steelhead occur in the plunge pool below Similkameen Falls from September through March. Juvenile UCR steelhead can be found in the pool year-round.

Currently all flow provided to the plunge pool flows over the falls and provides well oxygenated habitat for fish species. Bypassing flow around the falls could result in reduced DO concentrations in the plunge pool. To remedy this, Okanogan PUD proposes to locate the tailrace so that it discharges into the plunge pool in a manner that allows the flow to circulate to maintain water quality (TDG and DO) for fish holding in the pool. Okanogan PUD also proposes to install turbine venting to enhance DO levels in project discharges.

Our Analysis

When the tailrace is operational under Okanogan PUD's proposal, flow would enter the pool approximately 90 feet downstream from the falls at an angle and create clockwise circulation in the pool upstream of the tailrace exit. Orienting the tailrace to discharge flow into the plunge pool in this manner would provide circulation within the pool to prevent stagnation and water quality degradation. The potential TDG and DO effects of the tailrace discharge are addressed in section 3.3.2.2, *Water Quantity and Quality, Environmental Effects.*

Water circulation in the plunge pool, along with turbine venting, would benefit all anadromous and resident fishes found in the pool by ensuring adequate DO levels, while reducing TDG levels. These water quality measures that reduce TDG, while maintaining adequate DO (see section 3.3.2.2), would have the greatest potential to benefit juvenile UCR steelhead, as they are known to occupy the plunge pool year-round. The proposed tailrace location would maintain the UCR steelhead designated critical habitat and Chinook salmon EFH below Similkameen Falls.

Side Channel Enhancement (FISH–10)

Low velocity, high complexity side channels provide important habitat for juvenile fishes. Elevated summer stream temperature and limited rearing habitat are the most significant limiting factors for salmonids in the lower Similkameen and Okanogan Rivers.[30] The purpose of the side channel enhancement measure is to create cooler water, side channel habitat in the lower river to benefit anadromous fish, and mitigate any impacts such as entrainment mortality and any decreased production in the Similkameen River.

Okanogan PUD proposes the side-channel enhancement project in reach 1 (RM 0–4.7). The project would include the enhancement of one to three side channel areas in the Similkameen River located downstream of Enloe dam. The candidate side channel would be approximately 800 feet in length with an average gradient of 0.15 percent. The channel(s) would be entrenched in the floodplain; the cross section would be approximately trapezoidal with some undulation and woody debris in the channel bottom. Riparian vegetation would provide cover and shade over the majority of the open channel(s). The side-channel enhancement proposal would provide cool water in these candidate side channels that would enhance habitat for juvenile fishes.

Cool water would be provided by a well to sustain flow in the side channel. The well is expected to be about 12 inches in diameter with a minimum depth of 40 feet. Total depth would depend upon site specific sub-surface conditions. It is anticipated that a 25 to 30-horsepower pump would be adequate to provide the desired flow rate of 2 cfs. Based on water samples from adjacent wells, the temperature of water from the well is expected to be near 14 °C. Constructed riffles would contain buried manifold systems capable of delivering 2-cfs low pressure flow from the well.

The cool water pumped from the well to the side channel(s) would discharge water into a lateral channel of the mainstem Similkameen River that is disconnected from the main flow during the summer low flow period. The cool water discharged into the lateral channel would extend downstream for at least 200 to 300 feet. The water in this side channel would be backwatered by the mainstem flow, thus providing additional ponding of cool water, and the discharge into the channel would be approximately 4 acre-feet per day (2 cfs).

Most of the construction activity would occur in a dry channel. Sediment, erosion control, and water quality protection would be implemented using procedures outlined in Washington DOE's Stormwater Management Manual for Eastern Washington, as needed. BMPs would be used to protect water quality and prevent streambank erosion. Postconstruction monitoring would be conducted annually for the first 3 years after side channel construction, then every 5 years thereafter. Monitoring would likely be accomplished through a snorkel survey and the use of other fish observation techniques for shallow water, given that UCR steelhead are listed as threatened and there is risk of mortality or stress associated with electrofishing or seining. Sampling would occur in the low flow August to mid-September time frame.

The river stage at which flow would begin to naturally enter the upper end of the side channel and the relationship between river flow and side channel flow above this threshold value has not been determined. This information would be collected during a second planning and evaluation phase and would determine the timing of start-up and duration of well operation. It would also provide insight regarding the need to protect the side channel from flood flow; because the river gradient is flat, flood stage may backwater the downstream end of the side channel preventing higher water velocity from developing. If a downstream backwater is present, large floods would maintain natural processes within the side channel without destroying the investment in rearing habitat.

Washington DFW, Interior,[31] and NMFS recommend the proposed side-channel enhancement project. NMFS also recommends development of a fish habitat enhancement plan in consultation with NMFS, FWS, Washington DFW, the Colville, and the Yakama Nation. This recommended plan would consist of provisions for side channel enhancement, as well as Okanogan's proposed gravel supplementation plan (FISH–11) which is discussed below. NMFS recommends the final plan be filed with NMFS at least 180 days prior to the start of any land-clearing activities and include a schedule for completion in 3 years, performance criteria, monitoring provisions, contingency plans, and provisions for periodic review of the plans.

Our Analysis

The effect of the side channel improvements is not expected to have a significant effect on water temperatures in the Similkameen River. The side channel improvement would include the development of a small area (~1,000 square feet) of cool water at the confluence of the side channel and the mainstem river. It is expected that the outflow of 2 cfs (4 acre feet/day) of cool water from the side channel would maintain cool water habitat in the lateral channel. Lower temperatures would also be expected in the mainstem Similkameen River where the lateral channel connects to the river; however the downstream extent of the cool water influence is unknown at this time, but expected to be 200 to 500 feet.

The purpose of the proposed side channel enhancement is to provide coolwater rearing habitat for juvenile salmonids during the summer to decrease mortality, improve fish condition, and mitigate the loss of fisheries resources that could occur as a result of the construction and operation of the project. The proposed side channel and lateral channel enhancements would benefit juvenile UCR steelhead/rainbow trout, Chinook salmon, and sockeye salmon in the lower river during the low flow summer months by providing thermal refugia. Cutthroat trout and brook trout are also present in very low densities and could benefit. The proposed side channel habitat would be best suited to age 0+ steelhead/rainbow trout, and to a lesser degree age 1+ steelhead/rainbow trout. The relatively shallow water depths in the side channel would likely preclude significant occupancy by older age cohorts of trout and salmon. Monitoring the side channel via snorkel surveys after construction would determine if the newly created habitat was being utilized by the target species.

Installation of the structures, channel excavation, and other instream work related to the proposed side-channel enhancement project could cause short-term turbidity plumes and sedimentation when water is turned back into the dry channel following construction. In-water construction to connect the side channel with the river may cause mortality of eggs, fry, and juvenile fish due to crushing or abrasion during construction. It would be beneficial for Okanogan PUD to consult with NMFS, FWS, Washington DFW, the Colville, and the Yakama Nation, and file the side-channel enhancement plan with the Commission, as well as providing copies to the agencies, at least

[30] See license application.

[31] As part of Washington DFW and Interior's recommended Fisheries Enhancement Plan.

180 days prior to implementation, as recommended by NMFS.

Spawning Gravel Enhancement (FISH–11)

The Similkameen River is a gravel-poor system and Enloe dam prevents the transport of gravel from the upper watershed, which results in limited spawning habitat for Chinook salmon, sockeye salmon, and UCR steelhead in the lower 5 miles of the Similkameen River. Spawning salmonids use gravel deposits near and downstream of RM 4, and limited spawning occurs along the left riverbank (looking upstream) near RM 5.2. Okanogan PUD proposes a gravel supplementation program in reach 1 (RM 0–4.7). Okanogan PUD would supplement up to a maximum of 15,000 cubic yards of 1- to 3-inch diameter gravel on a schedule of 3,000 cubic yards 5 times at 5-year intervals. Each 3,000-cubic yards of gravel deposited would have the potential of providing approximately 2 acres of additional spawning area.

The preferred site for introduction of the gravel at RM 5.8 is near an abandoned orchard that would not require any site grading to create a pad for the conveyor belt and truck turn-around, and has a low river bank (12 feet high), which would allow a shorter conveyance system to reach the active channel of the river. The ground cover in this location is predominately riprap with a small number of willow shrubs and small cottonwoods growing in the riprap. Approximately eight willow shrubs on the riverbank would be cut back and allowed to resprout following the first supplementation.

The gravel would be placed adjacent to or in the wetted channel where it could be naturally redistributed at high flows. To reduce disturbance of the riverbanks and associated riparian habitat, a rock conveyor would be used to transport the gravel from an upland staging area to the river channel. The in-channel gravel pile is anticipated to be about 30 feet tall, 40 to 50 feet wide, and 150 feet long, and would extend 35 to 40 feet into the wetted channel.

Gravel supplementation is recommended by Interior, NMFS, and Washington DFW.[32] The Colville comments that the proposed gravel supplementation program would reinitiate gravel recruitment processes that have been disrupted by the presence of Enloe dam; would greatly increase the quality and quantity of spawning habitat in the lower Similkameen River, and would have minimal impacts on existing habitat. The Colville also comments that the benefits of the proposed activities would vastly outweigh any incidental impacts.

Our Analysis

Enloe reservoir would continue to interrupt gravel transport from upstream sources after the proposed project is constructed. The proposed gravel supplementation program would provide long-term benefits for spawning Chinook salmon and UCR steelhead/rainbow trout in the lower river as the gravel is redistributed. The proposed 3,000 cubic yards of gravel, however, may need to be distributed over more than one river location to allow efficient distribution under normal flow conditions and prevent unwanted channel alteration.

Deposition of the gravel into the wetted channel would likely cause short-term turbidity plumes, sedimentation, and mortality of juvenile fish due to crushing or abrasion. It would be beneficial for Okanogan PUD to consult with NMFS, FWS, Washington DFW, the Colville, and the Yakama Nation to develop and file a gravel enhancement plan with the Commission, as well as providing copies to the agencies, at least 180 days prior to implementation, as recommended by NMFS.

Biological Review and Fisheries Monitoring Database (FISH–12 and FISH–13)

Okanogan PUD proposes a TRG to monitor the success of proposed mitigation and enhancement measures. The TRG would: (1) Consult in the design of management and monitoring plans; (2) review and evaluate data; and (3) develop resource management proposals or other recommendations to further improve the measures, if appropriate. The group's meetings would be open to the public, and Okanogan PUD would maintain records of the meetings and any recommendations made. Data and information from the monitoring programs would be used to examine long-term trends and make decisions regarding adapting measures to further protect aquatic resources. As part of the biological review process, Okanogan PUD would develop a central database for organization and storage of the monitoring data related to aquatic resources. Database format and development would be consistent with other aquatic data gathered in the Okanogan River Basin. The monitoring programs that would be included in the biological review process are:

- An entrainment study, including reservoir sampling;
- Tailrace barrier monitoring;
- Monitoring the use of boulder clusters upstream of the reservoir; and
- A side-channel habitat monitoring program.

Washington DFW recommends that Okanogan PUD develop an adaptive management plan within 1 year of license issuance that includes goals, monitoring protocols, decision criteria, and actions to be completed in response to monitoring results.

Interior recommends development of a Resident Fish Habitat Management Plan within 1 year of license issuance that includes a comprehensive study of resident fish species, populations, numbers, and habitat conditions in the river from Nighthawk down to the reservoir to complement the studies already completed in the reservoir and downstream of the dam, and development of a fish habitat monitoring plan for the river upstream of the reservoir. The plan also includes provisions for temperature monitoring, riparian plantings in the reservoir, the stocking of triploid rainbow trout in the reservoir, and a fish habitat monitoring plan.

Our Analysis

Development and implementation of the fish monitoring database and study plans; interpretation of monitoring results; and development of adaptive management strategies based on monitoring results would best be accomplished through consultation among the proposed TRG and Okanogan PUD to ensure integration between license measures and other resource management plans, such as regional salmon recovery efforts. Creation of a TRG and a database with the results of the proposed monitoring programs would allow Okanogan PUD to manage project related mitigation and enhancement measures, to determine the success of these measures, and to modify these measures, if appropriate, to improve their effectiveness. This TRG and its functions would satisfy the Washington DFW recommendation for an adaptive management program.

Interior's recommendation for a Resident Fish Habitat Management Plan upstream of the project contains recommendations that are not directly related to project operations or effects, and thus do not have a direct nexus to the project. These recommendations include a comprehensive study of resident fish species, populations, numbers, and habitat conditions in the river from Nighthawk down to the reservoir; and development of a fish

[32] As part of Interior's Resident Fish Habitat Management Plan.

habitat monitoring plan for the river upstream of the reservoir The proposed run-of-river operation of the reservoir would likely have no effect on reservoir species, and would have little effect on the riverine habitat upstream of the reservoir. Some of the recommended provisions including temperature monitoring and riparian monitoring are duplicative of Okanogan PUD proposals discussed elsewhere in the document. The recommendation for stocking triploid rainbow trout has also been recommended by other agencies and is discussed in detail previously in this section.

Minimum Flow Proposal

As we've said, Okanogan PUD proposes continuous minimum flows for the 370-foot-long bypassed reach. Proposed minimum flows would be 30 cfs from mid-July to mid-September, and 10 cfs the rest of the year.

Okanogan PUD also proposes to evaluate critical flow thresholds for bypassed reach downramping requirements that may be implemented during emergency situations after observation of *in situ* conditions during provision of minimum flows.

American Rivers *et al.* recommend a minimum flow release to the bypassed reach equal to the requirements of Washington state law, to prevent degradation of existing instream water uses (WAC 173–201A–310). These releases would vary from 400 cfs to 3,400 cfs depending on the month. CRITFC recommends maintenance of minimum flows in the bypassed reach to provide biotic production and protect designated critical habitat in the reach. Washington DFW also recommends establishment of instream flows in consultation with Okanogan PUD as a condition for licensing and operation of the project, to protect fish in the bypassed reach and in the plunge pool below the falls. Neither CRITFC nor Washington DFW recommendations contained specific volumes for their recommended flow releases. In their preliminary recommendations, Washington DFW notes that new information is likely to be developed during the Washington DOE WQC process, and because fish and wildlife resources are greatly affected by water quantity and quality, Washington DFW will not be able to finalize its recommendations until the certification process is completed.

Our Analysis

Proposed flow diversions for project operations would cause flow in the 370-foot-long bypassed reach to be reduced by up to 1,600 cfs when the powerhouse is in operation. When river flow is greater than 1,600 cfs, the amount of water provided to the bypassed reach would be any flow in excess of 1,600 cfs. When river flow is less than 1,600 cfs and both generating units are operational, the only flow provided into the bypassed reach would be either 10 or 30 cfs depending on the time of year.

Table 14 shows mean flows in the bypassed reach under current conditions and under Okanogan PUD's minimum flow proposal. As shown in Table 14, under Okanogan PUD's proposal, flows in the bypassed reach would be greatly reduced for much of the year. The large majority of the wetted area in the 370-foot reach would be dewatered and the majority of aquatic habitat in this reach would be lost. While this reduction of flow in the bypassed reach may seem extreme, the aquatic habitat in this reach is not heavily utilized and is not accessible to most fish in the project area.

Similkameen Falls at the downstream end of the bypassed reach is a natural barrier to upstream fish passage; therefore, the only fish that could occupy the bypassed reach are individuals from resident populations above Enloe dam that pass over the spillway. Washington DFW states that rainbow trout could be washed over the dam into the bypassed reach and could contribute to the rainbow trout/UCR steelhead population in the river below the dam if sufficient flow and depth is maintained to avoid injury. Rainbow trout have not been found in the reservoir above the dam in previous sampling (Table 9), but in recent (September 2010) snorkeling and hook and line surveys in the plunge pool and bypassed reach immediately downstream of Enloe dam, rainbow trout were observed. Smallmouth bass, northern pikeminnow, sculpin, and unidentified suckers were also observed or collected.[33] Flow conditions did not allow a complete survey of the plunge pool, so additional fish may have been observed if a complete survey had been conducted.

Based on the recent survey, several species of fish are able to utilize the habitat in the plunge pool at least during lower-flow periods (river flow during the survey was about 600 cfs). Under Okanogan PUD's proposed minimum flows, most of the habitat in the plunge pool would disappear except during the summer months when natural flows are higher than 1,600 cfs. This would be the same timeframe when we would expect that fish would be washed over Enloe dam due to high flows. Therefore, the plunge pool habitat would be available during high flow months when resident fish may need it to survive when they are washed over Enloe dam. The plunge pool habitat would then largely disappear from August to March annually, as it would only contain minimum flows of 10 or 30 cfs. This would probably be of little consequence to resident fish populations, as no fish would be washed over Enloe dam during this timeframe. The survival chances of fish who would be occupying the plunge pool when it was dewatered annually are not known; however, recent surveys have shown that their numbers are quite small. Regardless of the numbers of fish in the plunge pool after high flow events, those fish would benefit from the minimum flows proposed by Okanogan PUD.

TABLE 14—COMPARISON OF AVERAGE MONTHLY FLOWS IN BYPASSED REACH WITH OKANOGAN PUD'S PROPOSED MINIMUM FLOW REGIME

[Source: Staff]

Month	Mean flows in bypassed reach under current conditions (cfs) [1]	Mean flows in bypassed reach under minimum flow proposal (cfs)
January	659	10
February	682	10

[33] Data were included in Okanogan PUD's November 10, 2010 filing.

TABLE 14—COMPARISON OF AVERAGE MONTHLY FLOWS IN BYPASSED REACH WITH OKANOGAN PUD'S PROPOSED MINIMUM FLOW REGIME—Continued

[Source: Staff]

Month	Mean flows in bypassed reach under current conditions (cfs) [1]	Mean flows in bypassed reach under minimum flow proposal (cfs)
March	746	10
April	2,086	486
May	2,086	486
June	8,597	6,997
July	2,965	1,365
August	916	30
September	596	30
October	697	10
November	938	10
December	798	10

[1] Data from USGS Nighthawk gage no. 12442500 (1929–2005).

Any fishes that would be occupying the plunge pool could be negatively affected by the reduction in minimum flow provision in the case of emergency operations, such as project shutdown. Okanogan PUD's proposal to determine appropriate downramping rates through monitoring and field observation would allow them to decide upon an appropriate downramping rate that would be utilized during these situations. This would be protective of any fishes utilizing the plunge pool.

The minimum flow now proposed by Okanogan PUD and agreed to by Washington DOE and Washington DFW would be only a small fraction of the flow recommended by American Rivers *et al.* (400 to 3,400 cfs). Although American Rivers *et al.* states that their recommended flow is based on Washington regulations to ensure that state water quality standards are met, neither of the Washington agencies has recommended this flow, nor has American Rivers *et al.* provided a technical justification, based on site specific data, for the higher flows that it recommends. American Rivers *et al.* only states that its recommended flow would provide adequate depth, substrate, cover and velocity, and does not provide any analysis of alternative flows.

Another issue associated with minimum flows in the bypassed reach is the design of the minimum flow release structure, which we previously discussed in section 3.2.2.2. We concluded that a flow release structure consisting of a gate and pipe using one of the former penstock intakes would be the best option, because it would minimize any potential water temperature increases, would allow placement of the flow discharge at a point below the dam that would provide the greatest environmental benefit, and would provide the best control of the flows to be released. For the flow discharge point, a point closest to the center of the dam would likely be best, to ensure good flow circulation to most of the pool area. We also concluded that the final design of this structure should be developed in consultation with the resource agencies (Washington DOE, Washington DFW, FWS, NMFS, BLM, and the Colville), prior to filing the design with the Commission for approval.

3.3.3.3 Cumulative Effects

We consider the geographic scope of cumulative effects on aquatic resources to be the Similkameen River basin. Non-power development and other activities contributing to cumulative effects on water quality include historic and present land use as described in section 3.3.2.3. Hydropower development at the Similkameen Falls began in the early 1900s with Enloe Dam being constructed in 1920. The powerhouse operated until 1958, when it was decommissioned and the flashboards removed from the dam. The proposed Enloe Project would replace the flashboards with crest gates, increasing the normal operating level of the reservoir by 4 feet, equal to its original operating level.

Cumulative effects on aquatic resources would occur on both resident and anadromous species in the Similkameen and Okanogan rivers, with potential effects on anadromous species extending to the Columbia River. For resident species, primary effects would be associated with construction-related effects downstream of Similkameen Falls (increased sedimentation and turbidity), and downstream passage through the turbines. The Similkameen River already experiences degraded water quality conditions associated with past mining activities, and high water temperatures during the summer months. Construction-related effects could add additional stress to both resident and anadromous species downstream of the falls, although Okanogan PUD has proposed measures to reduce construction-related effects, as described above. These effects would also be of relatively short duration, would subside after completion of construction, and overall would not contribute significantly to cumulative effects on the fishery resources of the basin.

Fish entrainment through the turbines would result in the mortality of some resident species that attempt to move downstream past Enloe dam, and could have some effect on resident populations in the lower Similkameen River, if those populations rely on recruitment from upstream river reaches to maintain their populations. Okanogan PUD's proposed intake design would include narrow-spaced trashracks that would act to exclude larger fishes from passing through the turbines, but would allow smaller individuals to pass. These smaller individuals, however, would have higher survival rates than larger fish, and any mortality may not significantly affect the downstream population. Smaller/younger cohorts of fish populations typically have higher natural mortality than older cohorts, so any turbine-related mortality may not be detectable in the downstream population. Okanogan PUD is also proposing to monitor fish entrainment at the project, to determine the effectiveness of the proposed intake

design, so overall, any turbine-related mortality would not contribute significantly to cumulative effects on the resident fishery resources of the basin.

Anadromous species occurring in the Similkameen River immediately downstream of the project include the UCR steelhead (listed species), Chinook salmon, and sockeye salmon. These species enter the Columbia River from the Pacific Ocean and migrate over nine downstream hydropower dams on the Columbia River, before reaching the Okanogan River and tributary Similkameen River. These species use the plunge pool at the base of Similkameen Falls as summer holding habitat prior to spawning, but the falls blocks any further upstream migration. Spawning for these species occurs in the lower Similkameen River or in the Okanogan River. The proposed tailrace would discharge into the plunge pool, but should have no negative effect on the holding habitat in the pool, and would result in water quality improvements associated with the reduction in TDG, and the maintenance of adequate DO levels as a result of air injection in the turbine draft tubes. The turbine draft tubes would also be equipped with barrier nets to prevent adult steelhead from swimming into the draft tubes and contacting the turbine blades. The project would operate in a run-of-river mode and would implement specific ramping rates when operations are changed, so proposed project operations would not result in excessive water level fluctuation in the lower Similkameen River. Other enhancements proposed by Okanogan PUD include construction of enhanced side channel habitat for juvenile salmonids, and spawning gravel supplementation in the lower river. In all, proposed project operations and enhancement measures would result in a positive cumulative effect on the anadromous salmonids occurring in the Similkameen River. Any beneficial effects on Similkameen River salmonids resulting in increased production could also be observed in the Okanogan and Columbia Rivers, as any increased production could result in increased adult returns to those rivers.

3.3.4 Terrestrial Resources

3.3.4.1 Affected Environment

Vegetation

The Enloe Project area is located in the Similkameen River Valley, within the Okanogan Highlands Province (Franklin and Dyrness, 1973). This valley is a transitional zone between the Cascade Mountains to the west and the Okanogan Highlands to the east. Columbia Basin steppe vegetation reaches its northernmost extension in this valley. Vegetation is a complex mosaic of three steppe vegetation units, including the big sagebrush/bluebunch wheatgrass association, the bitterbrush/Idaho fescue community, and the threetip sagebrush/Idaho fescue community. Soil, slope, aspect, topography, and grazing practices influence the distribution of these communities within the valley.

Previous botanical studies conducted in the vicinity of the project include a vegetation mapping study conducted along the Similkameen River in 1984 by FWS for the Corps and vegetation studies conducted for the 1991 license application by the Okanogan PUD. Additional vegetation and habitat mapping and riparian vegetation studies were conducted by Okanogan PUD in 2006. The 2006 studies were completed in consultation with state and federal agencies responsible for the management of terrestrial biological resources of the Similkameen River.

Five major vegetation communities were identified within the project area: Shrub-steppe; upland meadow; riparian forest; riparian shrub; and herbaceous wetland. Other minor communities included areas of rock, unconsolidated shore, developed land and open water.

The shrub-steppe community primarily occurs throughout the project area on hillsides above the dam along the eastern side of the reservoir. Smaller communities are located immediately downstream of the dam along both sides of the Similkameen River. It is the most extensive community, covering approximately 27 acres. Native shrub-steppe communities have been diminished in both extent and condition as a result of overgrazing by livestock, invasion of non-native plants, agricultural conversion, and wildfire suppression. Most extant shrub-steppe may appear to be in a natural condition, but it is actually a considerably altered ecosystem, compositionally and functionally different than pre-European settlement conditions (Altman and Holmes, 2000).

Dominant species in this community include big sagebrush, threetip sagebrush, bitterbrush, grey rabbitbrush, bluebunch wheatgrass, and Idaho fescue. Other common grass and forb species include Sandberg's bluegrass, cheatgrass, arrowleaf balsamroot, and prickly pear. Within the shrub-steppe community, the bitterbrush/Idaho fescue community is found on steeper slopes with coarse soils, while the big sagebrush/bluebunch wheatgrass is found on gentler slopes. Invasive exotic species, including knapweeds, thistles, and tumble mustard, are also common, particularly in disturbed sites.

A deciduous component of the shrub-steppe community occurs in draws and the steepest slopes of the hillsides on both sides of the river. Common shrub species in these areas are smooth sumac, serviceberry, and Wood's rose. Rocky Mountain maple occurs in some stands of this community. Scattered ponderosa pine trees occur within the shrub-steppe community, particularly with the deciduous component.

The upland meadow community occurs where shrub-steppe vegetation has been cleared and replaced by grasses and forbs. Cheatgrass usually dominates in these areas. Common grass and forb species include Idaho fescue, knapweeds, and tumble mustard. This community occupies approximately 4.3 acres of the project area and occurs primarily at two locations. Both of these locations are old homestead sites, with the larger situated near Enloe dam on the east bank of the river. These areas are also used for grazing livestock.

Riparian forest in the project area consists of stands of woody vegetation from 12 to 80 feet tall. This community occupies approximately 2.9 acres in the project area and is found primarily along the reservoir. The largest stand is on the east bank of the river at Enloe dam. The dominant tree in this community is black cottonwood, but quaking aspen and water birch contribute to overstory canopy in some areas. Common understory trees and shrubs include willow, red-osier dogwood, chokecherry, black hawthorn, Rocky Mountain maple, and mountain alder. Common herbaceous species include clematis, rushes, sedges, and horsetail. Introduced species such as maple, juniper, yucca, and lilac are found at the former homestead site near Enloe dam.

Stands of riparian forest on the east side of the river burned in 1991. Many of the larger black cottonwoods are at least partly dead, although resprouting is occurring. These stands are important as they provide crucial habitat, especially to species that are not well adapted to living in the arid grasslands and forests that dominate this part of the region. Cottonwoods grow quickly and die relatively young. They often provide cavities and snags, which are important to a variety of wildlife species. These snags may eventually fall into the stream, where they help create cover and pool habitat for fish and other aquatic creatures. In this capacity, fallen or dead trees help to stabilize stream banks and prevent erosion and siltation of streambeds.

The riparian shrub community consists of woody vegetation that is less than 12 feet tall. This community occupies approximately 7.4 acres in the project area and is found primarily along the east bank of the reservoir where the slope is gentle. It also occurs as a narrow fringe elsewhere along the reservoir and the Similkameen River, including the proposed side-channel enhancement site about 5 miles downstream from Enloe dam. Willow stands, varying in size from bands of seedlings or small shrubs to large dense thickets, provide over 75 percent of the total shrub canopy cover. The dominant willow species are Bebb willow and yellow willow. Other species in this community include red-osier dogwood, chokecherry, clematis, smooth sumac, and young black cottonwoods.

The herbaceous wetland community is found on wet or seasonally flooded areas. This community occupies approximately 3.5 acres in the project area and occurs in scattered patches on low-elevation terraces immediately adjacent to the reservoir. Dominant species are perennial grasses, including reed canary grass and bluegrass. Other species include cattail, horsetail, milkweed, and knapweed. Woody species found in these areas include Wood's rose, red-osier dogwood, black hawthorn, and willow, but they provide less than 5 percent of the cover in this community.

Several types of unvegetated areas are found in small portions of the project area. These areas include rock outcrops along the hillside slopes, bare soil, and sand and gravel bars (unconsolidated shore) along the reservoir shoreline. Unconsolidated shore areas were mapped as 5.0 acres in the project area. An unconsolidated sand and gravel bar area exists at the outfall of the proposed side-channel enhancement location where it connects to the mainstem Similkameen River. Some sandbars support a sparse herbaceous cover and overlap with the herbaceous meadow community. The open water of the reservoir and the Similkameen River downstream of Enloe dam occupy much of the project area (76.8 acres and 4.2 acres, respectively).

Developed areas exist within the project area. These areas include the dam itself, the old powerhouse, and various roads. These areas are also unvegetated and represent 0.5 acre in the project area.

Noxious Weeds

Noxious weeds and other exotic and invasive plant species are defined as those plants listed by the Washington State Noxious Weed Control Board under Washington Administrative Code 16–750 and adopted by local county boards. They are classified as A-, B-, or C-rated plants according to their current distribution and degree of threat, with A-rated being of highest concern.

Weed species have already infested the Enloe dam area and are currently targeted for eradication/reduction. These include three Class B weeds (houndstongue, diffuse knapweed, and sulfur cinquefoil), as well as one Class C weed (babysbreath).

Other weeds, such as thistles and tumble mustard, are common in the shrub-steppe and upland meadow communities, particularly along roadsides and disturbed sites. Invasive and noxious plants do not appear to be spreading into forested lands or other less-disturbed habitats.

Sensitive Species

In July 2006, Okanogan PUD conducted floristic surveys for sensitive species on all undeveloped land comprising the Enloe dam project area. The entire project area from the upstream end above Shanker's Bend to the downstream end below the existing powerhouse was surveyed. In most areas, the project boundary does not extend much above the ordinary high water line. Okanogan PUD conducted additional vegetation surveys along the proposed new access road in 2007 and the proposed side channel enhancement site in 2009.

Habitat for two sensitive plant species, Ute ladies'-tresses, which is state-listed as endangered and federally listed as threatened (see section 3.3.5, *Threatened and Endangered Species*), and Snake River cryptantha, which is state-listed as sensitive, occurs in the project area. No sensitive plants were observed.

Wildlife

The Okanogan Basin and Similkameen Subbasin are important ecological corridors for migratory megafauna. Species such as mule deer use the north-south corridor that connects the dry landscapes of Canada's interior with the grasslands to the south. In addition to megafauna, this corridor is a crucial part of the flight path for many species of birds during annual migrations in the Pacific Flyway between summer and winter ranges.

The Enloe Project vicinity supports a variety of waterfowl, aquatic furbearers, and amphibians. Prominent among the waterfowl are mallards, common mergansers, and greater and lesser scaup. Canada geese are resident in the project vicinity and small numbers may nest along the water in the project area.

Beaver is the most prevalent aquatic furbearer, feeding primarily on willow found in the riparian shrub and tree habitats bordering the reservoir. Amphibian observations are infrequent in the project area due to limited habitat suitability. Amphibian species that may be present in the project vicinity include Pacific tree frog, Columbia spotted frog, western toad, long-toed salamander, tiger salamander, and spadefoot toad. No amphibians were observed during reconnaissance surveys carried out in August 2006.

Riparian habitat, generally recognized as having a high diversity of wildlife species, supports a number of song birds best represented by the western flycatcher, eastern king bird, American robin, Bullock's oriole, cedar waxwing, and various species of warblers, sparrows, and woodpeckers. The upland area contains habitats dominated by sagebrush, bitterbrush, serviceberry, and rock outcrops, which support mule deer, yellow-bellied marmot, black-billed magpie, and ground-nesting species such as the introduced chukar partridge and the native California quail. Reptiles are also common in these habitats including western rattlesnakes, racers, and gopher snakes.

Wildlife species that use a wider variety of habitat types in the project area include swallows, vultures, raptors, and coyotes. Common swallow species in the project vicinity are barn swallows, bank swallows, and violet-green swallows. Vultures and raptors are primarily represented by turkey vultures. American kestrels, red-tailed hawks, sharp-shinned hawks, golden eagles, and bald eagles are also present but in smaller numbers. Except for swallows, these species may occur in the project year-round. Swallows only occur in the summer months.

Project area use by most of these species, as well as other less common species, is greatest in the spring and summer and lowest in the winter, when many species migrate, move upslope away from the river, or hibernate. Prominent exceptions are mule deer and bald eagles, which winter in the project area and remain active in this season.

Sensitive Species

Townsend's big-eared bat, which is a federal species of concern and a candidate for the State of Washington's threatened and endangered species list, uses irrigation tunnels adjacent to the proposed access roads immediately adjacent to or inside the proposed project boundary as night roosts. During BLM surveys conducted in 2000 in the Enloe dam area, one male Townsend's bat was observed. Washington DFW

states that the abandoned powerhouse and penstocks on the west side of the river (figure 1) may provide suitable habitat for this species.

State-listed wildlife species that may occur within the project area include the state threatened bald eagle, state endangered sage grouse, and state endangered Northern leopard frog. The bald eagle was removed from the federal threatened and endangered species list, effective August 8, 2007 (72 FR 37,346 [July 9, 2007]); thus, it is not subject to ESA protection. The Bald and Golden Eagle Protection Act is now the primary federal law protecting the species. This eagle is still state-listed as threatened in Washington, although it has been recommended for down listing to sensitive by Washington DFW.

Bald eagles occur along the Similkameen River during most of the year, but they are most abundant from approximately October to April. Very small numbers may occur during summer, but no nests have been located along the river, below Palmer Lake, since 1989. It appears that most bald eagles observed in the Enloe Project area are recorded as they cross the area and fly up- or downriver. When present, eagles range widely within the area depending on water conditions, prey availability, perch site locations, and human disturbance. Consequently, although bald eagles may be observed in the Enloe Project area throughout much of the year, they neither nest nor appear to have communal roosts there.

The project area is within the historical range of the state-listed sage grouse, but the nearest existing population of this species is more than 60 miles to the south.

Potential habitat may be present within the project vicinity for the state-listed Northern leopard frog. The species typically occupies waterbodies situated in grassland, scrubland, or forests. Although most historical occurrences of this species were in the shrub-steppe community, the project area is well outside the current range of the species. Additionally, Washington DFW states that the Northern leopard frog has not been found in Okanogan County for many years and may be extirpated (ENTRIX, 2009).

3.3.4.2 Environmental Effects

Activities that would be authorized under a license that could affect terrestrial species and habitats include: effects of proposed project actions on wetlands, riparian and littoral habitats; disturbance of vegetation, wildlife, and their respective habitats resulting from construction, road grading, and grounds maintenance; effects of water elevation changes on riparian and wetland vegetation; grazing access; introduction and spread of noxious weeds; and effects of proposed project actions on wildlife species. As discussed below, Okanogan PUD proposes measures to reduce adverse effects on terrestrial resources.

Effects of Construction, Operation, and Maintenance of Project Facilities on Wetlands, Riparian and Littoral Habitats (BOTA–01 Through BOTA–09)

Okanogan PUD proposes to mitigate the modification of existing riparian and wetland vegetation by facilitating the rapid development of riparian vegetation to replace any losses when the low-flow elevation for the reservoir is increased by 4 feet. This would be accomplished through the implementation of its Vegetation Plan, included in the additional information filed on March 2, 2009.

The overall objectives of the Vegetation Plan are to ensure that Okanogan PUD's proposed measures and agency recommendations are successfully planned and executed. The Vegetation Plan would establish the following measures:

- Planting riparian vegetation at previously identified sites along the west and east banks of the reservoir to mitigate for the temporary loss of habitat while fringe riparian vegetation establishes along the new low water line;
- Abandoning and restoring the existing unimproved shoreline road along Enloe reservoir to mitigate the effects of project construction noise and habitat fragmentation;
- Planting riparian vegetation along the corridor to mitigate the effects of the abandoned shoreline road;
- Planting riparian species on east and west banks downstream from Shanker's Bend;
- Installing grazing control measures, including fencing, to protect riparian plantings and other sensitive areas from cattle grazing;
- Monitoring restored areas and replanting if necessary in accordance with the performance criteria in the Vegetation Plan; and
- Employing BMPs to protect riparian and wetland vegetation to reduce or avoid effects associated with construction activities.

Okanogan PUD's Vegetation Plan would provide for appropriate protective measures, if monitoring results show project-related effects, and also would include employee training and monitoring to determine whether the measures are effective. The Vegetation Plan would provide for adaptive management, based on monitoring results and would outline consultation with the agencies and provision of annual reports on plan activities, with the opportunity to update the plan, as needed. Okanogan PUD's proposed BMPs for resource protection, cutting and planting methods for riparian trees and grasses, grazing controls, noxious weed maintenance, vegetation monitoring, and training would be included as part of the plan to ensure that riparian areas are developed and become more valuable areas for wildlife.

Okanogan PUD prepared the Vegetation Plan after consultation with FWS, BLM, and Washington DFW to address the measures that would be taken to facilitate the development and protection of riparian vegetation that is otherwise expected to occur naturally. As such, Okanogan PUD's Vegetation Plan would incorporate all the measures that BLM and Washington DFW recommend, except a BLM recommendation for additional sensitive plant species surveying above and below the dam.

FWS, BLM, and Washington DFW recommend that Okanogan PUD prepare a vegetation resources management plan that would include the measures contained in the Vegetation Plan, but would also include measures specifically addressing the restoration of riparian habitat lost, degraded, or disturbed by project construction, operation, and maintenance using a 3:1 ratio. Okanogan PUD replied that its Vegetation Plan would provide the appropriate replacement ratio with a net increase in riparian habitat over what currently exists.

BLM, FWS, and Washington DFW further recommend that Okanogan PUD monitor restored areas (upland sites, riparian and wetland sites) every year for 5 years and continue monitoring every 5 years thereafter and replant sites as necessary. Okanogan PUD's Vegetation Plan includes provisions for monitoring of restored areas of sites that may convert from upland meadow to herbaceous wetland.

Our Analysis

Development and implementation of Okanogan PUD's environmental measures contained in its Vegetation Plan for shoreline vegetation would mitigate or reduce the effects of project construction, operation, and maintenance on associated wetlands and riparian habitats and would provide a benefit to wildlife species that use the riparian habitats within the project area.

Overall, implementation of Okanogan PUD's Vegetation Plan would represent

a reasonable level of effort to mitigate the effects of increasing reservoir surface water elevation that would inundate 0.4 mile of riverine and wetlands habitat at Shanker's Bend. Okanogan PUD's Vegetation Plan includes provisions for monitoring of restored areas of sites that may convert from upland meadow to herbaceous wetland. Restoration of these habitats under this plan would provide a net increase in riparian habitat over what currently exists. Monitoring restored areas every year for 5 years after license issuance for success, with replanting if necessary, would be an appropriate measure to ensure effectiveness of habitat restoration.

Disturbance of Vegetation and Wildlife Resulting From Construction, Road Grading, and Grounds Maintenance (BOTA–03, BOTA–04, BOTA–08 Through BOTA–10, and WILD–02)

Okanogan PUD proposes to abandon and restore a 2,000-foot-long segment of the existing unimproved shoreline road traversing riparian habitat along the east bank of Enloe reservoir. This area would be restored to natural condition through the implementation of Okanogan PUD's proposed Vegetation Plan. Abandoning and restoring this segment of the road is intended to help mitigate the effects of project construction by eliminating the current disturbance of wildlife by vehicular traffic and associated noise and removing the current interruption between upland and riparian habitat posed by the road. Aquatic/riparian species, such as beaver, waterfowl, and other riparian birds, and upland species, such as coyotes, deer, snakes, and birds that forage in both upland and riparian areas, would be expected to benefit.

Okanogan PUD proposes in its Vegetation Plan to plant woody riparian vegetation along the abandoned shoreline road. BMPs to protect riparian and wetland vegetation would also be employed. Measures such as flagging and temporarily fencing any wetland and riparian vegetation in the vicinity of the project would reduce or avoid accidental impacts. Okanogan PUD proposes to provide a biological monitor to check construction sites on a weekly schedule to ensure that protected areas are not disturbed and that fencing is intact. It further proposes to limit construction and maintenance-related disturbance of sensitive habitats by concentrating construction activities with the loudest noise to occur in summer and early fall. This measure would minimize potential effects on noise-sensitive species, such as over wintering birds and bald eagles as much as possible.

BLM recommends, in addition to the measures contained in the Vegetation Plan, that Okanogan PUD develop a wildlife management plan that would include a measure to plant fast-growing native shade producing trees along the reservoir, such as native willows, alders, and/or cottonwoods. While a formal wildlife management plan was not developed, Okanogan PUD addresses facilitating the rapid development of riparian vegetation in its Vegetation Plan. Several other related recommendations made pertaining to wildlife were adopted (see table 23).

Our Analysis

Construction effects on vegetation would be limited to vegetation removal and possible noxious weed encroachment near the powerhouse and access road and recreational access areas. Project operation would not be expected to result in significant effects on the upland vegetation communities near the powerhouse.

Relocating the existing unimproved access road bordering the east side of the reservoir approximately 200 feet to the east (up slope) would not significantly affect wildlife; it would allow riparian habitat along low-lying sections of the current road corridor to naturally reestablish, resulting in a net benefit for wildlife and their habitat. The proposed route would follow an abandoned irrigation ditch through highly disturbed terrain largely consisting of low quality rocky habitat and debris.

Effects on wildlife would be minor, consisting primarily of temporary disturbance or displacement of wildlife during construction. Most wildlife may temporarily occupy other, nearby similar habitats during construction. Once the project is complete, the minor and constant noise associated with the project that could affect wildlife would be masked by the sound of water flow. Minor impacts would be associated with installation of crest gates, connection to Okanogan PUD's nearby power distribution line, and relocation of a portion of the unimproved access road along the reservoir.

Effects of Water Elevation Changes on Riparian and Wetland Vegetation (BOTA–01 Through BOTA–05 and BOTA–07)

Okanogan PUD proposes to install crest gates at the dam, increasing reservoir water level elevations by 4 feet, which would result in the inundation of approximately 0.4 mile of riverine and wetlands habitat at Shanker's Bend. BLM comments that the larger reservoir would reduce vegetation and wetlands along the shore of the current impoundment. Okanogan PUD maintains that increasing the minimum pool elevation would shift mesic conditions upslope, but would not necessarily result in a reduction in suitable habitat.

In response to BLM, FWS, and Washington DFW's recommendations for a vegetation resources management plan, Okanogan PUD proposes to plant riparian vegetation at previously identified sites along the west and east banks of the reservoir to mitigate for the temporary loss of habitat while fringe riparian vegetation establishes along the new low water line. It also proposes to plant riparian vegetation on east and west banks downstream from Shanker's Bend and along the corridor to enhance the effects of abandoning the shoreline road. Okanogan PUD would monitor restored areas and replant if necessary in accordance with the performance criteria in its Vegetation Plan.

Our Analysis

Habitat lost, degraded, or disturbed by project construction, operations, and maintenance would be restored or replaced along the Similkameen River. Habitat that is expected to be affected includes the 0.4 acre of riparian and wetland habitat that would be inundated by the rise in water level elevation. Currently, the herbaceous wetland community occupies approximately 3.5 acres in the project area and occurs in scattered patches on low-elevation terraces immediately adjacent to the reservoir. Although long-term inundation would affect approximately 12 acres of habitat along the shore of the reservoir, Okanogan PUD maintains that this does not suggest that all 12 acres of habitat would be lost. The total acres of vegetated habitat in that zone, including sparsely vegetated to barren rocky cliff habitat, is 7 acres. The remaining 5 acres of unconsolidated shore and water would remain. It is anticipated that while some of the habitat may become unvegetated; some habitat may merely undergo conversion to another wetland cover type, resulting in a minor long-term impact.

The restoration and subsequent operation of crest gates would increase the minimum pool elevation and inundate narrow strips of riparian and wetland habitat along the reservoir for longer periods than now occurs. Some habitat loss would be short-term and naturally mitigated as the inundated area would be replaced by the establishment of new riparian habitat upslope within a few years. Fringe riparian strips would eventually

reestablish along the new water line, in response to the higher water levels. Permanent alteration of about 5.1 acres of wetlands and riparian vegetation currently occupying seasonally exposed flats or benches along the reservoir would likely occur.

Under a run-of-river mode of operation, all project outflows would approximate all project inflows at any point in time. In this operation mode, a stable water level of the reservoir and stable flow in the downstream tailrace would be maintained. As such, effects of modified flows on vegetation and wildlife downstream of the dam would be negligible.

Implementation of Okanogan PUD's proposed riparian restoration as a component of its Vegetation Plan would provide a reasonable level of effort to restore and maintain these affected areas under altered conditions. The measures proposed to protect, mitigate, and enhance the affected riparian, wetland, and low-elevation upland habitats would benefit wildlife in the project vicinity by helping to preserve and enhance habitats surrounding the sub-basin that are important to maintaining wildlife populations, including small game species, migratory birds, and other wildlife.

Effects of Construction, Operation, and Maintenance of Project Facilities on Grazing Access (BOTA–06)

The lands within and adjacent to the proposed project boundary are currently not fenced. Cattle have free access to the river wherever the topography allows. Livestock grazing practices have led to trampled streambanks, increased bank erosion and sedimentation, and changes in vegetation, including loss of native grasses, effects on woody vegetation, and establishment of noxious weeds (PNRBC, 1977). Currently, grazing pressures occur mostly along the eastern side of the project area.

To protect riparian/wetland mitigation sites for the project from grazing and trampling damage while mitigation plantings are establishing, Okanogan PUD proposes livestock fencing for most of the eastern side of the project area along the Similkameen River between Enloe dam and Shanker's Bend. An additional security/safety fence section is proposed for the landward side of the new powerhouse, its intake at the dam, and the area between the intake and the powerhouse. Protective enclosures for individual plants would be used to protect young plantings from consumption by cattle and wildlife, such as beaver or deer.

FWS and Washington DFW recommend that Okanogan PUD install grazing control measures, including fencing, to protect sensitive riparian areas and restored sites. Okanogan PUD's Vegetation Plan includes a provision for installing a stock watering tank approximately 300 feet upslope from the river, just inside the project boundary and north of the proposed recreation site, as an alternative source of drinking water for grazing cattle (Okanogan PUD, 2009b). BLM recommends that any new livestock water development associated with the project include a wildlife escape ramp.

Our Analysis

Okanogan PUD's proposal to install fencing would protect riparian/wetland areas while accommodating livestock grazing. Okanogan PUD would need to consult with BLM, however, regarding finalizing its proposal to address grazing permittees' access to and use of water, including the provision of a wildlife escape ramp as part of its Fence Plan consultation (see section 3.3.6, *Recreation and Land Use*).

Effects of Construction, Operation, and Maintenance of Project Facilities on the Introduction and Spread of Noxious Weeds Within the Project Boundary (BOTA–11 Through BOTA–13)

Noxious weeds and other invasive plant species can negatively affect native plant communities and wildlife, as well as recreation, aesthetics, cultural values, and economic resources. Several federal, state, and county policies and regulations have been developed to address concerns about the spread of weeds, and to guide management of weeds on private and public lands. Landowners in the state of Washington are required by state law and various county ordinances to take steps to control the spread of certain specified noxious weeds on their property.

Okanogan PUD proposes to include a noxious weed control program as a component of its Vegetation Plan. This program would include noxious weed control measures for the proposed construction and management activities. Monitoring provisions in the vegetation resources management plan would include monitoring of sites that may convert from upland meadow to herbaceous wetland.

Okanogan PUD also proposes to include soil disposal and revegetation measures BOTA–12 and 13, as a component of the Vegetation Plan to further limit introduction and potential spread of noxious weeds within the project area. Prior to excavation and placement of spoil, existing vegetation in construction areas would be cleared and grubbed and buried in spoil disposal areas.

The spoil disposal areas would be surveyed for the noxious weeds addressed in the Vegetation Plan and control measures would be implemented to control any infestations of those species prior to spoil disposal. Following completion of spoil disposal, the spoil disposal areas would be hydroseeded with appropriate seed mixes to encourage revegetation with native upland species and reduce the potential for noxious weed introduction. These areas would be included in subsequent weed survey and treatment efforts.

FWS and Washington DFW recommend that Okanogan PUD implement a noxious weed control program to increase wildlife forage. BLM recommends the measures proposed in Okanogan PUD's proposed noxious weed control program be incorporated as a component of its recommended vegetation resources management plan. This plan would allow inclusion of additional provisions that, at a minimum, would identify and limit introduction and potential spread of noxious weeds. Specifically, BLM further recommends expanding Okanogan PUD's proposed Vegetation Plan to include surveying; documentation of species occurrences; treatment method and type of application; post treatment and site rehabilitation; and long-term prevention and control of noxious and invasive weeds; and mapping and digital database development.

BLM, FWS, and Washington DFW further recommend Okanogan PUD monitor restored areas (upland sites, riparian and wetland sites) every year for 5 years and continue monitoring every 5 years thereafter and replant sites as necessary. Okanogan PUD's Vegetation Plan includes provisions for monitoring of restored areas of sites that may convert from upland meadow to herbaceous wetland and maintains monitoring should be discontinued once success criteria have been met.

Our Analysis

Noxious weeds and invasive non-native plants are a growing threat throughout the west. Diffuse knapweed, in particular, is an invader species and a serious water quality threat in the Similkameen watershed. The introduced species crowd out the native vegetation and create instability along the riverbanks. There are multiple small areas of noxious weed infestations within the project boundary that would be controlled, reduced, or eradicated

through the implementation of a noxious weed management program.

While concentrated along access roads and disturbed areas, weeds and invasive species are widespread throughout the project area. Prevention of introduction and spread of weeds relies on early detection, effective treatment, on-going education of land managers and the public about weed issues, and proper planning and management of ground disturbing activities. Monitoring existing weed populations and patrols to identify new infestations are essential to evaluate the success of the steps being taken to control and prevent the spread of weeds.

Without management, weeds would likely continue to spread because of their tolerance for a variety of soil and moisture conditions, and their ability to out-compete native plants. Project construction and maintenance activities and increased human activity, in addition to wind, water, and animal transport, would continue to serve as vectors for weed dispersal.

Implementation of Okanogan PUD's noxious weed control program as a component of its Vegetation Plan would represent a reasonable level of effort to control existing weed populations and prevent the introduction and further spread of weeds in the project area. Implementation of the program would also encourage the growth of native plant species by preventing encroachment of non-native weeds on existing plant populations. The adaptive nature of the program would enable the plan to be responsive to changing conditions such as changes in weed status, occurrence, or distribution.

Effects of Construction, Operation, and Maintenance of Project Facilities on Wildlife Species (WILD–01 and WILD–02)

Okanogan PUD proposes several measures to protect and reduce effects on wildlife at the project. Construction activity (WILD–02) would be timed to minimize effects on over-nesting and over-wintering birds and bald eagles, as much as possible. Okanogan PUD also proposes a new 13.2-kV, approximately 100-foot-long primary transmission line (WILD–01). It would be constructed and connected to the Okanogan PUD's existing distribution system at an existing pole immediately to the east of the proposed project location. The existing pole would be relocated or modified to prevent raptor electrocutions.

FWS, BLM, and Washington DFW recommends that, in addition to the measures contained in the Vegetation Plan, Okanogan PUD develop a wildlife management plan that would include a measure to plant fast-growing native shade producing trees along the reservoir, such as native willows, alders, and/or cottonwoods. The agencies also recommend that all dead trees along the reservoir be retained as perch trees until the planted trees are large enough for raptor use and that the project transmission line crossing the Similkameen River be visually marked to prevent avian collision. They further recommend the installation of 10 artificial perch poles along the reservoir shoreline and in places where perch trees are sparse or lacking, and an unspecified number of nest boxes for small birds in areas that lack snags or natural tree cavities. They also recommend that to avoid disturbance of Townsend's big-eared bats using project lands, Okanogan PUD install barriers on irrigation canal tunnels to prevent human entry while allowing use by bats, and exclude project activities during the winter bat hibernation period. BLM recommends that Okanogan PUD institute seasonal restrictions on human activity near active nest sites of bald eagles, golden eagles, ospreys, peregrine falcons, and other raptors on BLM-administered lands within the project boundary. Washington DFW recommends that the wildlife management plan also provide a 200-foot-wide buffer around wetlands/riparian habitat.

While a formal wildlife management plan was not developed, several of the agency recommendations made pertaining to wildlife were adopted (see table 23). As a component of its Vegetation Plan, Okanogan PUD would employ BMPs to limit vegetation maintenance in sensitive habitats to the extent possible. This would include the retention of snags and dead trees, with the exception of trees that pose a hazard to human and facility safety. Okanogan PUD states that a previous fire resulted in the loss of large shoreline cottonwoods and other trees that could provide perching or cavity-nesting habitat. Okanogan PUD maintains that the project would not affect perching or cavity-nesting habitat in areas that lack such habitat and that perch poles and nest box installation should not be required.

Our Analysis

The construction, operation, and maintenance of the proposed project is expected to have minimal effects on wildlife because the footprint for the hydroelectric facility would be small and effects on flows would be minimal. Primary effects would be associated with human activity and noise associated with project construction and restoration.

Implementation of Okanogan PUD's WILD–01 and WILD–02 measures would reduce the effects of project construction and operation on bald eagles and other wildlife that use the project area. Bald eagle use of the area is incidental and transient and is not expected to be affected by the project. Modification to the transmission line pole would protect wildlife that use the eastern side of the reservoir and reduce the adverse effects of the power line on raptors and other birds. The transmission line would not cross the Similkameen River, further reducing the potential for avian contact (see figure 1).

Okanogan PUD does not propose to remove any non-hazard trees along the reservoir, including potential perching trees, therefore, no effects to existing perching habitat are anticipated. Likewise, any reduction in potential nesting habitat for cavity nesters would be slight and temporary, as shifts in riparian habitat occur in response to the new minimum pool elevation and new riparian vegetation establishes. This would not be a substantial adverse effect and does not require mitigation. Effects on bald eagles and other sensitive species would be limited and would be mitigated by measures addressing shoreline vegetation management, construction timing, and transmission pole modification. The proposed project would not affect these habitats. The Vegetation Plan, which includes the abandonment and natural restoration of the 2,000-foot-long segment of the existing unimproved shoreline road, would provide the same protection for riparian and wetland habitats as the 200-foot-wide buffer.

Construction, demolition, and blasting may disturb wildlife in the immediate vicinity of these activities. Okanogan PUD proposes to time construction activity to minimize effects on wildlife including nesting and over-wintering birds and bald eagles, as much as possible. Bald eagles and other wildlife may be temporarily displaced from the immediate project area and may avoid perching or feeding near the project. Because most perch trees are located considerably upriver from the dam, the disturbance effect should be minimal.

Most habitats in the project area are already affected by some level of human disturbance, due to existing informal recreational access. Development of a proposed public access site near the dam would not substantially increase the level of human disturbance on water-dependent wildlife within the

project area. It is likely that some vegetation would be removed or disturbed for site access and improvement. Much of this disturbance would occur in previously altered areas or in areas adjacent to existing facilities. As a result of this disturbance, some wildlife species that use riparian areas could be temporarily displaced. Okanogan PUD proposes to provide a biological monitor during construction to further assist with resource protection.

Once the project is complete, minor noise would be associated with the operation and maintenance of the hydroelectric facility, but generally would be masked by the sound of water flowing over the dam or the falls, or through the tailrace immediately below the dam (water would not flow over the dam or falls for 10 months of the year, thus it would not mask noise from operations). Noise levels at the facility would be fairly constant at all times. Wildlife commonly habituate to constant noise and human disturbance levels, provided they are not harassed by people working at the facility. Most wildlife would be expected to return once construction activities diminish and work is completed.

Activities related to the construction, maintenance, and increased recreational use associated with the project may disturb Townsend's bats, which are highly sensitive to human disturbance. Although not proposed by Okanogan PUD, Washington DFW recommends installation of barriers on the project's defunct irrigation tunnels. A recent inspection in March 2010 noted that the tunnel entrance nearest to Enloe dam had been blocked by a landslide, and, therefore, would not be suitable habitat for bats. Tunnel sites near Shanker's Bend and further upstream probably have more potential for good bat habitat than the tunnels closer to Enloe dam. These sites are far enough from the project site that recreational or construction noise would be unlikely to affect bats.

Under measure WILD–02, Okanogan PUD's proposes to concentrate construction activities with the loudest noise to occur in summer and early fall to minimize effects to over wintering birds and bald eagles as much as possible. This mitigation measure would also serve to reduce noise impacts to any bats potentially using the area close to the site of construction.

3.3.5 Threatened and Endangered Species

3.3.5.1 Affected Environment

Aquatic Species

Bull trout (*Salvelinus confluentus*) are listed as threatened by the FWS and have been reported to occur in the Okanogan River, but are not found in the Similkameen River. We conclude that bull trout are not present in the area that is subject to project effects. Therefore, the proposed Enloe Project would have no effect on the federally listed Columbia River bull trout.

UCR steelhead (*Oncorhynchus mykiss*) is listed as threatened and the Similkameen River from its confluence with the Okanogan River to the Similkameen Falls is designated as critical habitat. UCR steelhead spawn in the Similkameen River downstream from the falls. In its February 26, 2010, letter, NMFS stated that UCR steelhead enter the river from mid-September through April; spawning usually occurs in March through July. Adults hold in the river from the mouth to the plunge pool below the falls until spawning takes place. Most of the UCR steelhead redds are found below Oroville Bridge at RM 5, and above the cross channel with the Okanogan River. There are no known UCR steelhead spawning areas within the project boundary. During Okanogan Basin Monitoring and Evaluation Project surveys of the lower section of the Similkameen in 2005, 106 UCR steelhead redds were counted; their density was 18.8 redds per square mile. In 2006, 98 redds were counted, and their density was 17.4 redds per square mile. Fry emerge from the gravel between July and September, and move downstream in search of overwintering habitat in the fall. Juveniles generally rear in freshwater for 2–3 years before migrating to the ocean.

Terrestrial Species

Vegetation

As previously mentioned, the Ute ladies'-tresses (*Spiranthes diluvialis*) could occur within the project area. FWS lists Ute ladies'-tresses as federally threatened and therefore protected under the ESA (FWS, 2010). FWS initiated a status review in 2004 for this species, but no determination has been issued to date regarding a change in status. No other federally-listed plant species have been found within the project boundaries. Ute ladies'-tresses is a perennial terrestrial orchid that flowers from mid-July through August in Washington. It is found in early to mid-seral vegetation in wet meadows, stream or river banks, irrigated hay meadows, and wetlands associated with wet meadows, springs, streams, lakes, irrigation ditches, and reclaimed gravel and peat mines.

Although this orchid was reported as historically found in riparian areas in Colorado, Utah, and Nevada when it was listed, existing populations were known only in Colorado and Utah at that time. Since 1992, populations have been found in Montana, Wyoming, Idaho, Nebraska, and at four locations in Washington. One Washington location is in a periodically flooded alkaline flat. The other three are on stabilized gravel bars along the Columbia River. Washington populations are at elevations ranging from 720 to 1,500 feet. No critical habitat has been designated for this species.

The nearest known population to the Enloe Project is at Wannacut Lake, approximately 5 air-miles to the southwest. Wannacut Lake is in the Whitestone Creek watershed, and the Whitestone Creek confluence with the Okanogan River is approximately 9.8 miles downstream of the Similkameen River confluence with the Okanogan River. No individuals of Ute ladies'-tresses or any other species of Spiranthes were observed during Okanogan PUD's botanical surveys of the project area in 2006, 2007, or 2009. However, the surveys identified two areas of suitable habitat. An approximately 9-square-foot area at the edge of the reservoir (Okanogan PUD, 2009d) and a sparsely vegetated area at the downstream end of the proposed side channel enhancement location, immediately adjacent to the active Similkameen River channel approximately 5 miles downstream from Enloe dam, could provide potential habitat for these species, although Ute ladies'-tresses were not observed during an October 2009 survey.

Wildlife

FWS lists three wildlife species potentially occurring in Okanogan County that are federally designated as threatened and therefore protected under the ESA (FWS, 2010). These species are the Canada lynx (*Lynx canadensis*), grizzly bear (Ursus arctos), and northern spotted owl (*Strix occidentalis caurina*). Designated critical habitat for two of these species—Canada lynx and northern spotted owl—is also present in Okanogan County. Based on literature review and agency consultations, these species are not likely to occur within the project area due to the lack of suitable habitat. Effects on these species are not likely to occur due to their absence within the project area.

Canada Lynx—The Canada lynx is a medium-sized cat that is highly mobile and has a large home range. Its population and distribution is closely tied to its main prey, the snowshoe hare. Populations in northern boreal regions fluctuate in response to snowshoe hare population level cycles; however, this cycling has not been found to occur in Washington (Stinson, 2001).

Canada lynx inhabit moist coniferous forests with cold, snowy winters. In Washington, the majority of lynx records and evidence of reproduction are from older lodgepole, subalpine fir, and spruce forests at elevations higher than 4,000 feet (Stinson, 2001). Based on Washington surveys, the nearest designated critical habitat for the Canada lynx is located in existing Lynx Management Zones of the Okanogan National Forest. The Okanogan Lynx Management Zone contains extensive stands of lodgepole pine and supports one of the largest lynx subpopulation in Washington. The project area, however, is not located within this designated critical habitat.

Furthermore, forests around the project area include shrub-steppe and riparian species that are located well below elevations typically occupied by Canada lynx, and are not characterized as forest habitat that would be considered suitable for this species. Prey opportunities are also not available at or near roadways, proposed facilities, and other project features close to the Similkameen River.

For these reasons, the Canada lynx is unlikely to occur in the project area. No studies were requested or performed by Okanogan PUD to investigate the presence or status of the Canada lynx in the project area. We conclude the Canada lynx is not likely to occur in the project area. The project would have no effect on the Canada lynx, and for this reason, we do not discuss this species further in this EA.

Grizzly Bear—Preferred habitats of grizzly bears include sub-alpine meadows and open or semi-open forests, but individuals are very wide-ranging and can be found in diverse habitats. Dens are typically located far away from human activity on steep slopes where snow accumulation is deep and persistent. Seasonal movements often occur associated with patterns of newly sprouted vegetation, ripening berries, spawning salmon runs, and the availability of other prey, such as marmots.

FWS established several recovery zones throughout the western United States in 1993; the North Cascades Ecosystem Recovery Zone is the only zone in north central Washington. Current population levels in this zone are unknown, but are believed to be very low, possibly fewer than 20 animals (FWS, 2004). Without augmentation, FWS concludes there is a low likelihood of recovery in the north Cascades (FWS, 2004).

Grizzly bears are unlikely to occur in the project vicinity other than as a rare transient. Okanogan PUD did not perform and the agencies did not request any studies to investigate the presence or status of the grizzly bear in the project area. The grizzly bear is unlikely to occur in the project area. The project would have no effect on the grizzly bear, and we do not discuss this species further in this EA.

Northern Spotted Owl—Northern spotted owls inhabit temperate forests of the Pacific Coast region from southwestern British Columbia, through the Olympic and Cascade ranges in Washington and Oregon to north central California. The northern spotted owl is commonly associated with old-growth or mature conifer forest stands, especially during nesting, although younger stands that have late-successional stand remnant structures are also sometimes used, especially during times of dispersal (Thomas *et al.,* 1990).

Nest sites are generally located in previously excavated cavities or on platforms in large trees, and northern spotted owls may use nests built by other species (FWS, 2008). Established pairs normally remain in the same territories from year to year and foraging areas may reach nearly 2,500 acres (FWS, 2008). Breeding behavior is generally initiated in March and continues into June, depending on elevation. Parental care continues into September and sometimes October, as fledglings learn to fly and hunt on their own. FWS considers the period between March 1 and July 15 to be the early breeding season, when birds are most vulnerable to disturbance. Birds may be less sensitive during the late breeding season (July 16 and September 30).

The northern spotted owl was listed as federally threatened on June 26, 1990. FWS issued a final recovery plan in May 2008 (FWS, 2008). Based on Recovery Action 4 of the plan, FWS revised the designation of critical habitat to provide for a network of managed owl conservation areas that are of sufficient size and spacing to achieve long-term recovery of spotted owls. The designation includes only federal lands. FWS designated managed owl conservation areas in north central Washington, which includes Critical Habitat Unit 3. It consists of approximately 115,600 acres in Whatcom, Okanogan, and Chelan counties and is composed of lands managed by the Okanogan and Wenatchee National Forests.

The project area is not located within Unit 3; the project area does not meet the size requirement of small habitat blocks and is not within the Okanogan National Forest. The forested areas around Enloe dam and along the access roads and project facilities do not provide suitable habitat for nesting, roosting, and foraging. No studies were requested by FWS or other agencies participating in the licensing, and none were performed by Okanogan PUD to investigate the presence or status of northern spotted owls in the project area. The northern spotted owl is unlikely to occur in the Project area. The project would have no effect on the northern spotted owl, and we do not discuss this species further in this EA.

3.3.5.2 Environmental Effects

Aquatic Species

UCR Steelhead

We evaluated the effects of Okanogan PUD's proposed measures on aquatic resources, including UCR steelhead, the only listed fish species known to occur in project affected waters, in section 3.3.3.2, *Aquatic Resources.* As we previously noted, the Similkameen River below Similkameen Falls is designated critical habitat for the threatened UCR steelhead, and UCR steelhead use the Similkameen River for spawning, rearing, and thermal refugia.

Our Analysis

Under the proposed action, fish passage would not be provided at the dam, and the 370-foot long bypassed reach would only receive a minimum flow of 10 to 30 cfs during the low flow months,[34] when most of the river flow would be diverted through the powerhouse and returned to the river below the falls. As discussed in section 3.3.3.2, we have concluded that the Similkameen Falls is a natural barrier to fish passage preventing fish migration further upstream, so the project would have no effect on the upstream migration of the UCR steelhead. Similarly, because steelhead are unable to use the bypassed reach as habitat, and the reach is not considered critical habitat, there would be no effect on UCR steelhead by only providing a relatively low minimum flow in the reach.

Other recent Okanogan PUD proposals related to the WQC

[34] This is Okanogan PUD's alternative minimum flow proposal based on agreements reached in WQC negotiations with Washington DOE and Washington DFW, as reported in its filing of October 28, 2010.

negotiations would also have no effect on the UCR steelhead, or would act to enhance habitat quality for this species. The proposed temperature and DO monitoring and associated adaptive management program would ensure that water quality downstream of the project continues to meet state standards, and adequate quality for the UCR steelhead. Other measures related to developing appropriate ramping rates for spillage flow over Enloe dam, and determining a point of release for the minimum flow from Enloe dam, would have no effect on UCR steelhead because this species does not occur upstream of Similkameen Falls.

Overall, Okanogan PUD's proposed environmental measures would be consistent with the Upper Columbia Spring Chinook Salmon and Steelhead Recovery Plan developed by the Upper Columbia Salmon Recovery Board to restore viable and sustainable populations of salmon, steelhead, and other at-risk species through collaborative, economically sensitive efforts, combined resources, and wise resource management of the Upper Columbia region. This plan is an outgrowth and culmination of several conservation efforts in the Upper Columbia River Basin, including current efforts related to the ESA, state and tribal-sponsored recovery efforts, subbasin planning, and watershed planning. In regard to Enloe dam, the plan does not identify upstream and downstream passage of fish as being a short-term or long-term action that would contribute to the restoration of these fish stocks. This conclusion was based on the uncertainty of fish being able to ascend the falls before the construction of Enloe dam at that site.

Although Okanogan PUD's overall plans for development of the Enloe Project would generally enhance aquatic habitat in the Similkameen River, construction of the project would have the potential to adversely affect UCR steelhead and UCR steelhead designated critical habitat. These effects would be associated with: (1) The direct or indirect effects of blasting activities that may cause mortality or injury to steelhead adults and juveniles in the plunge pool immediately below Similkameen Falls; and (2) turbidity plumes and sedimentation, including potential contaminated sediment, within steelhead habitat, which could cause injury or mortality of eggs, fry, and juvenile fish due to smothering or abrasion. Okanogan PUD has proposed several measures to minimize the effects of construction on downstream aquatic habitat (the fish salvage plan for blasting, the Spill Response Plan, the CSMP, the ESCP, employing BMPs, and the Storm Water Pollution Prevention Plan). The proposed measures would minimize potential take of UCR steelhead during blasting activities; however, some take due to physiological stress, injury, predation, or mortality could still occur. Development of a fish salvage plan that includes seasonal work windows, in consultation with NMFS, FWS, and Washington DFW, would reduce the potential for injury or mortality of steelhead during capture and relocation activities. Measures to control erosion and sedimentation would also reduce the potential for effects on steelhead, but some physiological stress could still occur during unanticipated releases of turbidity or sedimentation.

Project operations could affect the UCR steelhead, as a result of some flow fluctuations downstream of the project, and the potential for adult steelhead to swim into the project draft tubes and impact the runner blades. The project would be operated run-of-river so that outflow equals inflow to the reservoir, but there could be some fluctuations in flow releases as unit operations change or as spill gates are opened or closed, possibly resulting in the stranding of redds, fry, and juveniles. Okanogan PUD, however, is proposing a ramping rate below the project ranging from 1 to 2 inches per hour depending on the season and time of day. These proposed rates would minimize any effects related to stranding of UCR steelhead downstream of the project. Okanogan PUD is also proposing to install draft tube net barriers to prevent adult steelhead from entering the draft tubes during operational periods when lower outlet velocities may prevail. Successful deployment of these barriers would prevent steelhead from entering the draft tubes and experiencing injury or death by contacting the runner blades.

Okanogan PUD also proposes habitat enhancement measures in the Similkameen River downstream of the project, including supplementing spawning gravel, transporting large woody debris to enhance habitat diversity, and providing side channel enhancements that would provide coldwater side channel habitat for steelhead juveniles. Although the measures would likely enhance aquatic habitat for listed UCR steelhead downstream of the falls, the risk of incidental adverse effects on individual fish cannot be entirely eliminated. Some short-term habitat degradation would occur during construction and implementation of the gravel supplementation program and side-channel enhancement projects. All of these proposed measures would entail instream work, which has the potential to result in injury or mortality of eggs, fry, or juvenile trout that may be in the direct path of instream equipment, or during placement of structures and/or gravel in the stream channel, or create turbidity and sedimentation. In the long term, these measures would provide benefits to steelhead, such as improved spawning and rearing habitat in the river downstream of the dam and increased productivity. Okanogan PUD's proposed biological review process, fisheries monitoring, and adaptive management program would also provide long-term benefits for UCR steelhead and UCR steelhead designated critical habitat, because those programs would ensure that the proposed mitigation and enhancement measures are being successfully implemented.

Although long-term benefits would occur as a result of measures proposed by Okanogan PUD, we conclude that licensing the project would adversely affect the federally listed UCR steelhead because proposed project construction and habitat enhancement projects could result in short-term increases in turbidity and sedimentation and the risk of injury or mortality to eggs, fry, juveniles, or adults as a result of runoff from construction and instream use of equipment. Construction of the tailrace could result in injury or mortality to eggs, fry, juveniles, or adults caused by capture and transport, relocation, and blasting. We conclude that the proposed project would not appreciably diminish the value of designated UCR steelhead critical habitat for both survival and recovery of this species, but because of potential impacts on steelhead during the construction period, we will request formal consultation with NMFS pursuant to section 7 of the ESA.

Terrestrial Species

The following sections summarize our analyses for Ute ladies'-tresses, which may be affected by project operation or project-related activities.

Effects of Construction, Operation, and Maintenance of Project Facilities on Federally Listed Species and Their Habitats (BOTA–14 and WILD–03)

Habitat for the threatened Ute ladies'-tresses has been identified within the project area. Okanogan PUD did not observe this species in surveys of the project area it conducted in 2006, 2007, and 2009. The survey of the proposed side-channel enhancement site was conducted in October 2009, outside the typical mid-July through August flowering period when Ute ladies'-tresses can be distinguished from other

plants; Okanogan PUD states, however, that the species may still be flowering or fruiting as late as October.[35] BLM states that Okanogan PUD's plant surveys were not adequate to determine the presence or absence of Ute ladies'-tresses. In response to agency concerns about its plant surveys, Okanogan PUD proposes to conduct an additional 3 years of surveys for Ute ladies'-tresses prior to construction (BOTA–14). Surveys for this species would be conducted in the summer/fall and would be timed to correlate with the flowering period for the Ute ladies'-tresses. Okanogan PUD would also take the following measures that would protect the Ute ladies'-tresses: employ BMPs to limit vegetation disturbance in sensitive riparian and wetland habitats to the extent possible, control noxious weeds, conduct an environmental training program for its employees, and provide a biological monitor during construction.

FWS, Washington DFW, and BLM recommend additional surveys, using FWS and BLM's protocols, for Ute ladies'-tresses and other threatened and endangered plant species as a component of their recommended vegetation resources management plan. BLM further recommends that the section of the vegetation resources management plan, which expands on Okanogan PUD's proposed Vegetation Plan include surveying, documentation of species occurrences, evaluation of impacts, and mapping and digital database development.

FWS and Washington DFW recommend that Okanogan PUD survey and document threatened and endangered plants within 1 year of any license issuance and every 5 years thereafter for the duration of the license term. The agencies further recommend that Okanogan PUD monitor known threatened and endangered plant habitat at 5-year intervals and evaluating the effects of any new ground-disturbing activities or substantive changes in project operation on listed plants and their habitats prior to implementation of the activities or changes in operation. Okanogan PUD would be required to evaluate the adequacy of the vegetation resources management plan and update the plan as needed.

Our Analysis

Habitat for Ute ladies'-tresses has been identified within the project area along the reservoir and near the proposed side-channel enhancement area. According to Fertig *et al.* (2005), perennial stream and riverine habitats occupied by this species typically have short vegetative cover maintained by grazing, periodic flooding, or mowing. In the absence of disturbance or as sites become drier, streamside wet meadow habitats may become encroached by riparian shrub or woodland vegetation. Ute ladies'-tresses populations may persist for a short time in the grassy understory of woody riparian shrublands, but do not appear to thrive under these conditions.

An approximately 9-square-foot area at the edge of the reservoir could support Ute ladies'-tresses, although no plants were found in Okanogan PUD's 2006 and 2007 surveys. Okanogan PUD states that any Ute ladies'-tresses present along the reservoir would be adversely affected if they occur in the area that would be permanently inundated by the proposed crest gate operation and if they are unable to establish at the new water line (Okanogan PUD, 2009d).

Suitable Ute ladies'-tresses habitat has also been identified at the proposed side-channel enhancement site. Okanogan PUD's October 2009 survey of the site did not identify this species. Okanogan PUD anticipates temporary disturbance of vegetation at the side-channel enhancement site to install the well pad, buried pipeline, and one power pole for a distribution line to the well, and proposes to minimize disturbance to the extent practicable. The disturbed area would not exceed 40 feet in width within the lower 400 feet of the channel. Along the pipeline route, the disturbance area is assumed to be a 10-foot-wide by 300-foot-long corridor. Operation and maintenance activities at the side-channel enhancement site would likely be limited to activities at the well. The footprint of the proposed construction and subsequent operation and maintenance activities could be adjusted, if necessary, to avoid adversely affecting any Ute ladies'-tresses identified in additional surveys.

Okanogan PUD's 2006 and 2007 surveys of the Enloe dam and reservoir area were adequate to identify suitable Ute ladies'-tresses habitat and were likely adequate to determine the presence of the species, although it is unclear whether Okanogan PUD's were conducted using protocols acceptable to FWS and BLM. Therefore, there would likely be no adverse effects on Ute ladies'-tresses as a result of inundation of the 9-square-foot-area of suitable habitat at the edge of the reservoir. However, Okanogan PUD's surveys of the suitable habitat at the proposed side-channel enhancement site were not conducted at the optimum time to identify the species.

In order to ensure the protection of threatened and endangered plant species, we agree with Okanogan PUD, FWS, and BLM that additional surveys should be conducted before land-clearing or land-disturbing activities, both in the Enloe dam and reservoir area and the side-channel enhancement site.

Monitoring of known threatened and endangered plant habitat and evaluating the effects of any new ground-disturbing activities or substantive changes in project operation would reduce any potential effects on threatened and endangered species such as the Ute ladies'-tresses and their habitat. Preparing and implementing a monitoring plan after consultation with FWS, BLM, and Washington DFW would ensure that the 3 years of additional surveys are adequate to determine the presence or absence of Ute ladies'-tresses and other listed species. If the surveys identify a listed species in areas that would be affected by the proposed project, developing a plan, after consultation with the agencies, to avoid or minimize adverse impacts would be appropriate. We conclude that licensing the project, with staff's recommended measures, would be not likely to adversely affect the Ute ladies'-tresses.

3.3.6 Recreation and Land Use

3.3.6.1 Affected Environment

The proposed project boundary includes about 2.75 miles of the Similkameen River. The proposed upstream project boundary extends upstream from the dam (RM 8.80) approximately 2.50 miles (RM 11.30); the downstream extends 0.25 mile to encompass a short reach of the tailwater (RM 8.55).

Recreation

Regional Recreation Opportunities

As we've said, the Enloe Project is located in north-central Washington about 2 miles south of the Canadian border and 3.5 miles northwest of the city of Oroville on the Similkameen River in Okanogan County (figure 5). BLM manages the recreation resources that provide recreational opportunities within the Enloe Project area. The BLM's Spokane District, Wenatchee Field Office, manages the informal Miner's Flat area located about 3 miles upstream of Enloe dam and 0.25 mile upstream of the project boundary. Dispersed camping occurs on the Flat, which includes several informal fire rings created by recreational users, and there are several trails and a rough road

[35] The 2006 survey was conducted in July and the 2007 survey was conducted in July-August.

that provides access to the river. Similkameen Camp, another primitive campground maintained by the BLM, is located approximately 2.25 miles upstream from the project boundary.

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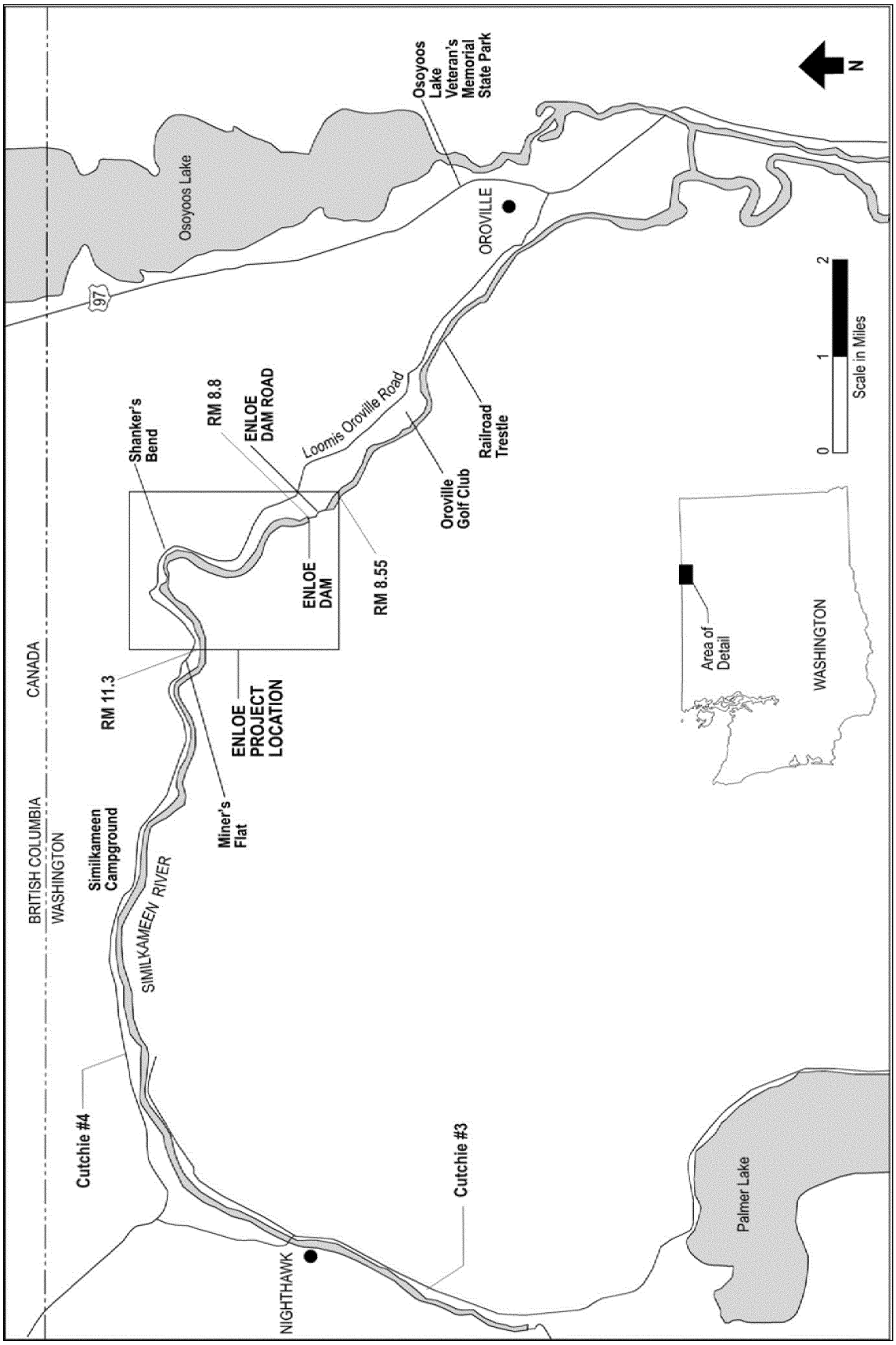

Figure 5. Recreation facilities in the Enloe Project area (Source: Okanogan PUD, 2008a, as modified by staff).

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No formal or developed recreation facilities are located within the Enloe Project area. The nearest developed campground is about 4 miles east of Enloe dam, in Osoyoos Lake State Veteran's Memorial Park. Osoyoos Lake State Veteran's Memorial Park is a 47-acre camping park on a 14-mile-long lake that stretches several miles north into British Columbia.

The park has 86 standard camping sites, one dump station, two restrooms (one accessible) and two showers, a park office, small store and entrance kiosk. Recreational activities include camping, picnicking, boating, swimming, fishing, wildlife viewing, bird watching, and horseshoe pits. Winter activities in the park include ice skating, snow playing, and ice fishing.

Washington DFW owns two river access sites on the Similkameen River upstream of the Enloe Project area. The site known as Cutchie #4 is located about 7 miles west of Oroville on the Loomis-Oroville Road. The site is surrounded by private land and is accessible only from the river; it has no developed facilities. Another site known as Cutchie #3 is located about 1.5 miles south of Nighthawk on the Loomis-Oroville Road.

The Loomis-Oroville Road in the vicinity of the Enloe Project area is designated as a segment of the Pacific Northwest National Scenic Trail (Scenic Trail). The Scenic Trail is a 1,200-mile-long multi-use recreation trail that runs from the Continental Divide in the Rocky Mountains to the Pacific Ocean. The Pacific Northwest Trail Association constructed and maintains the Scenic Trail. A new Okanogan County Nighthawk Scenic Trail (non-motorized trail) is currently under construction and follows the abandoned railroad bed and Similkameen River between Oroville and Nighthawk for a total of 12.5 miles. The portion of the trail that has been completed can be accessed from the City of Oroville and travels 3.5 miles to a scenic view of Similkameen Falls at about RM 8.5 and just outside of the lower end of the proposed project boundary (Okanogan County, 2010). The corridor of the old railroad bed for the Great Northern Railroad runs through the Similkameen River Valley, roughly following the west bank of the Similkameen River from the railroad trestle bridge located about 2 miles below Enloe dam. The old railroad bed passes through the proposed project boundary and goes through a tunnel near the upstream end of the Enloe Project area. BLM owns and manages most of the Great Northern Railroad corridor within the proposed project boundary.

The Water Trail Committee is developing a work plan for a water trail catering to canoes and kayaks in the Columbia River Basin. The route of the proposed trail would include the Similkameen River from the Canadian border to the confluence with the Okanogan River at Oroville. The Water Trail Committee, working with federal, State, and local partners, proposes to develop infrastructure, including launch sites, directional signs, educational signs, sanitary sites, and campsites.

Extreme Adventures and Alpine Fishing Guides, a commercial outfitter, provides raft floating and fishing trips on the Similkameen River. This outfitter provides three experiences, including: (1) A scenic flat water float that starts at the Canadian border and ends near Nighthawk or at Washington DFW's Cutchie #3 site (mentioned above); (2) an introduction to whitewater experience that starts at Miner's Flat and ends at Shanker's Bend; and (3) a trip that runs through Enloe Dam Canyon, which starts below Enloe dam and the falls and provides some whitewater experiences depending on the season.

Regional Comprehensive Plans

In terms of regional recreational management goals, Washington State Recreation and Conservation Office (2008) identified the following policy statements in its *Defining and Measuring Success: The Role of State Government in Outdoor Recreation, A State Comprehensive Outdoor Recreation Planning Document:*

- Recognize outdoor recreation sites and facilities as vital elements of the public infrastructure, essential to the health and well-being of Washington citizens, and important to visitors;
- Assist local and state agencies in providing recreation sites and facilities that benefit our citizens' health and well-being;
- Provide adequate and continuing funding for operation and maintenance needs of state-owned fish and wildlife habitat, natural areas, parks, and other recreation lands to protect the state's investment in such lands;
- Work in partnership with federal agencies to ensure the availability of a variety of opportunities and settings for outdoor recreation;
- Encourage the private sector to contribute needed public recreation opportunities; and
- Encourage all agencies to establish a variety of financial resources that can be used to significantly reduce the backlog of needed outdoor recreation, habitat, and open space projects.

Recreation Opportunities Within the Enloe Project Area

There are no formal, developed recreation sites within the project boundary. Public use of undeveloped dispersed recreation sites consists primarily of individuals who access the shoreline for fishing, hunting, swimming, paddle sports (i.e., canoeing, kayaking, and river rafting), picnicking, camping, hiking, biking (road touring and mountain biking), ATV riding, horseback riding, gold prospecting, bird and wildlife watching, photography, and scenic driving. Winter activities include fishing, snowshoeing, snowmobiling, and cross-country skiing when weather allows.

On the east side of the river, two access roads to project lands spur off of Loomis-Oroville Road. These access roads are not maintained for passenger vehicles. The Enloe Dam Road or downstream access road is a steep, one-lane road that contains exposed embankments, heavy ruts, and active erosion areas. This county road is unsafe for passenger vehicles and lies partially within the Enloe Project boundary. The upstream access road or OTID Road provides informal access to the river corridor and the reservoir shore for public use . Heavy brush impedes clearance, and the road is heavily rutted and steep in places. The upstream access road is impassable during the spring and early summer due to the spring runoff and remains muddy for some time after the peak flow period.

Informal/unimproved reservoir access ramps are located just upstream from the safety barrier. The old powerhouse eastbank access road now provides pedestrian access only to the shoreline area below the dam for boaters, miners, anglers, and hikers. An informal/unimproved parking area is located near the top of the dam from which emerge informal user-created trails providing access to the reservoir above the dam and some dispersed camping areas on the east bank of the reservoir.

The steep terrain limits access to the shoreline on the west bank of the Enloe reservoir and downstream of the dam. Below the dam and the falls, the Similkameen River is confined between nearly sheer rock walls until the canyon opens just below the railroad trestle about 2 miles downstream from Enloe dam. This downstream canyon area is accessible only on foot from the east bank, via informal user trails. Access to the west bank is limited because the old rail bed crosses private land and is gated. From the west bank, access crosses private land and occurs via game trails and existing hiking trails

leading to the river from the rail grade, which sits nearly 100 feet in places, above the river. The only other means of access is by boat.

Recreation Use Within the Enloe Project Area

Shore fishing and boating are the most popular activities inside of the Enloe Project area. In the past, fishing for steelhead and Chinook salmon has been popular downstream of the falls, and some trout and bass fishing has also taken place there.

During high water periods, the river attracts a limited number of whitewater enthusiasts who run the river above Shanker's Bend and below the dam. As water levels drop and the temperatures warm, the river sees more relaxed water-based recreation. Rafting, kayaking, and inner-tubing have been observed both above and below Enloe dam in the Project area. Swimming near Shanker's Bend and floating in the canyon below the dam are popular activities during these periods. Boaters and floaters use a number of informal, user-developed access points in the Project area. Some users walk down the old access road on the east bank of the river to launch rafts, kayaks, and inner tubes just below the waterfall downstream of the dam.

Okanogan PUD conducted one visitor intercept survey between June 1 and October 15, 2006, to coincide with the peak recreational use, particularly to encompass the recreational gold mining season, to gather information to estimate visitor use of the Enloe Project area. Because the survey was conducted during only one recreational use season (2006), Okanogan PUD assumed that 2006 was an "average" recreational use year. Recreational use estimates were based on 59 survey records completed with respondents in the field on 21 days from June 1 through October 15, 2006. Surveys were conducted on weekdays, weekend days, and "peak" days (selected holiday weekends).

Survey results indicate that use of the Enloe Project area is estimated at 1,378 user days during the June 1–October 15 peak recreation season. Table 14 provides Okanogan PUD's estimate of monthly user-days during the June–October recreation season. Use peaks quickly in July and remains at a fairly constant level from August through October. Outside of the Enloe Project area the most popular recreational activity is gold prospecting followed by boating, shore fishing, and sightseeing. Most of the mining and camping activities occur outside of the Enloe Project area.

TABLE 14—ESTIMATE OF USER DAYS BY MONTH FOR THE PROJECT AREA

[Source: Okanogan PUD, 2008a]

Month	Estimate of user days	
	Number	Percent
June	190	13.8
July	346	25.1
August	267	19.4
September	278	20.2
October	297	21.6
Total	1,378	100.0

Table 15 indicates estimated user days by type of day. In this area, weekend and weekday use levels are similar, but peak days show a marked increase in use.

Fishing occurs mainly in the lower reaches of the Similkameen River near Oroville; however, many anglers walk down the old access road on the east bank of the river to fish just below the dam. Okanogan PUD reported that as many as 30 people have been seen at one time fishing below the falls. In response to surveys, visitors expressed the importance of the river corridor below the dam and falls for fishing, gold prospecting, and sightseeing; a desire for safety features or assigned a high priority to the provision of additional facilities; and a need for picnic facilities, vault toilets, garbage collection, and improved river access.

TABLE 15—ESTIMATE OF USER DAYS BY TYPE OF DAY FOR THE PROJECT AREA

[Source: Okanogan PUD, 2008a]

Type of day	Number	Per day
Peak days[a]	540	14
Weekend days	190	6
Weekdays	648	6
Total	1,378	

[a] Days coinciding with holidays or recreational events, including Fourth of July (4 days), Northwest Miner's Rally (3 days), Labor Day/Blues Festival (3 days), and first weekend of deer hunting season (2 days).

Although thirty-three respondents (60 percent) reported staying longer than one day at the project area, only two of the parties surveyed actually camped within the Enloe Project area due to the absence of developed facilities.

Land Use

The proposed Enloe Project boundary is generally defined by the 1,055-foot elevation contour. The boundary extends 0.25 mile downstream from Enloe dam, following the 1,055-foot elevation contour to include the falls and the site of the proposed powerhouse, tailrace, and associated facilities. The Enloe Project boundary deviates from the 1,055-foot elevation contour to accommodate rehabilitation of the OTID Ditch Road. In that area, the Enloe Project boundary has been set 100 feet landward of the OTID Ditch Road's upper leg; it does not maintain a specific elevation.

Agriculture, grazing, and recreation are the primary land uses in the Enloe Project vicinity. A number of orchards, vineyards, and a public golf course are located along the Loomis-Oroville Road. The Enloe Project area is unfenced open range, and the BLM lands in the immediate vicinity of the Enloe Project are generally leased for grazing (figure 6). The bulk of the private land in the Enloe Project area is owned by a livestock company. There are a few residences in the Enloe Project vicinity, mainly along the Loomis-Oroville Road. Most active land uses are some distance from the Enloe Project area, with the nearest located about 1 mile downstream. There are no lands designated as prime or unique farmlands within the FERC boundary.

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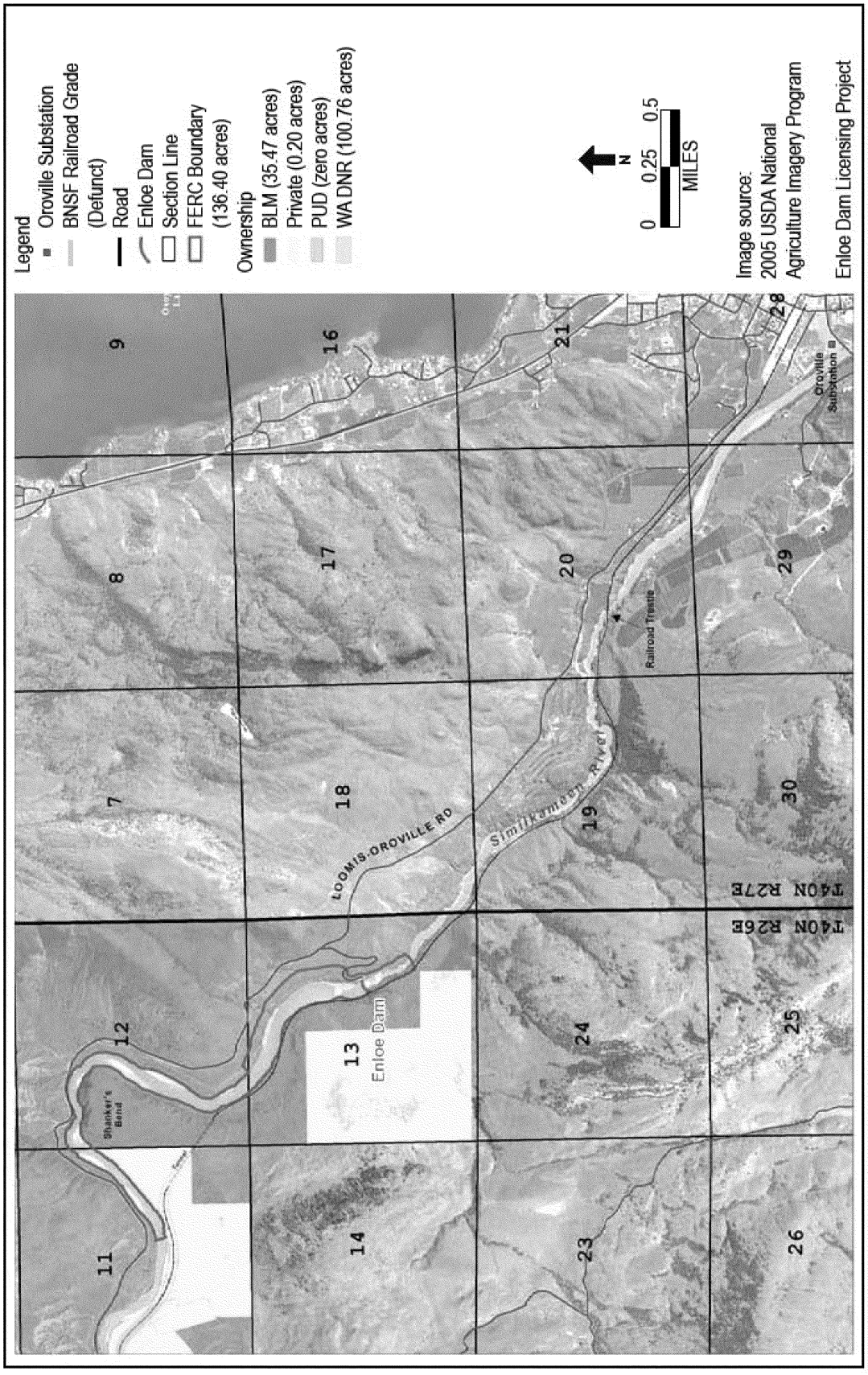

Figure 6. Land ownership in the Enloe Project area (Source: Okanogan PUD, 2008a).

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Mining was once a dominant land use in the region; however, commercial mining activity in the Similkameen Valley in Washington has been very limited during the past 25 to 35 years. Several small individual mining claims exist on BLM lands in vicinity of the Enloe Project. Recreational gold prospecting (small-scale placer mining; conducted primarily with motorized suction dredges) is popular within the river corridor.

One of the largest commercial mines in the area was the Kaaba-Texas Mine, located several miles upstream of the project area, near the community of Nighthawk. The mine operated from the late 1890s until 1951, and discharged tailings directly into the Similkameen River until 1946. In 1999, the EPA removed and disposed of approximately 81,000 cubic yards of contaminated mine tailings from the mine site.

Land Ownership

The Enloe Project boundary encompasses approximately 136.4 acres, including the proposed raised Enloe reservoir, river corridor extending downstream from the dam 0.25 mile, and shoreline generally to the 1,055-foot elevation contour. The project boundary deviates from the 1,055-foot elevation contour to accommodate work that the Okanogan PUD proposes to build a new access road.

Table 17 shows land ownership within the Enloe Project boundary. Public agencies own and manage the majority of the land, with the exception of a portion of a single parcel (comprising about 0.15 percent of the area) held privately.

TABLE 17—LAND OWNERSHIP WITHIN THE PROPOSED ENLOE PROJECT BOUNDARY

[Source: Okanogan PUD, 2008a]

Land owner	Acres	Percent
BLM	35.47	26.00
Washington DNR	100.76	73.85
Private	0.20	0.15
Total	136.43	100.00

Hydropower generation was the primary land use in the Enloe Project area from 1906 until 1958. A hydropower facility was first constructed in 1906 at the falls on the east bank of the Similkameen River, across from the present powerhouse. That facility was replaced by the existing dam and power plant, which began construction in 1916 and was completed in 1923. The facility ceased operations in 1958 for economic reasons. Most of the project structures, including the dam, the powerhouse, one of two penstocks, and the power line, still exist. Portions of the foundation of the original power house are still extant, as well.

At one time, the OTID transported irrigation water through the Enloe Project area via a system of canals and flumes, and some of the structures remain in place. That system has been replaced by a pressurized distribution system, and the point of withdrawal has been transferred from the Similkameen River, 7 river miles upstream of the dam, to Lake Osoyoos, 3.5 miles southeast of the Enloe Project. The Oroville Golf Club maintains a pumping station and pipeline within the project area to provide irrigation water for its course. With the exception of the golf course facilities, no irrigation facilities in the Enloe Project area are currently in use, and there are no other water rights on the Similkameen River.

In accordance with the Washington's Shoreline Management Act of 1971 (WSMA), Washington State has designated the Similkameen River and associated shoreline areas as shorelines of the state, which are subject to the provisions of Okanogan County's Shoreline Master Program (Okanogan Shoreline Program). In Okanogan County, shorelines of the state include water areas and shorelands extending 200 feet landward, on a horizontal plane, from the ordinary high water mark, or the 100-year floodplain, whichever is greater. The WSMA and the Okanogan Shoreline Program provide for protection of shoreline functions and values, including physical and visual access to the shoreline.

The Okanogan Shoreline Program designates all of the shoreline area within the proposed Enloe Project boundary as "Conservancy." According to the Okanogan Shoreline Program, the Conservancy areas contain a resource capable of sustained yield. Forest products, hunting, fishing, agriculture, and many types of recreation are examples of uses compatible with this environment. The intent of this environment is to maintain the existing character of the shoreline.

Access

Highway access to the Enloe dam area is via the Loomis-Oroville Road. Located in a remote rural area, the road carries little traffic. Traffic counts for Loomis-Oroville Road range between 112 and 166 average daily trips according to 2005 traffic counts by Okanogan County.[36] Two access roads (the Enloe Dam Road and the OTID Road), connect the Loomis-Oroville Road to the dam site.

3.3.6.2 Environmental Effects

Recreation

Recreation Management Plan (REC–13)

Okanogan PUD proposes to implement a Recreation Management Plan to address recreational issues associated with the project. The plan includes 12 measures for recreation and three measures for safety and access to the project areas. This Recreation Management Plan was developed in coordination with the BLM, NPS, Washington DNR, the Washington RCO, and tribal agencies that use lands within the project area. Lessees that use project lands for grazing were also invited to participate in the preparation of the RMP. The various measures within the plan are discussed below.

BLM recommends that Okanogan PUD complete a final Enloe Recreation Management Plan after consultation with BLM and the Park Service.

Abandon Portion of Existing Road Along the Shoreline and Restore Existing OTID Road To Provide Access (BOTA–03)

[36] An average daily trip is the average number of vehicles that cross a given surface during a specified 24-hour period.

Okanogan PUD proposes to restore the OTID Road by smoothing out bumps, filling potholes, and adding vehicle turnouts to allow vehicles traveling in opposite directions to safely pass one another. A 2,000-foot-long segment of the existing access road (Shoreline Road) located along the east bank of the impoundment would be abandoned and closed to vehicle traffic (figure 7). The roadway would be relocated approximately 200 feet to the east (up slope) to protect wetlands, reduce effects on cultural resources (for effects of project proposals on cultural resources see section 3.3.8.2, *Cultural Resources, Environmental Effects*), and make the road more accessible during spring, summer and fall months for all users. The new roadway segment would follow the alignment of an old irrigation canal road.

Large rocks would be placed at both ends of the abandoned roadway segment to prevent vehicle access. Pedestrian use of the abandoned road would be discouraged until riparian vegetation planted in that area has become established. Other existing unimproved spur roads in the project area would also be closed to vehicles by blocking entry points with large rocks. All parties have agreed that additional design details on the access road and any proposed crossing structures would require consultation.

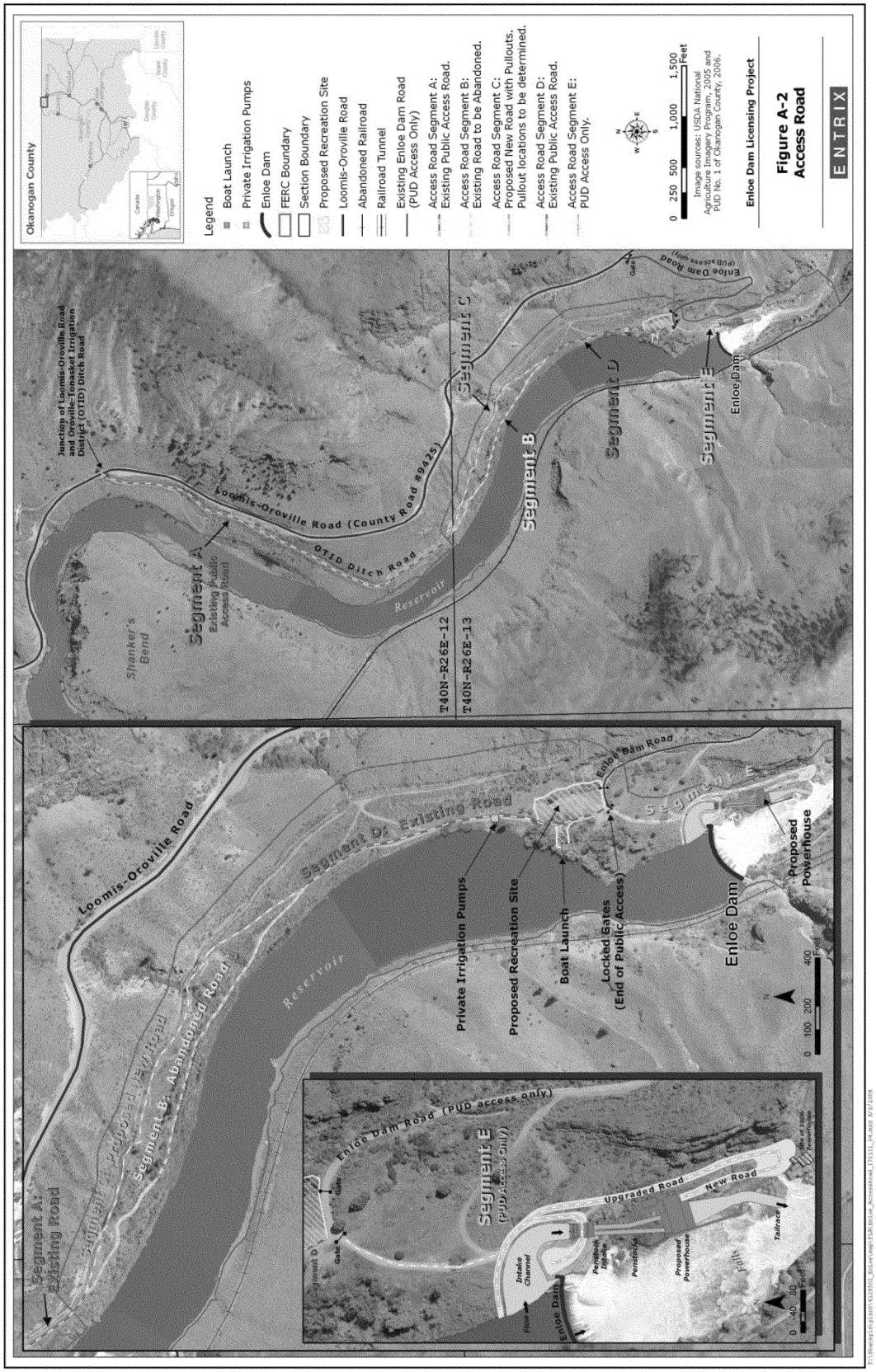

Figure 7. Roads, gates, and spurs in the project area (Source: Okanogan PUD, 2009b).

Although the access road would not be plowed on a regular basis during the winter, Okanogan PUD may clear the road periodically to access project facilities for maintenance and operations purposes.

Consistent with Okanogan PUD's proposal, BLM recommends improving an existing access road for public access into the Enloe dam area and abandoning and relocating a segment of the existing road that would be subjected to seasonal flooding under the proposed project operations. BLM also comments that the Commission should develop and analyze an alternative access road configuration that does not affect the OTID right-of-way.

Our Analysis

The realignment of a 2,000-foot-long segment of the existing access road located along the east bank of the impoundment would improve recreation at the project by providing enhanced access to project lands and waters. However, it is unclear in Okanogan PUD's application whether the entire public access road (OTID Road) between the Loomis-Oroville Road and the proposed project boundary (approximately 4,000 feet) would also be maintained to the same standard. Although, Okanogan PUD proposes to make improvements to the entire access road from the Loomis-Oroville Road to the dam, it does not intend to bring the entire access road into the proposed project boundary. Brining the entire length of the access road from the Loomis-Oroville Road to the dam would ensure that the entire access road is maintained by the licensee for project operation as well as recreational access. Incorporating the 4,000-foot stretch of this road including a 50-foot-wide corridor and turnouts would add approximately 5.0 acres of land to the proposed project boundary.

Okanogan PUD's proposal to construct an access road is in a portion of the OTID right-of-way. Okanogan PUD has consulted with OTID, and OTID has agreed that the proposed access road would not conflict with the OTID's interest or affect any facilities in current use. The two parties have come to an agreement that would allow Okanogan PUD to construct an acceptable access road to the project dam. A final agreement would be negotiated after the licensing decision. Therefore, we do not see a demonstrated need for Commission staff to develop and analyze an alternative access road configuration at this time.

During the winter season, Okanogan PUD would not regularly plow or maintain the access road for visitors but states it may clear the road periodically to access project facilities for maintenance and operations purposes. Access to project waters was evident during the site visit in January 2009, when Commission staff noted that there was a fisherman downstream of the dam. Therefore, there is a need for more periodic maintenance of the roadway in the winter to allow visitors to project lands and water. Development of an established plowing schedule with signs posted at the beginning of the access road would have a direct beneficial effect on winter recreation users by providing enhanced access to project lands and waters.

Fence Plan (REC–01)

Safety/Security Fence—Okanogan PUD proposes to remove the existing chest-high chain-link fence, approximately 100-foot-long, that separates visitors on the east bank of the river from the dam and the lower reaches of the impoundment and install a new fence (at least 6 feet high) along the upland perimeter of the power generating facilities and tailrace (figure 8). The fence would be constructed of small mesh chain-link material finished in traditional galvanized zinc or coated in brown vinyl. A top rail would be installed to keep the fence from sagging. Authorized personnel would have keys to access selected locked gates. Signs warning the public about high voltage and other hazards would be posted on appropriate fence locations.

Cattle Fencing—Okanogan PUD proposes to install an 8,000-foot-long cattle fence along the eastern boundary of the project boundary from Shanker's Bend to Enloe dam. At its northern end, the cattle fence would tie in to a rock outcrop just south of the apex of Shanker's Bend and an access point through the fence would be provided for pedestrians. Cattle would have access to the river just upstream from the rock outcrop. At its southern end, the fence would tie in to another rock outcrop just east of the proposed powerhouse. The configuration of the cattle fence would be consistent with BLM guidelines for livestock fencing installed in areas inhabited by common ungulate species. The fence would consist of no more than four, well-stretched horizontal wires with the top wire no more than 42 inches above the ground. The other wires would be spaced evenly no less than 8-, 16-, and 24-inches below the top wire.

The grazing lessee has an existing water right to withdraw water from the river for stock watering purposes. Okanogan PUD proposes to install a stock watering tank approximately 300 upslope from the river, just inside the project boundary and north of the proposed recreation site, as an alternative source of drinking water for all grazing cattle with rights to this area. The tank would be supplied with water from an existing pump and waterline located on the east bank of the river. The pump and waterline are owned by one of the grazing lessee Okanogan PUD would monitor the need to install a security fence around the pump and electrical power system to discourage vandalism and theft if they become problems.

A cattle guard would also be installed where the cattle fence crosses the main access road to the dam. The cattle guard grid would be designed to bear the maximum expected vehicle load (which may include construction equipment). A gate (accessible only by authorized personnel) would be installed where the cattle fence crosses Enloe Dam Road.

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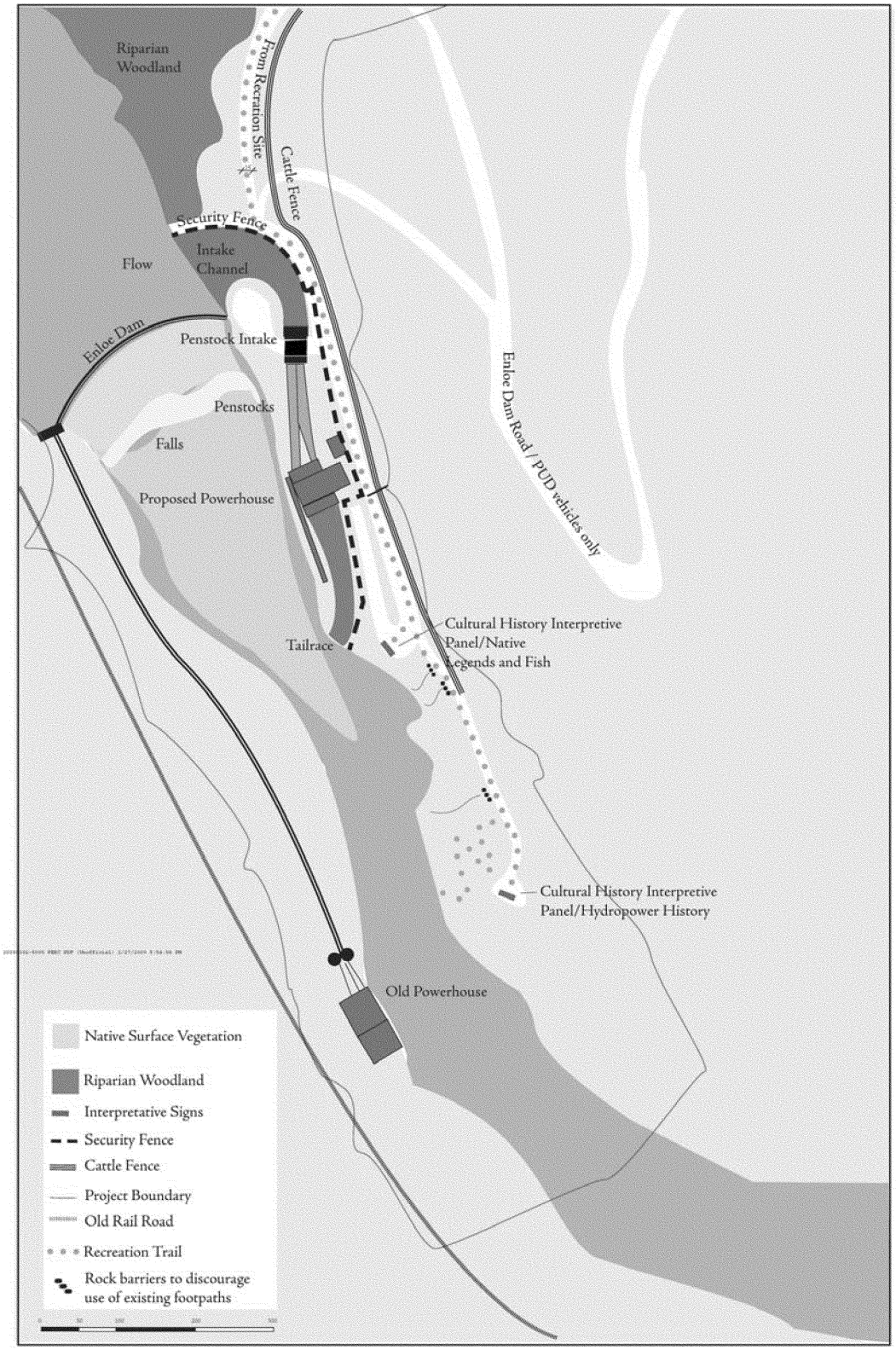

Figure 8. Location of proposed fencing downstream of Enloe dam (Source: Okanogan PUD, 2009b).

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BLM recommends non-barbed wire be used near the recreation area or the addition of crossings as needed for safe access to project lands and waters. In addition, BLM recommends prior to building the proposed Enloe Project fence, Okanogan PUD develop and implement a plan to provide water outside the fenced area for the use of livestock that are authorized to graze on BLM-administered public lands within and adjacent to the Enloe Project.

Our Analysis

Three ranchers have rights to graze cattle on BLM land within the proposed project boundary. Because there are no fences to limit or control livestock access, cattle freely roam the entire site. The grazing lessee has an existing water right to withdraw water from the river for stock watering purposes. Cattle access the river for drinking water wherever the topography allows. Okanogan PUD's Fence Plan implemented in coordination with its vegetation resources management plan would be consistent with BLM's recommendations. The proposed fence configuration would protect wildlife and vegetation within the project area while still allowing access to recreation users. Injury to fawns and yearling deer who often try to move between lower fence wires would be reduced and adult deer could easily jump a fence with a top wire 42 inches above the ground. However, continued consultation with BLM and lessees who have the water rights would ensure the fence meets BLM standards and cattle are still able to access water within the project area. In addition, Okanogan PUD's proposal to install a stock watering tank north of the proposed recreation area would provide an alternative source of drinking water for all grazing cattle with rights to this area. A written agreement to provide water for all three lessees' cattle at this proposed watering site would also ensure all three ranchers' cattle would have an alternative source of water.

Barriers to Restricted Areas—Okanogan PUD proposes to install locked gates and rock barricades to limit vehicle access by recreational users. The proposed barriers and access restrictions are described below:

- Locked metal gates would be installed at the upper end of Enloe Dam Road to prevent unauthorized vehicles from using the road. The road is very steep and is not maintained for passenger vehicles. Visitor access to the project area would be via OTID Road. Because Enloe Dam Road is a county road, Okanogan PUD would work closely with Okanogan County on plans to close the road to public vehicle access. Pedestrians would be able to walk along the road; however, they would need to use the pedestrian access at the north end of the recreation area to access the new recreation site and areas below the dam.
- Okanogan PUD staff and other authorized personnel would have keys to the locked gates. Okanogan PUD does not propose to install a gate at the entrance to the main access road off Loomis-Oroville Road.
- A locked metal gate would also be installed at the intersection of the one-way loop road within the proposed recreation site and the new access road to the area below the dam. Only Okanogan PUD staff and authorized personnel would have keys to open the gate. Large rocks spaced approximately 3 feet apart would be used to prevent visitors from attempting to drive around the gate. Visitors (including those portaging rafts, canoes, kayaks and mining equipment) would be able to access the area below the dam by using a trail to be located near the west end of the gate.

Consistent with Okanogan PUD's proposal, BLM also recommends installing barricades and fencing to prevent unauthorized access to closed areas.

Our Analysis

Finalizing and implementing the Fence Plan after consultation with BLM and stakeholders as part of the proposed Recreation Management Plan would improve prevent damage to wetlands and proposed riparian/wetland mitigation sites by preventing cattle from entering the proposed recreation site and keeping recreation users out of sensitive vegetative areas. A key schedule developed by Okanogan PUD in consultation with stakeholders would also ensure the appropriate entities had keys to access project facilities.

Recreation Access Below Enloe Dam (REC–02)

The construction of the new power generation facilities would require upgrading or replacing portions of the abandoned road, which currently provides foot access to areas below Enloe dam, including the rocky area above the falls and the lower reaches of the Similkameen River.

The area downstream of the dam contains dispersed trails made by visitors who access different areas below the dam depending on the activity they are taking part in (fishing, hiking, photography, mining, and kayaking/rafting/canoeing). Okanogan PUD proposes to designate and improve a single trail for public recreation access to the river below Enloe dam. Okanogan PUD would allow hikers and visitors portaging watercraft or recreational mining equipment (on foot) to use the improved access road between the recreation site and the powerhouse. Okanogan PUD also proposes to improve approximately 350 feet of the existing trail located between the access road to the powerhouse and the southernmost interpretive display. The trail would be widened to approximately 6 feet, leveled, smoothed, and surfaced with gravel to provide barrier-free access to all users.

In addition, Okanogan PUD proposes to make limited improvements to an existing footpath that extends between the trail described above and the edge of the river. Large obstacles would be moved or avoided, and the path would be widened and smoothed where possible. The path would also be marked to increase its visibility and enhance public safety. Other existing footpaths leading from the upper trail to the river's edge would be closed by placing rocks at the existing entry points to discourage use.

BLM recommends providing recreation access below Enloe dam and rebuilding the footbridge.

Our Analysis

Options for providing access to the river corridor below Enloe dam (including portage options) are limited by site factors (including steep, rocky terrain on both sides of the access corridor and the confined river channel). Generation facility design and security requirements also limit options for improving access to areas below the dam. Okanogan PUD proposes to designate and improve a single trail within the proposed project boundary for public recreation access to the river below Enloe dam. The improved path would provide easier access to those carrying kayaks or prospecting equipment and provide overall enhanced access. Anglers would also be able to access the popular fishing areas below the falls using the improved footpath. The proposed improvements would enhance access to lands and waters downstream of the dam and provide for the effective launching of boats below the falls.

At this time, Okanogan PUD does not propose to provide public access to the west bank of the river as a part of the Recreation Management Plan. Okanogan PUD states it would be receptive to proposals to restore the footbridge across the river if a proponent and source of funding were to come forward. Okanogan PUD would continue to

coordinate with federal and state agencies and local historical societies to explore funding sources for restoring the footbridge (see *Land Use* "Non-motorized Trails and West Side River Access" for a full analysis).

Transfer Ownership of Trestle Bridge (REC–03)

Okanogan PUD proposes to continue collaboration with the County towards development of the County's proposed 12.5-mile non-motorized public access trail on the railroad bed along the west side of the Similkameen River between Oroville and Nighthawk. This trail is currently under construction with the first 3.5 miles having been completed, running from the City of Oroville to a scenic view of Similkameen Falls at around RM 8.5, which lies just outside of the lower end of the proposed project boundary. Okanogan PUD has provided easements through its property to the County with the following conditions: (1) The first phase of the trail would terminate prior to reaching the downstream end of the project boundary—that is, the first phase of the trail would not run adjacent to the project boundary; and (2) Okanogan PUD retains the right to use the bridge and the railroad bed to reach the dam site for project maintenance and operations.

Okanogan PUD also plans to coordinate with the Department of Public Works regarding road approaches and signage.

Our Analysis

Okanogan PUD transferred ownership of the trestle bridge to Okanogan County for the development of a future public, non-motorized, recreational use trail. The rail would provide a beneficial effect to users who would be able access to the west side of the Similkameen River and Enloe Project area for possible informal, dispersed recreational activities.

Improvements to Existing Informal Boat Ramp (REC–04)

Okanogan PUD proposes to install a new formal boat launch in approximately the same location as the primitive put-in/take-out area now used by recreational boaters on the reservoir. The boat launch access road would be accessed from the loop road at the new recreation site. The road to the boat ramp would be approximately 14 feet wide and surfaced with gravel. The road would be accessible to both vehicles with trailers and people carrying watercraft on foot. The boat ramp would be constructed of gravel geoweb materials or concrete planks. Changing water levels would be accounted for in the design of the ramp. If necessary, a trash deflector would be installed to protect the boat ramp from floating debris. A vehicle and trailer parking area would also be located in the new recreation site.

Rock barricades would be installed along both sides of the access road to the boat ramp to prevent vehicles from entering the adjacent woodland area. The rock barricade would consist of three-man rocks [37] placed approximately 3 feet apart.

BLM recommends improving the existing informal boat ramp at Enloe dam, consistent with Okanogan PUD's proposal.

Our Analysis

These improvements would facilitate access for current and future recreation use at the project. By implementing the proposed enhancements in areas where recreational use is most concentrated, within 1.5 miles of the dam, recreation access at the project would be increased and areas for the effective launching and retrieving of boats would be improved.

Clean Up and Restore Wooded Area on East Bank (REC–05) and Remove Existing Trash and Conduct Annual Cleanup (REC–07)

Okanogan PUD proposes to remove existing trash from the following areas: (1) the wooded area on the east bank of the reservoir, just above Enloe dam; (2) the OTID Road access leading from the Loomis-Oroville Road to the dam site; and (3) unimproved beaches within the project area, including Shanker's Bend and area below the dam.

Okanogan PUD proposes to clean up and restore the wooded area on the east bank of the impoundment, just upstream of the dam on BLM land, to enhance visitor experience. Clean up would include removing trash, auto bodies, and other debris from within the wooded area. Restoration would include planting native vegetation appropriate to the site in areas that have been degraded by vehicle use and informal camping.

Okanogan PUD proposes to coordinate with user groups and area civic organizations to arrange an annual clean-up to remove trash and dumped materials that accumulate within the project boundary. Signs stating Okanogan PUD's "Pack it In/Pack it Out" policy would be installed at the entrance to the OTID Road off Loomis-Oroville Road and at a conspicuous location within the new recreation site upstream of the dam.

Okanogan PUD personnel would visit the site several times each month, and if trash or illegal dumping exist, they would be removed as soon as practical.

BLM recommends cleaning up and restoring the wooded area on the east bank as well as removing existing trash and conducting annual cleanup events consistent with Okanogan PUD's proposal.

Our Analysis

The proposed clean-up plan for the wooded area on the east bank of the river and removal of existing trash and an annual clean up plan would address the litter and sanitation concerns expressed by the visitors in response to Okanogan PUD's recreational surveys. The proposed plan would have a direct beneficial effect on the recreational experiences of visitors by providing annual litter pickups, site checks on a regular basis, and signage to encourage users to carry-in/carry-out.

Develop an Interpretive Publication (REC–06)

Okanogan PUD proposes to develop an interpretive publication that would include a map of the project area in consultation with Okanogan County, the Greater Columbia Water Trail Steering Committee, and other interested parties. The interpretive publication would identify the locations of developed recreational facilities and inform visitors of appropriate locations to park, load and unload recreational equipment, portage, and camping areas. The map would include recreation sites and access areas and be suitable for printing as a stand-alone piece that could be posted on an information board.

The design of the publication would follow the style guidelines that would be developed in the Aesthetic Resources Plan (see section 3.3.7 *Aesthetic Resources*) and be consistent with other interpretive signs (REC–11) and information boards (REC–12) at the project.

Okanogan PUD's proposal is consistent with BLM's recommendation to develop an interpretive publication.

Our Analysis

Finalizing and distributing an interpretive publication after consultation with stakeholders as part of the proposed Recreation Management Plan would establish a consistent method to provide visitors with information about the project and recreation sites within the project area. Development of such a publication

[37] A three-man rock is defined as a rock weighing 750–3,500 pounds and measuring approximately 24 to 36 inches on each side.

would increase public safety and awareness at the project.

Develop Parking Area, Including Vault Toilet and Access Road (REC–08), Install Picnic Tables (REC–09), and Develop Primitive Campsites (REC–10)

Okanogan PUD proposes to develop a one-acre recreation site located in a relatively flat area next to the riparian woodland just upstream from the dam. Okanogan PUD chose this site because it is heavily disturbed and would not affect known cultural resources in the area. The design concept for the recreation site is a one-way access road that would circulate traffic in a counter clock-wise direction. The access road would be approximately 14 feet wide and would be surfaced with gravel. A gravel surfaced parking area able to accommodate up to five standard vehicles and two vehicles with trailers would be located on the southern half of the site. Large rocks would be used as needed to direct traffic, protect facilities, and designate the parking areas. Due to space and topographical limitations, vehicles with boat trailers would be required to pull in and back out of the parking area. One vault toilet would be constructed for recreational users at the south end of the parking area.

Okanogan PUD also proposes to install picnic tables in two areas on the east side of the new recreation site near the parking area. The areas would be designated for day-use picnicking, although overnight campers would be able to use the picnic facilities as well.

The first site (Picnic Area I) would be located in the southeast corner of the recreation site outside of the loop road (figure 9). This area is slightly wooded providing natural shade and views toward the dam. Two tables would be spaced approximately 25 to 50 feet from each other to provide privacy. The second picnic area (Picnic Area II) would be located in the northeast corner on the outside of the loop road. This site provides overlooking views of the placid water of the reservoir. Two picnic tables would be clustered together to accommodate larger groups. Parking for both picnic areas would be provided in the parking area located at the south end of the recreation site inside the loop road (Figure 9).

Okanogan PUD would develop four primitive campsites near the parking and picnic areas described above. Each campsite would be approximately 25 feet wide and 50 feet long. The campsites would provide for pull-in parking and include ample space to accommodate a tent site. Rock barriers would be installed to serve as curbstops and define the boundaries of individual campsites. A picnic table and steel fire ring would be provided at each campsite and be surrounded by 3 feet of gravel in all directions to reduce fire danger. Campsites would be available on a first-come, first-served basis and overnight stays would be limited to a maximum number of 14 consecutive stays. Okanogan PUD's overnight stay policy would be clearly posted on an information board at the recreation site and at each campsite. Campsites would be designed to provide barrier free access to all users.

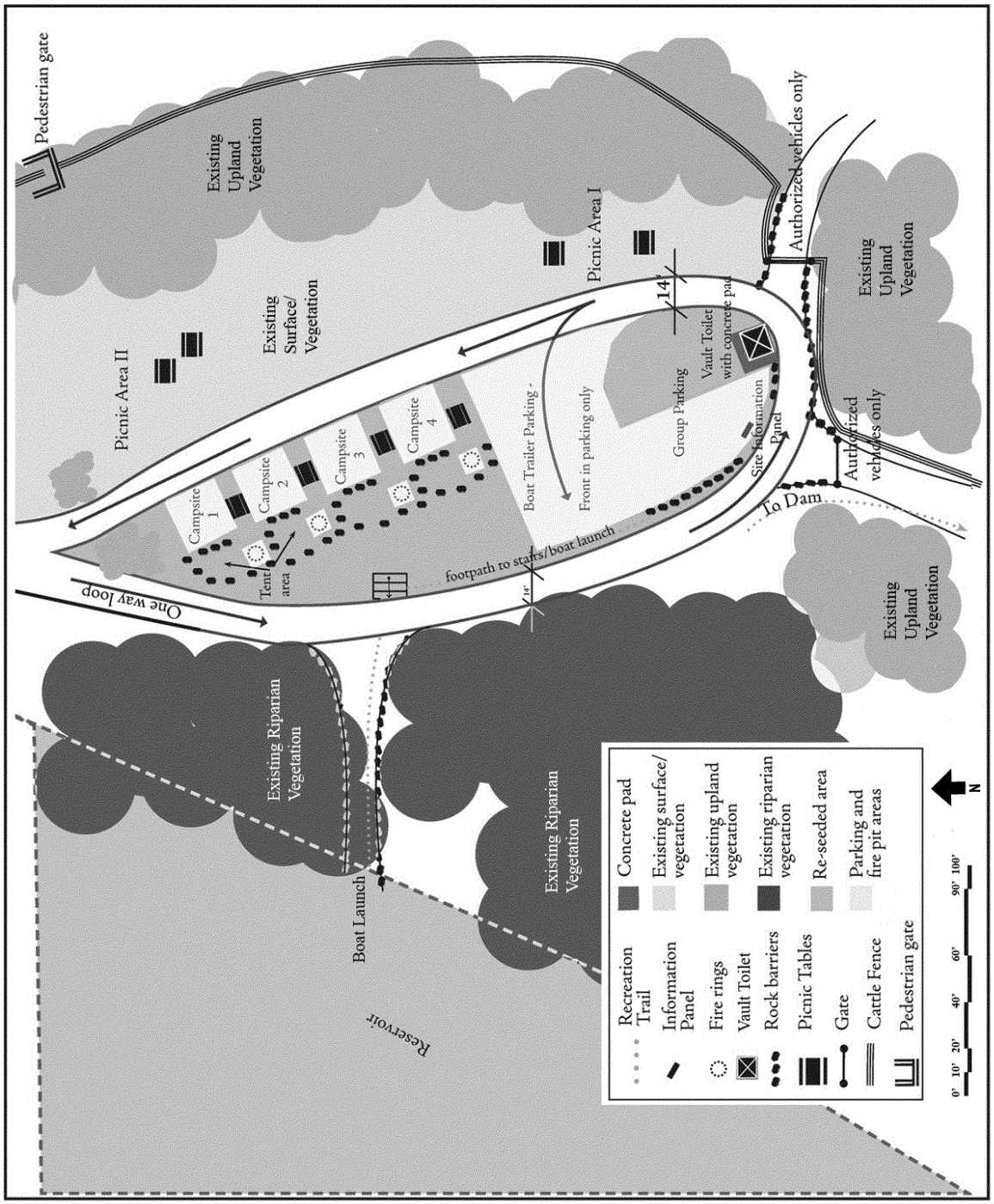

Figure 9. Enloe Project recreation site schematic (Source: Okanogan PUD, 2009b, as modified by Staff).

Okanogan PUD proposes it would, either directly or indirectly through a formal partnership, be responsible for maintaining recreational assets in an acceptable condition through routine maintenance, repair and replacement.

Recreation features would be inspected during normal maintenance visits and any recreation features that are identified as broken or in need of repair would be repaired or replaced. The repair of recreation features, which could include the replacement of certain items, would be conducted on an as-needed basis as soon as practical after being identified through regular facility inspections.

BLM recommends developing a parking area, installing a vault toilet, installing picnic tables, and developing primitive camp sites at the recreation site consistent with Okanogan PUD's proposal. BLM also recommends that Okanogan PUD provide recreation site grounds maintenance and consult with BLM to develop a schedule for site maintenance, facility replacement, modifications, or upgrades to the administered recreation sites at Enloe dam and Miner's Flat. In addition, BLM recommends Okanogan PUD clear and keep clear to an adequate width all lands along roads and trails and dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the Enloe Project that result from maintenance, operations, or alteration of the Enloe Project facilities. Trees that have died or had portions die should be removed or pruned to minimize hazards to the public. Prior to removal, trees would be evaluated for wildlife value and a determination made of the appropriate action. Trees that have been removed should be replaced by planted seedlings of species native to the area.

Our Analysis

The development of this small recreation area is consistent with the low level of current and anticipated use. Survey results indicate that use of the Enloe Project Area is estimated at 1,378 user days during the June 1 to October 15 survey period.

Okanogan PUD developed a Recreation Needs Assessment, dated April 2009. The Recreation Needs Assessment projected the needs and capacity data for the project area through the year 2050 using peak use estimates.

The peak day-use projection for campers visiting the survey area in 2030 under Okanogan PUD's high growth scenario is 15, which would be in balance with the capacity available at the project site once the campsites are developed. The 2050 peak day demand is anticipated to be 38 percent of the total survey area capacity, including the primitive campsites available 3 miles upriver at Miner's Flat. This suggests that peak day demand for camping facilities at the project would be exceeded in 20 to 30 years. Thus, it appears there would be sufficient capacity to accommodate anticipated future demand for camping in the area of the project.

The proposed sites would be appropriate given current recreational use at the project. Recreation access would be improved at the project by providing formal campsites and picnic areas in the areas where recreational use is concentrated. The addition of a vault toilet would ensure that human waste is handled in a manner that would protect environmental and aesthetic resources. The addition of picnic tables and primitive campsites would assist in defining areas for recreational activity and would concentrate recreational use in these intended areas. This would reduce the current adverse effects on surrounding natural and cultural resources from recreational activities that could cause ground compaction, vegetation loss, and erosion. Similarly, the designation of parking spaces for recreational users would reduce impacts on natural and cultural resources. Although grounds maintenance is already included in Okanogan PUD's day-to-day operation and maintenance activities finalizing the Recreation Management Plan after consultation with stakeholders and filing the plan with the Commission for approval would establish a maintenance protocol to provide visitors with clean and safe recreation facilities.

Interpretive Signs and Information Board (REC–11 and REC–12)

Okanogan PUD proposes to place at least three interpretive signs (display panels) in areas accessible to visitors at the project. The purpose of these panels would be to develop visitor understanding of the cultural, historical, and biological resources in the project area and enhance visitor experience. Sign designs and locations would be consistent with those specified in the HPMP and would be finalized in consultation with BLM and the CRWG during the design phase.

The preliminary list of proposed sign locations and topics are as follows: (1) One display panel at or near the old bridge tower, below the falls, the focus of which would be the history of power generation at the site; (2) one display panel at or near the 1906 powerhouse foundation at the end of the new access road, the focus of which would be native legend about the falls and fish; and (3) one display panel near the parking and picnic area, which would have smaller versions of the two other panels and interpretive information about the environment (e.g., wetland, riparian, and shrub-steppe functions and values) around the project area.

The exact locations of the signs may change slightly to ensure that they do not obstruct views of other project features and are placed in appropriate locations relative to the features being interpreted.

Okanogan PUD also proposes to develop an information board in addition to the interpretive signs. At a minimum, the information board would include a map showing recreational features in the project area, visitor rules, and safety information.

BLM recommends the development of the interpretive signs and an information boards consistent with Okanogan PUD's proposal.

Our Analysis

Finalizing and implementing the plan for interpretive signage and information board after consultation with BLM and the CRWG, as part of the proposed Recreation Management Plan, would enhance the recreational experience by providing visitors with information about the project as well as important safety messages. In its proposed Recreation Management Plan, Okanogan PUD identified likely locations, themes, stories, objectives, and options for structures and sign displays within the project boundary. Because Okanogan PUD states that specific displays would be subject to alteration based on the outcome of consultation, a final Recreation Management Plan filed with the Commission for approval would ensure that the proper consultation has occurred and that the final site-specific information could be assessed properly.

Additional Measures To Improve Public Safety

In the interest of promoting public safety for all those who participate in recreational activities within the project area, Okanogan PUD proposes following additional safety measures.

Maintain Warning Signs, Safety Cable and Grab Ropes (SAFETY–01)

In consultation with BLM, Park Service, FWS, Washington RCO, Washington PC, Washington DNR, CRWG, Washington DFW, Washington DOE, Okanogan County Planning and Development Office, the Colville, Greater Columbia Water Trail Coalition, Pacific Northwest Trail Association,

Washington Water Trails Association, Wenatchee Valley Museum and Cultural Center, and grazing lessees, Okanogan PUD proposes to install a 1,500-foot long canoe/kayak portage trail. Paddlers would be able to identify the portage trail by signs informing boaters and paddlers where take-outs are located. Portage signs would be large enough to direct canoeists and kayakers to safe take-out locations.

Okanogan PUD also proposes to continue to maintain the existing signs and system of safety cables and grab ropes above the dam. The existing system of safety cables and grab ropes is located more than 300 feet upstream of Enloe dam and the proposed intake channel at a narrow point in the reservoir. The cables and grab ropes serve as a means of restraint and escape for people who are approaching the spillway and are not able to exit the water at the boat launch as directed by instructional signs and warnings.

Finally, a log boom would be placed at the entrance to the intake channel to serve as a restraining barrier for any boaters or swimmers approaching the intake channel.

Allow Limited Public Access to the Project Area During Construction (SAFETY–02)

Okanogan PUD proposes to allow limited public access to the project area during the 2.5-year construction period. Public access would be limited to areas upstream of the dam, outside of the construction and staging areas. Access to the primitive put-in/take-out area in the riparian wooded area would be available during most of the construction period. During periods when the put-in/take-out area would not be available for use, a sign would be placed upstream to alert boaters to use an alternate take-out location.

Because of safety and liability concerns, the area along the east bank of the river (extending approximately 250 feet above the dam and 550 feet below the dam), including all areas of active construction and materials stockpiling, would be off-limits to the public until major construction activities are completed. The off-limits area would be completely enclosed by a temporary chain link security fence. Signs would be erected at the entrance to main access road, alerting visitors that construction activities are taking place and that portions of the site may be closed to public use. Okanogan PUD would continue regular site inspections during periods of active construction.

Identify Options for Preventing Public Access to the Old Powerhouse (SAFETY–03)

Okanogan PUD proposes to coordinate with BLM, the state of Washington, and private land owners, as appropriate, to identify options for preventing public access to the old powerhouse. Options include installing fencing and/or gates at key access locations on the west bank of the river between the powerhouse and the old railroad. Warning signs with the words "Danger" and "No Entry" could also be installed at key locations. The fencing and signage could remain in place until another party has assumed ownership and management of the powerhouse or until the powerhouse and penstock are demolished and removed. Okanogan PUD would allow 5 years before the powerhouse is demolished to identify potential partners to restore the old powerhouse for interpretive opportunities (see section 3.3.8, *Cultural Resources,* for more discussion of this issue).

BLM recommends improving public safety by maintaining warning signs, safety cables, and grab ropes, allowing limited or controlled public access to the Enloe Project area during construction, and preventing or appropriately managing public access to the old powerhouse.

Our Analysis

Okanogan PUD has a responsibility for public safety and ensuring public access under parts 12 and 2.7 of the Commission's regulations. The proposed measures listed above to improve public safety are reasonable and appropriate to ensure public safety at the project. Public safety at the proposed new recreation site and other areas within the project area is also under the jurisdiction of law enforcement agencies, including the Okanogan County Sheriff's Office. It would be appropriate for Okanogan PUD to also coordinate with the local county sheriff's office and other emergency response entities to ensure that an appropriate level of public safety exists within the project area.

Recreation Management Plan (REC–13) and Monitoring

Okanogan PUD proposes to review, update, and/or revise the RMP if the FERC Form 80 monitoring indicates significant changes in recreation use and or conditions or substantial differences in uses versus capacity of recreation facilities. Changes would also be implemented if monitoring results indicate resource objectives are not being met. Any updates to the RMP would be made after consultation with BLM and filed for final Commission approval.

BLM recommends that Okanogan PUD conduct annual and periodic recreation plan monitoring. Within 90 days of license issuance, BLM recommends Okanogan PUD develop an Annual Visitor Use and Monitoring Form, in consultation with BLM. This form would be used to record visitor use; maintenance, both performed and needed; and report on the recreation facilities and recreation use within the Enloe Project area. The report would be submitted to BLM by December 1 each year for review and approval.

Every 6 years, starting with the issuance of an Enloe Project license, Okanogan PUD should review and evaluate information regarding recreation needs and report recreation use levels. Use levels would be documented by means of site visits and staff observations. Okanogan PUD would also conduct monitoring, using the Commission's FERC Form 80.

BLM recommends that every 5 years, Okanogan PUD review, and if necessary, update the final Recreation Management Plan. If the Form 80 monitoring, the Annual Visitor Use and Monitoring Form, or other sources identify issues, problems, or significant changes to recreational use levels, types, or other issues, Okanogan PUD would update or revise the final Recreation Management Plan to contain information on managing and providing adequate facilities to meet the needs of the current and projected recreation use. Significant change would include exceeding the project's recreation facility capacity as defined by the Commission's FERC Form 80 updates.

Our Analysis

Okanogan PUD's proposed recreational use monitoring and assessment of recreation-related effects on lands within the project boundary as a component of the proposed Recreation Management Plan would allow Okanogan PUD and stakeholders to consider measures to address recreational use, including dispersed use, over the term of a license. It would be beneficial for Okanogan PUD, in coordination with filing of the FERC Form 80, to file every 6 years a Recreation Monitoring Report summarizing the recreation monitoring results and any recommendations for future recreation management at the project. The monitoring would provide a mechanism for which recreation facilities could be maintained and improved over the term of a license.

Although monitoring recreation on an annual basis, as proposed by BLM, would also be beneficial, this amount of monitoring seems excessive due to the low amount of current recreational use at the project.

Coordination with other stakeholders, such as the Washington SHPO, BLM, NPS, Washington DNR, and Washington ROC would ensure that other environmental resources are appropriately considered when implementing any changes or new recreation measures into the Recreation Management Plan.

River Access Point at Miner's Flat

BLM recommends that Okanogan PUD place the Miner's Flat area within the Enloe Project boundary. Currently some visitors use Shanker's Bend as a boat take out to avoid paddling the flat water above the dam. BLM states that river visitors who take out at Shanker's Bend to avoid the flat water would now take out at Miner's Flat due to the increase in reservoir area as proposed. BLM recommends Okanogan PUD make recreation improvements to the Miners Flat area to accommodate future increases in recreation needs at this location. BLM proposes that recreational development at Miner's Flat incorporate the following: (1) Improve the existing entrance road, road through the site, and parking areas; (2) improve water access for launching and landing boats; (3) install an information kiosk with a map; (4) establish primitive campsites, including picnic tables and steel fire rings; (5) install a vault toilet; and (6) develop drawings showing the location of site improvements and consult with them on this plan.

Our Analysis

Currently, there is no suitable area for the development of a take-out within Okanogan PUD's proposed project boundary. It is likely that the raised reservoir level would result in more paddlers taking out at Miner's Flat to pass up the increased flatwater area.

Since an informal access already exists at Miner's Flat and the area is flat enough to accommodate a take-out area, it would be reasonable to develop a take-out within this location with minor upgrades made to the access road to the take-out. However, because Okanogan PUD has proposed to develop formalized campsites within the project boundary and two campgrounds already exists within two to five miles of the project, developing campsites at Miner's Flat would not be justified.

Land Use

Project Boundary

The Enloe Project boundary encompasses approximately 136.4 acres and includes Enloe reservoir, the corridor for the new access road proposed by Okanogan PUD, the location identified for the placement of boulder clusters in the riverbed (about 2.5 miles upstream of the dam) and the river corridor extending downstream from the dam 0.25 mile. Okanogan PUD does not propose to place additional lands associated with the proposed side-channel enhancement site, the restoration of the existing OITD road, and Miner's Flat within the project boundary.

Our Analysis

Okanogan PUD's proposal to enhance existing side channel to improve spawning, rearing, and summer thermal refugia would be a mitigation measure for the protection of environmental resources. This proposed facility would add approximately 0.75 acres of project lands approximately 5 miles downstream of the dam necessary for project operation. These enhancements would need to be maintained over the license term and, therefore, it would be appropriate to include these lands within the project boundary for the purpose of operation and maintenance of the proposed Enloe Project.

In addition, all but about 4,000 feet of the existing access road is currently proposed to be located within the project boundary. Because of the proposed modifications of the existing access road and the fact that the road is the only access route to the project, it is appropriate to include the entire access road within the project boundary. This would add approximately 5 acres of land to the project area.

Finally, the provision of an upgraded take-out area at Miner's Flat is justified due to the potential increase in recreational use as a result of the raising of the impoundment from current levels and anticipated increases in recreational use of the area over time. The inclusion of the recommended Miner's Flat take-out area, would be necessary for project purposes, such as recreation, shoreline control, or protection of environmental resources. This would add approximately one acre of land into the project boundary.

Law Enforcement, Emergency Services, and Fire Prevention

BLM recommends Okanogan PUD develop and implement, after consultation with BLM, a Law Enforcement, Fire, and Emergency Services Plan. The plan would include provisions for: (1) Coordination of and funds for law enforcement, fire, and emergency services personnel; (2) law enforcement presence, enhanced emergency communication and response procedures, public safety and security, protection measures for natural resources, recreation resources, and heritage resources; (3) an emergency telephone at the site; (4) an assessment of the need for additional law enforcement, including funds for additional personnel, to patrol BLM-administered lands; (5) a description of fire prevention and protection on BLM-administered lands to include: (a) An identification of hazard abatement procedures, (b) a notification process, (c) an identification of agencies to respond to fire reports, and (d) a process for reclaiming and/or rehabilitating burned lands; (6) coordination with BLM to evaluate the need for fire protection on BLM-administered lands, including monitoring and evaluating of man-made fires that affect BLM-administered lands; and (7) all costs provided by Okanogan PUD, if monitoring demonstrates an increased need for fire prevention, detection, and suppression.

Our Analysis

BLM indicated that increased recreational use in the Enloe Project area can lead to adverse effects on environmental and cultural resources, an increased risk of fire, and an increase in vandalism that will require law enforcement and emergency or fire response. As previously discussed, Okanogan PUD proposes to remove existing trash from defined areas on BLM land, conduct annual clean up events, and conduct project facility site reviews. Further, Okanogan PUD proposes to implement its Recreation Management Plan that contains measures to minimize conflicts between recreational use and associated effects on environmental resources. Overall, these measures, along with additional staff-recommended measures, would protect the environmental, recreational, and cultural values at the Enloe Project.

Providing funds for law enforcement, fire, and emergency services personnel is not a specific measure to protect and enhance fish and wildlife resources. The Commission has made clear that it is concerned with protecting resources and uses at the project rather than funding personnel.[38] However, a fire suppression program to rehabilitate

[38] *See Settlements in Hydropower Licensing Proceedings Under Part I of the Federal Power Act,* 116 FERC § 61,270 (2006).

lands subject to wildfire and to reduce fuel loads to prevent wildfire on project lands and adjoining wildlife areas could protect and enhance terrestrial resources affected by the construction, operation, and maintenance of the Enloe Project. A fire suppression program could include signage at recreation sites describing the hazards and costs of wildfire and undertaking habitat rehabilitation efforts, such as replanting with perennial grasses to reduce fuel loads.

Building Removal

BLM recommends that Okanogan PUD remove two small, deteriorating buildings at the north end of the proposed Enloe Dam Recreation Area. BLM states these buildings are deteriorating, unsafe to enter, marked with graffiti, and pose an unattractive nuisance to visitors to the site. In response to BLM, Okanogan PUD states that one of two small structures on the north end of the proposed Enloe dam recreation area is owned by a private landowner that maintains a lease with BLM. Okanogan PUD states it is not in a position to remove this structure, however, it will take reasonable measures to secure existing structures from unauthorized entry.

Our Analysis

Licensees are required to ensure that all reasonable precautions are taken to ensure that the construction, operation, and maintenance of structures or facilities on project lands occur in a manner that protects the scenic, recreational, and environmental values of the project.

If the deteriorating pump house structure is unsafe and does not serve project purposes, it would be appropriate for Okanogan PUD to maintain the building to a point where it is safe or remove it from the project boundary. Currently, it does not appear that these two buildings are being used for project purposes.

Non-Motorized Trails

BLM recommends Okanogan PUD support the development of the Similkameen Rail Trail, a cooperative, non-motorized public access trail along the old railroad grade from Oroville to Nighthawk, as a segment of the Pacific Northwest National Scenic Trail. BLM also recommends that Okanogan PUD support the development of the Similkameen portion of the Greater Columbia Water Trail. BLM recommends that Okanogan PUD consult with BLM, FWS, Park Service, Water Trail Committee, Pacific Northwest Trail Association, and Okanogan County to identify water and trail access points that are likely to become popular as the trails are developed in this area. BLM also recommends that Okanogan PUD rebuild the footbridge across the Similkameen River. The footbridge would provide the only foot access from the east side of the river (between the trestle bridge two miles downstream of the dam and Nighthawk six miles upstream) to the trail opportunities on the west side of the river.

Okanogan PUD states its recreation development proposal was crafted in consultation with local stakeholders, and local stakeholders did not identify that the footbridge providing public access to the west bank of the river was needed. Okanogan PUD states this is a request for an enhancement that goes beyond the need to mitigate project impacts. However, Okanogan PUD has indicated that it is receptive to proposals to restore the footbridge across the river if a proponent and source of funding were to come forward. Okanogan PUD would continue to coordinate with federal and state agencies and local historical societies to explore funding sources for restoring the footbridge.

Okanogan PUD states it supports the development of the Greater Columbia Water Trail as evidenced by the measures in the Recreation Management Plan that are supportive of and complementary to the goals and objectives of Greater Columbia Water Trail. Okanogan PUD states that it has demonstrated support for the Similkameen Rail Trail by transferring ownership of the trestle bridge to Okanogan County for use in developing the Similkameen Connector Trail, which has become part of the Similkameen Rail Trail and the Scenic Trail.

Our Analysis

Consultation with Okanogan PUD in the development of the Similkameen Rail Trail and the Similkameen portion of the Greater Columbia Water Trail within the project vicinity would ensure both planned trails are implemented in a manner consistent with the project. Rebuilding the footbridge across the Similkameen River downstream of the dam would provide access to the west side of the river, no project recreational facilities are being proposed for that area at this time. Recreational access to the west side of the Similkameen River could be improved in the future, once the plans for the Similkameen Rail Trail are finalized.

3.3.7 Aesthetic Resources

3.3.7.1 Affected Environment

Project Setting

Situated in north-central Washington (near the Canadian border) on the east side of the Cascade Mountains near the rural community of Oroville, the Enloe Project area is characterized by its remote, relatively undeveloped landscape. Accessed via the narrow Loomis-Oroville Road, the Enloe Project area features moderately steep mountainous terrain incised by eroded canyons. Created by the Similkameen River, the Enloe Project area's topography is distinguished by gradual to steep sloping canyon walls. These walls rise to elevations between 700–800 feet with Kruger Mountain rising 878 feet to the north and a series of smaller un-named 750- to 800-foot peaks line the southwest side. A small intermittent stream, the Ellemeham Draw, is situated between Enloe dam and the falls, and visually cleaves the southeast canyon wall. Most of the project area is undeveloped with a cluster of industrial structures and abandoned buildings assembled immediately around and just below Enloe dam.

The land surrounding the Enloe Project area is greatly influenced by its climate and geologic history. The eroded canyons that characterize the Enloe Project area are generally the result of retreating glaciers that last covered the area about 15,000 years ago. The eroded canyon slopes feature both gradual slopes, as well as steep, rocky inclines that rise to 800 feet (about 500 feet above the mean Enloe Project area elevation). Upstream, the Similkameen River follows a horseshoe-shaped turn enclosed between steeply sloped canyon walls, known as Shanker's Bend. The river within the Enloe Project area flows placidly through a shallow reservoir before spilling over Enloe dam and plunging down steep falls immediately downstream.

The hills on either side of the river are a combination of rocky outcrops and large areas of shrub steppe vegetation spotted with evergreen trees. Riparian forest, dominated by black cottonwood in stands, is found along the reservoir shoreline. In the spring, summer, and fall, colors in the landscape are primarily brown hues dotted with dark green vegetation. Snow is common in the winter. Textures in the landscape include rocks, sagebrush, trees, and water.

The overall landscape is a combination of natural and human-made elements. The natural elements

are characterized by unnamed mountains, sparse low level vegetation, and the Similkameen River snaking through the canyon. Several human-made elements are included in the landscape of this region. These include a vineyard, golf course, and residences approximately 2 miles north of Oroville. Linear elements include the Loomis-Oroville Road, which is located on the canyon rim above the Similkameen River and roughly follows the river's twists and turns, the abandoned Great Northern Railroad grade that lines much of the south or east shoreline of the river at the canyon floor, power distribution lines that run along the canyon walls and rim, and two dirt tracks that extend south from Loomis-Oroville Road and lead to the dam. The access roads proceed along the river's eastern perimeter to the dam, which is located at a point where the canyon narrows. While minimally visible from upstream, Enloe dam rises quite prominently when viewed from downstream. The historic powerhouse is similarly sheltered from view, perched against a sharp slope on the west side of the river, nestled within a rocky eddy. It is accompanied by horizontal penstocks, and prominently positioned cylindrical surge tanks that rest on raised concrete foundations. Human-made elements on the east side of the river include: A bridge remnant (which once connected the east side of the river to the powerhouse); two small outbuildings; and an abandoned concrete irrigation ditch. The town of Nighthawk, approximately 6 miles west of Enloe dam, is a historic mining community comprised of wood-frame buildings (residences and associated agricultural buildings) along a two-track dirt road.

Visitation to the Enloe Project area is largely confined to those persons traveling along the Loomis-Oroville Road or pursuing outdoor recreation activities in the canyon, as well as Native Americans and Canadian First Nations who attach cultural value to the natural setting and associated fishing areas.

Visual Resource Management

BLM manages its lands in accordance with its Visual Resource Management (VRM) System. The system designates landscape units in four classes that indicate the overall significance of the visual environment and establishes objectives for the management of each class in order to define the level of change from a proposed project that is acceptable in that class. By comparing the effects from a project to the established visual objective for that area, the visual acceptability of that project and mitigation measures needed to decrease the visual contrast are determined. The four visual management classes and their objectives are described below:

- Class I—The objective of this class is to preserve the existing character of the landscape. This class provides for natural ecological changes; however, it does not preclude very limited management activity. The level of change to the characteristic (background) landscape should be very low and must not attract attention.
- Class II—The objective of this class is to retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape.
- Class III—The objective of this class is to partially retain the existing character of the landscape. The level of change to the characteristic landscape should be moderate. Management activities may attract attention but should not dominate the view of the casual observer. Changes should repeat the basic elements found in the predominant natural features of the characteristic landscape.
- Class IV—The objective of this class is to provide for management activities that require major modification of the existing character of the landscape. The level of change to the characteristic landscape can be high. These management activities may dominate the view and be the major focus of viewer attention. However, every attempt should be made to minimize the impact of these activities through careful location, minimal disturbance, and repeating the basic elements.

In consultation with the BLM, Okanogan PUD conducted visual resources analysis of the Enloe Project area using the VRM methodology outlined above and determined that the characteristics of the area fell within the Class IV management class. Four key observation points (KOPs) in the project area were identified for analysis of the most critically-traveled routes or observation points in the Enloe project boundary (figure 10): (1) Loomis-Oroville Road; (2) overlook from Loomis-Oroville Road approximately 3 miles north of Oroville; (3) rocks below Enloe dam on the Similkameen River; and (4) overlook near Enloe dam (figures 11 through 14).

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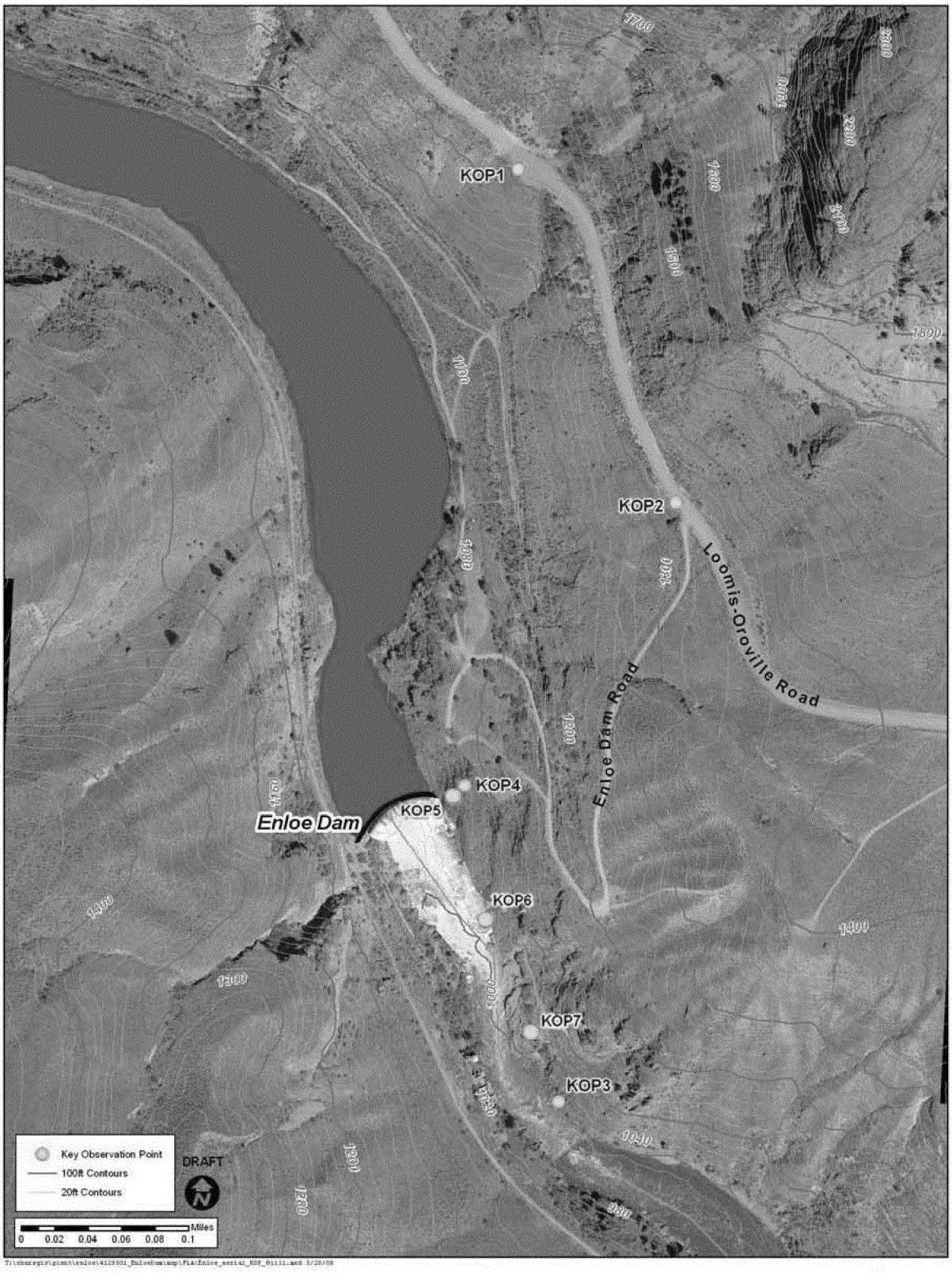

Figure 10. Enloe Project area KOPs (Source: Okanogan PUD, 2008a).

On May 29, 2009, additional information was submitted by Okanogan PUD regarding the visual resources study. Three additional KOPs were evaluated to include views associated with the proposed locations for interpretive displays (figure 10): The overlook east of Enloe dam and the areas where the two interpretive panels would be placed (figures 15 through 17). The dates that the photos were taken and the approximate river flows at that time were not included in the study.

Figure 11. KOP 1, Loomis-Oroville Road (Source: Okanogan PUD, 2008a).

Travelers on Loomis-Oroville Road view the Enloe Project area for a relatively short time in the foreground-middleground. Visibility of the Enloe Project area is generally unobstructed to travelers on Loomis-Oroville Road; however, the canyon topography makes it difficult for the travelers to view.

Figure 12. KOP 2, overlook from Loomis-Oroville Road approximately 3 miles north of Oroville (Source: Okanogan PUD, 2008a).

People stopping at the overlook on Loomis-Oroville Road have opportunities for extended views of the Enloe Project area. From this viewpoint, the dam is visible as are the abandoned penstock, surge tank, and the roof of the abandoned powerhouse.

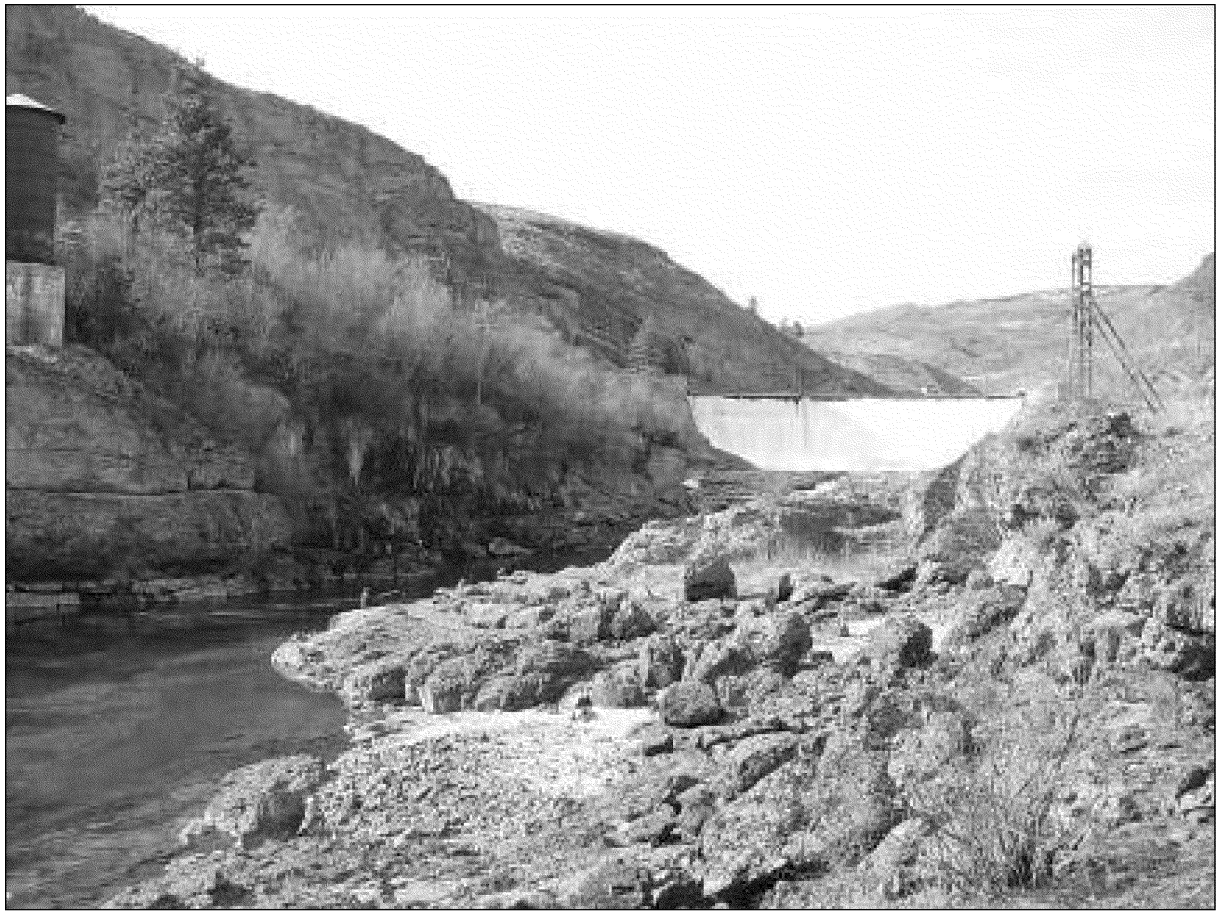

Figure 13. KOP 3, rocks below Enloe dam on the Similkameen River (Source: Okanogan PUD, 2008a).

Recreators on the river have extended views of the project area. From this viewpoint visitors see the existing human-made features to include the abandoned powerhouse, former footbridge tower, and Enloe dam.

Figure 14. KOP 4, overlook near Enloe dam (Source: Okanogan PUD, 2008a).

From this viewpoint, the dam and abandoned penstock are clearly visible.

Figure 15. KOP 5, overlook east of Enloe dam, looking south (Source: Okanogan PUD, 2009h).

From this viewpoint looking downstream, the abandoned penstock and powerhouse are visible.

Figure 16. KOP 6, view from proposed interpretive panel #1, looking north (Source: Okanogan PUD, 2009h).

Visitors stopping at this proposed interpretive panel location along a proposed pedestrian trail would have opportunities for extended views of the project area. From this viewpoint, the dam is clearly visible.

Figure 17. KOP 7, view from interpretive panel #2, looking north (Source: Okanogan PUD, 2009h)

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Visitors stopping at this proposed interpretive panel along a proposed pedestrian trail, located approximately 300 feet south of KOP #6 would also have opportunities for extended views of the project area. From this viewpoint, the dam, the abandoned penstocks, and Similkameen Falls are clearly visible.

Noise

Noise is generally defined as unwanted sound. It is emitted from various sources including airplanes, factories, railroads, and highway vehicles. The magnitude of noise is described by its sound pressure. Because the range of sound pressure varies greatly, a logarithmic scale is used to relate sound pressures to some common reference level, the decibel. Therefore, a sound pressure level is equivalent to a certain number of decibels.

Because sound pressure levels expressed in decibels are based on a logarithmic scale, they cannot be added or subtracted in the usual arithmetical manner. If a sound of 70 dB is added to another sound of 70 dB, the increase is only 3 dB to 73 dB, not a doubling to 140 dB. If two sounds are of different levels, the lower level adds less to the higher level as their difference increases. For example, if the difference is as much as 10 dB, the lower level adds nearly nothing to the higher level. Adding 60 dB to a 70 dB sound increases the total sound pressure level less than 0.5 dB. Additionally, a decrease of 3 dB in sound pressure level means that the noise has been reduced to half of its original level.

In 1974, EPA identified indoor and outdoor noise levels to protect public health and welfare against hearing loss, annoyance, and activity interference (EPA, 1974). A 24-hour exposure level of 70 dB was identified as the limit of environmental noise which will protect against hearing damage. Levels of 55 dB outdoors and 45 dB indoors are identified as desirable limits to protect from activity interference and annoyance. These levels of noise are considered those which will permit spoken conversation and other activities such as sleeping, working, and recreation. The levels are not single event or peak levels, but are 24-hour averages. Further, these levels are not regulatory goals or requirements; they represent levels of environmental noise required to protect the public health and welfare with an adequate margin of safety (EPA, 2007).

The Enloe Project area is characterized by its remote, relatively undeveloped landscape. Accessed via the narrow Loomis-Oroville Road, the Enloe Project area features moderately steep mountainous terrain incised by eroded canyons. Natural noises which are associated with this site would include wildlife sounds such as animal calls and the sounds of wildlife moving through the environment and interacting with one another. Other natural sounds would include sounds of the physical environment such as wind, rain, thunder and the river rushing over

the dam or falls when flows are occurring. Human background noise would include the passing cars on the Loomis-Oroville Road, the sound of recreating visitors, and the activities Okanogan PUD employees occasionally checking the area of the dam.

3.3.7.2 Environmental Effects

Aesthetics Management Plan

Okanogan PUD proposes to implement its Aesthetics Management Plan to manage project effects on aesthetic resources associated with the proposed project. Okanogan PUD proposes the following measures within its Aesthetics Management Plan.

Use Visually-Compatible Colors and Building Materials and Non-Reflective Surfaces (AES–01 and AES–03)

Okanogan PUD proposes to use visually-compatible colors and building material textures that harmonize with the existing landscape for the new east-bank construction. A range of compatible colors and building material textures would be used to reduce the visual presence of new project facilities within the larger landscape.

The proposed east bank construction of project facilities consists of the (1) new crest gates at the top of the dam, (2) headworks that include an approach channel, river intake, and intake canal, (3) penstock intake, (4) two penstocks, (5) powerhouse, (6) tailrace, (7) recreational facilities north of the dam (picnic tables, vault toilet, boat launch), and (8) an improved access road.

It would be expected that the powerhouse, penstocks, and tailrace would be visible from KOPs #3 through #7 with the powerhouse representing the most visible new feature. To further reduce the visual presence of the new powerhouse and have the new structure harmonize with its surroundings, Okanogan PUD proposes colors consistent with suggested guidelines within the HPMP regarding new construction within the Enloe Project. These guidelines state that "muted, natural tone materials would be used. Okanogan PUD also proposes matte finishes, as opposed to glossy finishes. Consistent with guidance within the HPMP, new building materials, such as concrete, steel, and galvanized metal roofing would have minimal, but some discernable textures. Concrete, for instance, would in general be left exposed, trowelled smooth so that board forms are not visible, or coated with natural gray-colored stucco coatings to blend with the original features. While galvanized materials, such as steel or iron roofing, are by nature smooth, they would be primed with a matte finish and be nonreflective.

Consultation with Colville Confederated Tribes on Traditional Cultural Properties (AES–02)

The Colville attach cultural significance to the visual aesthetics of several natural features and their components (i.e., Traditional Cultural Properties) within the project area. Okanogan PUD proposes to consult with the Colville concerning these traditional cultural properties utilizing the existing Cultural Resources Working Group.

Dewatering and Construction of a New Facility That Could Block Existing Views (AES–04)

Okanogan PUD proposes to make trail improvements that would create closer and more intimate views of the falls. This would be from viewpoints that are not currently easily accessible to the public. The trail would be linked to the recreational improvements made above the dam and provide visitors with a trail with closer views of the falls and greater accessibility to the area below the dam. Interpretive signage, in concert with HIST–03, would also be placed along the trail to highlight historical flows over the dam. This new trail would help to replace views partially blocked by the construction of new project facilities and provide closer access to the falls for recreators during periods of high flows and high visitation.

The existing buildings would be removed unless a qualified third party entity assumes ownership and management of the old west bank powerhouse to maintain it for historic and recreation purposes. If a qualified third party entity is not identified within five years of licensing, then the historic Enloe powerhouse, located on the west side of the Similkameen River and below Enloe dam, would be demolished after completing mitigation measures undertaken in consultation with the Washington SHPO and Park Service. Such measures may include detailed Historic American Engineering Record (HAER) documentation.

Okanogan PUD states that the foundation of the powerhouse and surge tanks, which accounts for about 50 percent of the visible portions of the building, would be retained, but that the powerhouse and surge tank superstructures would be demolished to remove any deteriorated and unstable structures from the site. Okanogan PUD would also ensure that these actions are consistent with Measures HIST–01, HIST–02, and ARCH–01.

BLM recommends that Okanogan PUD revise and implement the Aesthetics Resource Management Plan to include the following: (1) Blending the existing and proposed Enloe Project into the existing landscape character; (2) revegetate, stabilize, and landscape new construction areas and areas immediately adjacent; (3) grading, planting native vegetation, repairing slopes damaged by erosion, preventing future erosion; (4) monitoring and maintenance; (5) implementation schedule; (6) periodic review and revision; and (7) providing river flows over Enloe dam.

BLM also noted in its 10(a) recommendations that Okanogan PUD's aesthetic analysis identified the Similkameen Area as having a Scenic Quality of B, but then based its analysis as having a Scenic Quality of C. Therefore, BLM recommends that the aesthetic analysis that Okanogan PUD conducted be revised to reflect a Scenic Quality of B and to similarly adjust the sensitivity rating given the current and projected recreation use, the identification of sightseeing as a use in the final license application, the designation of a National Scenic Trail which passes by the Enloe Project, and the proximity of a highway.

Our Analysis

Okanogan PUD's proposal to use visually-compatible colors and building material textures that harmonize with the existing landscape for the new east-bank construction and implement its Aesthetics Management Plan would reduce potential adverse visual effects at the proposed project. BLM's recommendation that Okanogan PUD include specific approaches concerning the blending of the existing and proposed Enloe Project facilities into the existing landscape character, revegetating and stabilizing and landscaping new construction areas and areas immediately adjacent, grading, planting native vegetation, repairing slopes damaged by erosion, preventing future erosion, monitoring and maintenance, implementation schedule, and periodic review and revisions would help ensure that project facilities would ensure protection of the visual resources at the proposed project. In addition, because the project is located on BLM lands, it would be beneficial if BLM were added to this consultation process in addition to consultation with the Colville. Revising the Aesthetics Management Plan to contain these elements could have a direct beneficial effect on aesthetic resources at the project by keeping BLM and the Colville informed on lay down or construction material storage areas that are yet to be determined. Consultation with BLM on

the revision of the aesthetic analysis to reflect a Scenic Quality of B, with an appropriate sensitivity rating reflecting the site conditions identified in BLM's 10(a) recommendation, would ensure that the project area has been appropriately evaluated and that appropriate measures are undertaken to preserve the aesthetic character of the area.

Aesthetic River Flows

As we've said, Okanogan PUD proposes a year-round minimum flows of 10 cfs in the bypassed reach. The flows would be seasonally adjusted to 30 cfs for the period of mid-July through mid-September. This proposal would provide minimum flows when spillage is not occurring—about 9.5 months of the year in low water years and 8 months in high water years. BLM, the Colville, Washington SHPO, and American Whitewater recommend an investigation into options for providing river flows over Enloe dam and the subsequent Similkameen Falls for aesthetic purposes, the incorporation of aesthetic flows into the Aesthetic Management Plan, and a survey of recreational users regarding aesthetic flow releases. Specifically, the parties request a study to assess the effects of dewatering the spillway and rocky area below the dam, including alternatives that would spill water over the dam all year long.

Okanogan PUD states that Similkameen River fisheries managers have expressed serious concern that aesthetic flows could increase temperature below the falls. For this reason, the minimum flows would be monitored for both DO and temperatures. Additionally, Okanogan PUD proposes to address issues with the minimum flow through an adaptive management plan.

Our Analysis

In consultation with BLM, Okanogan PUD conducted visual resources analysis of the Enloe Project area using the VRM methodology outlined above and determined that the characteristics of the area fell within the Class IV management class. In addition, Okanogan PUD provided aesthetic simulations showing the views of project area from various KOPs.

The lowest minimum monthly average flow of 191 cfs occurred on September 2003. The proposed minimum flow of 10 cfs (for the last 15 days of the month) is only 5 percent of the 79 year record (see table 2) and is less aesthetically desirable. However, any minimum flow must meet the water quality standards. The 10-cfs flow (with seasonal adjustment to 30 cfs) would meet water quality standards based on Okanogan PUD's best estimate of the bypassed reach dimensions and modeling of the temperature gained in the bypassed reach (see section 3.3.2.2, *Minimum Flow Proposal*).

While several assumptions were made in the modeling and size estimate of the bypass section, this is a proposed minimum flow and is subject to change based on real-world results. Additionally, the method of delivery of the minimum flow is undetermined at this time. As such, it is difficult to ascertain the full effects of the minimum flow on water quality and the aesthetic resources, namely the falls. However, the measure, along with an evaluation to determine effectiveness, should adequately provide a means for testing the proposals' effect on aesthetics and water quality while still providing a framework for making improvements, if needed. Observing recreation use at the falls as a part of the recreation monitoring plan would provide more information on if visitors to the project are visiting the falls as well.

Noise

Proposed construction activities at the Enloe project would cause unnatural noises. Okanogan PUD has taken steps to reduce the impacts of such noise, particularly with its Blasting Plan. It also proposes to concentrate construction activities with the loudest noise to occur in summer and early fall to minimize effects on overwintering birds and bald eagles as much as possible.

Once the project is complete, minor noise would be associated with the operation and maintenance of the hydroelectric facility (typically 54–68 decibels ten to sixty feet from the powerhouse, depending upon the design structure and topography), but it is not anticipated that routine project operations and maintenance would disturb wildlife or visitors in the project area.

Our Analysis

Although proposed construction activities would cause unnatural noises at the project, construction-related noise is considered a temporary and short-term effect. Constructing the project in the summer and early fall would reduce the effect on overwintering birds and bald eagles and other wildlife. Moreover, visitors would only be allowed limited public access to the project during construction as proposed in the Safety during Construction Plan. This would increase the distance between the public and construction activities at the project and further minimize the amount of construction-related noise visitors may hear when visiting the project.

3.3.8 Cultural Resources

3.3.8.1 Affected Environment

Section 106 of the National Historic Preservation Act

Section 106 of NHPA, as amended, requires the Commission to take into account the effects of licensing a hydropower project on any historic properties and allow the Advisory Council on Historic Preservation a reasonable opportunity to comment if any adverse effects on historic properties are identified within the hydropower project's APE.

Historic properties are defined as any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. In this EA, we also use the term "cultural resources" to include properties that have not been evaluated for eligibility for listing in the National Register. In most cases, cultural resources less than 50 years old are not considered eligible for the National Register.

Section 106 also requires that the Commission seek concurrence with the Washington SHPO on any finding involving effects or no effects on historic properties. If Native American (i.e., aboriginal) properties have been identified, section 106 also requires that the Commission consult with interested Native American tribes that might attach religious or cultural significance to such properties.

Area of Potential Effect (APE)

Pursuant to section 106, the Commission must take into account whether any historic property could be affected by the issuance of a license within a project's APE. The APE is determined in consultation with the Washington SHPO and is defined as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. In its license application, Okanogan PUD (2008a) defined an APE as consisting of all lands within the Enloe Project boundary, described as the 1,055-foot above mean sea level elevation line that extends from the upstream end of Shanker's Bend, to approximately 1,000 feet downstream from Enloe dam. The APE includes the dam, penstocks, powerhouse, recreational sites, access roads, and appurtenant facilities. The APE for historic resources (buildings and structures) extends beyond the

project boundary to include an additional 100 feet (horizontally) where project operations may affect the character or use of historical resources and/or TCPs. Okanogan PUD included in its license application a letter dated July 24, 2009, from the Washington SHPO office which concurred with the APE.

In November 2008, Okanogan PUD requested Washington SHPO concurrence on an amended APE that consisted of the APE as described above, and also included an additional access road. Okanogan PUD's May 2009 HPMP identifies the APE as such, but also includes a limited number of power transmission lines that connect to a single utility pole.

On October 14, 2009, the Commission requested clarification of Okanogan PUD's response to additional information Item 11, side channel enhancement development. The Commission requested a map to clearly identify the proposed side channel's location in relationship to the project's defined APE and requested that the Okanogan PUD consult with the Washington SHPO regarding the side-channel enhancement site. Okanogan PUD filed its response on December 14, 2009. In its clarification response, PUD provided a copy of meeting minutes from a November 30, 2009, CRWG meeting. At the meeting, the possibility of two separate APEs was discussed: one consisting of the proposed project APE and another APE encompassing lands to be affected by the proposed side-channel enhancement site (side-channel APE). The CRWG agreed that two separate APEs for the Enloe Project would be appropriate and should be identified in the PA and associated HPMP. On September 23, 2010, Okanogan PUD requested Washington SHPO's concurrence on the side-channel APE. On September 28, 2010, the Washington SHPO concurred.

Prehistoric and Historic Background

The following text is a summary of the cultural overview provided in the May 2009 HPMP (Okanogan PUD, 2009e).

The Northern Columbia Plateau lies primarily within the Fraser Watershed, with a portion in the south draining into the Columbia River Watershed. It is an area that was occupied primarily by Interior Salish speakers who are now represented by the Colville. Colonizing groups were likely coastal people with a generalized Paleolithic foraging economy that spanned a much larger geographic area. Middle Holocene and later peoples followed a generally riverine subsistence economy typical of the large western river systems, including a collector strategy that was centered on ungulates and salmon and the gathering and storage of root crops. As a result of resource pressures, Plateau peoples tended to follow an annual round that led them to move to locations of stable, predictable resources on somewhat the same schedule every year. Changes to that schedule, such as moving from winter villages earlier in spring than usual, or leaving a common fishing location earlier, were generally due to variations in the productivity of the resource that existed that year. Several different regional cultural chronologies commonly employed for the region reflect prehistoric occupation to approximately 12,500 years before present.

At the time of contact, the Okanogan people occupied the portion of the Central Plateau region that includes the study area. The political structure of the people of the Central Plateau region consisted of small autonomous bands or villages. Bands were organized in small groups according to language, customs, and friendly relations, with group leaders generally inheriting their position. The seasonal round that groups made was based on the availability of salmon, berries, roots, and large game. Winter villages typically consisted of a long house covered with a tule-mat roof, one or more subterranean houses, and a sweat lodge. Villages were located near water and firewood. Near the project area, the falls, the location of Enloe dam, was a likely fishing site throughout the Holocene. If necessary, individuals would hunt deer, bear, or other game to supplement their winter food supplies.

In April, the members of the winter village moved to streams where they would catch trout and suckers, which were dried and eaten until the salmon runs began in June. Women gathered bitterroot and camas. From June to October, salmon fishing was a primary focus of subsistence activities with the continuation of gathering of berries and roots near rivers. The salmon were caught with spears, weirs, fish traps, large nets, and dipnets. They were dried on racks erected near the fishing camps.

Early Euroamerican presence in the Okanogan Valley was driven by economic interest in locating fur trading posts and establishing relations with local tribes. In 1811, the Canadian Northwest Company fur trader David Thompson was the first Euroamerican to travel to the Okanogan County seeking new trading opportunities. In fall 1811, the Pacific Fur Company established Fort Okanogan 1 mile north of the confluence of the Okanogan and Columbia rivers. By the late 1820s, nearby Fort Colville became the center for inland trading. By 1860, plagues caused a decline in the Native American population and the depletion of fur resources, which led to the decline of the fur industry in the Okanogan region.

Christian missionaries arrived in to the Northwest in the 1840s and contributed to the permanent Euroamerican settlement of the Northwest. The Whitman mission was established in 1841 south of the Okanogan region in Walla Walla, while Father Pierre Jean de Smet, who traveled widely, came to the Okanogan Valley in 1842. It was not until 1885 that missionary Etienne de Rouge established a mission for the Okanogan Indians at Ellisforde. Two years later, the mission was moved south to Lake Omak.

On May 3, 1853, Washington Territory was created out of the Oregon Territory. During this period, Territorial Governor Isaac Stevens negotiated treaties with local tribes. The treaties defined boundaries of ceded territories and removed Indian tribes to reservations, thereby opening lands for American settlement. Between 1855 and 1856 hostilities broke out between tribes and Euroamericans erupting into the Yakima War.

Another point of conflict for local tribes was the growing mining activity that had an impact on salmon spawning streams, brought an influx of Euroamericans to the Okanogan Valley, and further altered the local economy and development patterns. Miners formed temporary settlements in places with convenient access to supplies and the gold fields. One such encampment near the mouth of the Similkameen River following a gold strike at Shanker's Bend in 1859 was called "Okanagan City" and in 1860 had a population of 3,000.

Transportation in the area advanced from stage coaches following the Okanogan Trail to steamboats along the Columbia and Okanogan rivers during high water season. By the early 1900s, the Marcus Division Molson-Chopaka branch of the Great Northern Railway line was constructed along the Similkameen River offering improved access to the mineral of the area. The lead and zinc mining town of Nighthawk, just west of the project, was founded in the 1890s. The community once occupied 160 acres. Today, it is privately owned by a rancher, and several historical buildings remain standing, including the old post office and hotel dating to the mining era.

A USGS map from 1906 and county atlas from 1934 show additional roads

and trails in the vicinity of the APE (Metzger, 1934, as cited by Okanogan PUD, 2009e). The 1934 map also shows an irrigation canal between the Similkameen River and the Oroville-Tonasket Road to the east.

In 1955, the U.S. Bureau of Reclamation (Reclamation) began investigating the feasibility of establishing irrigation facilities for an Okanogan-Similkameen Division, using water from the nearby Chief Joseph Dam. The Oroville-Tonasket Unit of the Okanogan-Similkameen Division was authorized by the Act of October 9, 1962 (76 Stat. 761, Public Law 87–762), placed under construction in 1965, and completed in 1969 (Reclamation, 2007, as cited by Okanogan PUD, 2009e). Remnants of this later partially concrete-lined canal are within the project boundary APE.

The power potential of the falls site attracted the interest of Eugene Enloe, the owner of a store in Medicine Lake, who began buying small power companies in eastern Washington. In 1913, he incorporated the Okanogan Valley Power Company. By 1916, Okanogan Valley Power had also acquired the falls site including all the power generating equipment used at the original power plant. Use of the Great Northern Railway allowed for the delivery of construction materials for the powerhouse and dam. Designs for the new powerhouse were developed in 1916, and construction of the concrete arch-gravity Enloe dam began in 1919 and was completed in the summer of 1920.

Reflective of the move toward small utilities becoming part of a unified system, the Washington Water Power Company bought Okanogan Valley Power in 1923. Washington Water Power Company added a second unit of 1,600 kilowatts to the Enloe plant in 1924. Washington Water Power Company operated the complex until 1942 when it was acquired by Okanogan PUD. It became economically inefficient to operate the small complex after 1958, when the Bonneville Power Administration brought its high voltage line to the Okanogan Valley. Okanogan PUD ceased operation of the plant's generators on July 29, 1958.

According to a record search undertaken by Okanogan PUD, several cultural resources studies have been undertaken in the vicinity of the project boundary APE (Okanogan PUD, 2009e). The Corps conducted a cultural resources study between 1985 and 1987 (Salo, 1987, as cited by Okanogan PUD, 2009e). Within the APE in the vicinity of the project boundary, the Corps study identified five archaeological sites: 45OK367, 45OK532, 45OK533, 45OK565, and 45OK566.

Another study within the APE was conducted for a previous Enloe Project licensing effort (Galm, 1991, as cited by Okanogan PUD, 2009e). This previous effort identified the potential of adverse effects on the National Register-eligible Enloe dam and archaeological sites 45OK532, 45OK533, 45OK565, and 45OK566 (Okanogan PUD, 2009e). It was noted that licensing the project could result in adverse effects on unidentified TCPs.

A later study conducted by Archaeological and Historical Services (AHS) included test excavations at 45OK367, 45OK532, and 45OK566 (Boreson, 1992, as cited by Okanogan PUD, 2009e). AHS determined that both 45OK532 and 45OK566 were National Register-eligible under Criterion D.[39] AHS did not conduct archaeological investigations of sites 45OK533 and 45OK565.

A record search undertaken of the side channel APE identified six archaeological sites documented within one mile of the side channel APE: 45OK355, 45OK357, 45OK358, 45OK359, 45OK369, and 45OK370 (Okanogan PUD, 2009f). All of the sites were recorded in 1976 by the Corps. No archaeological, historic, or architectural resources had been previously identified within the boundary of the side channel APE. A dike constructed in the early 1970s is located in this APE, but according to Okanogan PUD, this feature does not meet the 50-year age requirement for National Register eligibility (Okanogan PUD, 2009f).

Archaeological and Historic-Era Properties and Structures

Between 2006 and 2007, Okanogan PUD conducted cultural resources inventories of lands within the project boundary APE. These results of these studies were presented in *Enloe Dam Licensing Project, Okanogan County, Washington, FINAL Cultural Resources Section 106 Technical Report* (Okanogan PUD, 2008b). These studies resulted in the documentation of eight archaeological sites and six historical features or structures within the APE. Two additional sites were identified directly adjacent to the project boundary APE. Table 18 provides a summary of all prehistoric and historic resources identified within or adjacent to the project boundary APE to date. A cultural resources study of the side channel APE conducted in October 2009 did not result in the documentation of any archeological or historic-era properties within this area.

TABLE 18—ARCHAEOLOGICAL AND HISTORIC RESOURCES WITHIN OR DIRECTLY ADJACENT TO THE ENLOE PROJECT BOUNDARY APE

[Source: Okanogan PUD, 2009e, as modified by Staff]

Primary No.	Description	National Register eligibility and rationale	Within APE
45OK367	Prehistoric occupation debris	Not eligible due to lack of integrity	Y
45OK368	Enloe dam	Listed on the National Register; eligible under Criterion A.[40]	Y
45OK368	Enloe powerhouse	Listed on the National Register; eligible under Criterion A	Y
45OK532	Lithic debris	Eligible under Criterion D	Y
45OK533H	Historic homestead	Not eligible; does not meet National Register criteria	Y
45OK565	Prehistoric site	Unknown; consultant could not relocate site	Y
45OK566	Lithic scatter	Eligible under Criterion D	Y
45OK1238 (AR–1)	Gensey homestead site	Unevaluated (outside of APE)	N
45OK1239 (AR–4)	Similkameen Falls powerhouse	Not eligible due to lack of integrity	Y
45OK1240 (AR–5)	Railroad camp	Unevaluated (outside of APE)	N
45OK1241 (AR–6)	Historic roads	Not eligible; does not meet National Register criteria	Y
45OK1265 (AR–4)	Historic can dump	Not eligible; does not meet National Register criteria	Y

[39] Criterion D is as follows, "that have yielded, or may be likely to yield, information important in prehistory or history." 36 CFR 60.4.

[40] Criterion A is as follows, "that are associated with events that have made a significant contribution to the broad patterns of our history." 36 CFR 60.4.

TABLE 18—ARCHAEOLOGICAL AND HISTORIC RESOURCES WITHIN OR DIRECTLY ADJACENT TO THE ENLOE PROJECT BOUNDARY APE—Continued

[Source: Okanogan PUD, 2009e, as modified by Staff]

Primary No.	Description	National Register eligibility and rationale	Within APE
HR–1	Great Northern Railroad Grade	Eligible under Criterion A (June 19, 2007)	Y
HR–2	Access road to operator's house	Not eligible; does not meet National Register criteria	Y
HR–3	Pump house and water tank	Not eligible; does not meet National Register criteria; integrity compromised.	Y
HR–4	Oroville-Tonasket Irrigation Canal	Portion within the APE not eligible; does not meet National Register criteria, integrity compromised.	Y

In June 2007, the Washington SHPO concurred that resources 45OK368 (Enloe dam, Enloe powerhouse and penstock), and HR–1 (Great Northern Railroad Grade) are eligible for or listed in the National Register and that resources HR–2 (access road to operator's house at Enloe dam) and HR–3 (pump house and water tank) are not eligible (letter from G. Griffith, Deputy State Historic Preservation Officer, Washington Department of Archaeology and Historic Preservation, Olympia, Washington, to K. Demuth, ENTRIX, Inc., Seattle, Washington, June 19, 2007). In its letter, the Washington SHPO also concurred that the portion of HR–4 (Oroville-Tonasket Irrigation Canal) located within the APE does not contribute to the potential significance of other portions of the canal that were previously determined to be eligible. However, the Washington SHPO recommends that the system be re-evaluated for National Register eligibility 5 to 10 hence. The HPMP notes that both the historic Enloe dam and powerhouse have been documented according to HAER standards (Holstine and Eminger 1990, as cited by Entrix 2009).

In September 2008, the Washington SHPO concurred that sites 45OK532 and 45OK566 are eligible for the National Register and that sites 45OK367, 45OK533H, 45OK1239, 45OK1241, and 45OK1265 are not eligible (letter from R. Whitlam, State Archaeologist, Washington Department of Archaeology and Historic Preservation, Olympia, Washington, to R. Bailey, District Archaeologist, Spokane District Office, BLM, Spokane Valley, Washington, September 23, 2008).

Traditional Cultural Properties

In 2006, Okanogan PUD consulted with the Colville to identify potential TCPs that could be present within the project APE. A final TCP report was included as an appendix to the *Enloe Dam Licensing Project, Okanogan County, Washington, Final Cultural Resources Section 106 Technical Report* (Okanogan PUD, 2008b). Within the APE, two potential TCPs were identified.

3.3.8.2 Environmental Effects

In a letter filed August 6, 2009, the Washington SHPO concurred that the proposed Enloe Project would have an adverse effect on significant cultural resources listed in, or determined eligible for listing in, the National Register. In view of the adverse effect determination, the Washington SHPO recommended development of a Memorandum of Agreement or PA.

In this section, we evaluate the effects of Okanogan PUD's proposed project construction, operation, and maintenance on the following cultural resources: (1) Archaeological resources; (2) TCPs; and (3) historic buildings and structures.

Project Construction

In its HPMP and section 106 Technical Report, Okanogan PUD states that construction activities would adversely affect one archaeological site located within the project boundary APE: Archaeological site 45OK532, which is eligible for the National Register under Criterion D (Okanogan PUD, 2009e, 2008b). The access road needed for project construction site would use the existing OTID Ditch Road that crosses site 45OK532. During construction, Okanogan PUD proposes to improve this road to a one-lane gravel road with turnouts. As discussed below, changes in chemical characteristics (including pH) of soils and increases in soil moisture content due to ground-disturbing activities can affect the preservation of site 45OK532.

Proposed ground-disturbing construction (parking area, trails, fencing) would occur in the vicinity of site 45OK367. However, this site has been determined ineligible for the National Register due to disturbance of the prehistoric archaeological deposits during the historic period. The remaining sites are either ineligible for the National Register, eligible (45OK566), or unevaluated (45OK565); however, they are not located where ground disturbance may occur. Okanogan PUD also concluded that any demolition of the historic Enloe powerhouse is unlikely to affect historically significant archaeological resources (Okanogan PUD, 2009e).

In its Section 106 Technical Report, Okanogan PUD (2008b) states that short-term effects on TCPs identified in the project boundary APE, such as noise, dust, vibrations, and access restrictions, would not be adverse. However, construction of the new powerhouse would have an adverse visual effect on one of the two TCPs identified within the project APE.

National Register-eligible Great Northern Railroad Grade (HR–1) and National Register-listed Enloe dam (45OK368) and historic Enloe powerhouse (45OK368) are historically significant resources. The Enloe powerhouse and Great Northern Railroad Grade, both of which are abandoned, are located across the river from the proposed construction site; therefore, Okanogan PUD states that project construction would not result in long-term effects on the Great Northern Railroad Grade (Okanogan PUD, 2009e, 2008b). Long-term effects on the historic Enloe powerhouse are discussed under *Operation and Maintenance Effects* below.

The historic Enloe dam would need to be refurbished to meet current dam safety requirements and to extend its service life. Okanogan PUD states that activities associated with refurbishment would not contribute to the extended life of the structure. These effects would therefore not be considered adverse if they are completed according to the Secretary of the Interior's *Standards for Rehabilitation* (Okanogan PUD, 2009e, 2008b).

Other project-related construction would entail an approximate 2.3-acre staging area near the proposed new powerhouse site and areas potentially affected by spoil disposal. At this time, effects on cultural resources that may be

associated with these areas are unknown. The HPMP, however, includes a provision for the discovery of previously unidentified cultural resources, which would ensure that the resource is addressed in accordance with section 106.

Project Operation and Maintenance

In its HPMP, Okanogan PUD states that operation of the proposed Enloe Project would not adversely affect National Register-eligible archaeological site 45OK566 and that effects on site 45OK565 have not been assessed because the site could not be relocated during project surveys (Okanogan PUD, 2009e). However, because prehistoric site 45OK532 is buried within an alluvial terrace adjacent to the reservoir's edge, Okanogan PUD explains that fluctuating water levels in the reservoir could potentially disturb archaeological deposits at this site. Additionally, the access road passing through this site may result in disturbance of archaeological deposits as a result of maintenance activities and increased traffic. Okanogan PUD therefore concludes that effects on this site are adverse.

Prehistoric site 45OK566 is situated on a terrace outcrop above the river, limiting the potential of project-related erosion effects at this historically significant site. Okanogan PUD therefore states that there would be no operational adverse effects to this site (Okanogan PUD, 2009e).

Okanogan PUD states that proposed recreation improvements could increase public use of the project area resulting in the potential of increased site disturbance by recreationalists (Okanogan PUD, 2009e, 2008b). However, revegetating disturbed areas with native vegetation, as discussed in section 3.3.6, *Recreation and Land Use,* could minimize project-related erosion effects at the sites. Additionally, consultation with the CRWG, including the Washington SHPO and the tribe, regarding project-related recreation improvements, would protect the sites through placement of the facilities.

In its HPMP, Okanogan PUD states that operational effects on the historic Enloe dam would not be adverse (Okanogan PUD, 2009e). Also, Okanogan PUD states that proposed construction of a new powerhouse on the east side of the river would not adversely affect the historic Enloe powerhouse. However, per the HPMP, the powerhouse would either assume new ownership with portions demolished, or it would be entirely demolished. In either case, any demolition of the historic Enloe powerhouse would result in an adverse effect on a historic property. Additionally, because of the powerhouse's proximity to a known TCP, there is a possibility intact archaeological resources could be uncovered during demolition activities. In its HPMP, Okanogan PUD proposes to monitor this area during ground disturbance.

Further, demolition of part or all of the historic powerhouse would require the transportation of equipment and supplies along the existing National Register-eligible Great Northern Railroad Grade, which serves as an access road to the Enloe powerhouse. However, Okanogan PUD states that the use of heavy equipment and hauling of refuse along the railroad grade would not damage the grade, including elements to its existing railroad grade surface or tunnel, which are located outside the APE (Okanogan PUD, 2009e, 2008b). Okanogan PUD therefore concludes that there would be no adverse effect to the railroad grade as a result of the project.

Historic Properties Management Plan

The HPMP was prepared after consultation with the CRWG, consisting of representatives from Okanogan PUD; BLM; Forest Service; Washington SHPO; the Colville; and the Commission staff. In its HPMP, Okanogan PUD proposes to appoint an HPMP Coordinator and implement review procedures that would apply to non-routine maintenance activities, structural modifications or additions that may be necessary in the future. Additionally, the HPMP includes measures and procedures for: (1) Monitoring during construction activities and over the license term; (2) addressing unanticipated discoveries and evaluating cultural resources for National Register-eligibility; (3) discovery of human remains; (4) emergency undertakings; (5) annual reporting and agency coordination; (6) periodic review and revision to the HPMP every 5 years; (7) employee training; (8) records management and curation of any recovered archaeological materials; and (9) activities exempt from section 106 consultation. The HPMP includes a process for identifying resource-specific measures for historic properties within the APE after consultation with the CRWG.

The HPMP describes standards to be applied during project activities that have the potential to affect the historic integrity of the historic Enloe dam. Okanogan PUD would apply specific standards adapted from the Secretary of the Interior's *Standards for Historic Preservation Projects* to ensure preservation of the dam. Additionally, the HPMP includes historic resource maintenance guidelines that would guide future dam maintenance.

In its license application, Okanogan PUD proposes to implement four measures to address project effects on significant historic structures (HIST–01, HIST–02, HIST–03, and HIST–04). Additionally, Okanogan PUD proposes five measures for archaeological resources (ARCH–01, ARCH–02, ARCH–03, ARCH–04, and ARCH–05). Of the nine measures, all but two of these measures were subsequently incorporated into the May 2009 HPMP. HIST–04 would entail a review of appropriate measures, and although the HPMP does not specifically identify measure ARCH–05 (Determine Potential Recreational Impacts to Archaeological Sites) by name, the HPMP discusses measures to address potential recreational effects on cultural resources. The HPMP discusses the other measures and describes how Okanogan PUD is seeking an outside entity to assume ownership of the historic Enloe powerhouse (HIST–01). If a new owner is not identified within 4 years, Okanogan PUD would consult with the CRWG, which includes the Commission, to identify appropriate mitigation options prior to demolishing the structure (HIST–02), which may include updated HAER photography, stabilization of a portion of the powerhouse as a "ruin," development of interpretive materials for display in the project boundary (HIST–03), offering bricks, windows and other materials for salvage, providing turbines and other equipment from the powerhouse for use in local museums, and developing an interpretive facility that houses artifacts from the powerhouse and Enloe dam. If demolition is determined necessary, a Memorandum of Agreement between the Commission and the Washington SHPO would be developed that could identify agreed-upon mitigation measures. The powerhouse penstocks and surge tanks would be demolished regardless of whether a new owner would be identified. To mitigate adverse effects on these features, Okanogan PUD would photograph the powerhouse, penstocks, and surge tanks to HAER standards prior to their demolition.

In its HPMP, Okanogan PUD proposes to monitor shoreline areas for erosion as a result of reservoir fluctuation (ARCH–01), avoid known historic properties during construction (ARCH–02), and monitor sites 45OK532 and 45OK367 during construction activities (ARCH–03). If removal of the historic Enloe powerhouse becomes necessary,

Okanogan PUD proposes to mitigate potential effects on an identified TCP by monitoring any ground-disturbing activity in the vicinity of the site during demolition. Other treatment options for site 45OK532 include capping the portions of site that would be crossed by the improved access road with gravel and/or dirt rather than re-grading the existing road and placing road turnouts and shoulders outside of the site boundary. However, in Appendix E of the HPMP, Okanogan PUD states that data recovery of site 45OK532 prior to construction may be necessary. Although site 45OK367 is not eligible for the National Register, Okanogan PUD would monitor it during construction in the event that intact deposits might be identified. To protect both of these sites from recreational use, Okanogan PUD proposes to implement a long-term monitoring program. If any changes to site conditions are identified, Okanogan PUD would implement a review procedure with the CRWG to determine appropriate next steps. Additionally, Okanogan PUD's annual report would summarize monitoring efforts and CRWG consultation. Other measures include implementing an inadvertent discovery program and training staff about protocols for such discoveries (ARCH–04) and determining if there would be effects on archaeological sites in the vicinity of recreational facilities (ARCH–05).

Interior recommends revising the May 2009 HPMP, after consultation with BLM, the Washington SHPO, and the Colville, to include the following:

- Revise the APE to accommodate modifications to the Enloe Project boundary, if any, and any project-related actions that may affect historic properties on BLM-administered lands;
- A process for evaluating any previously unidentified cultural resources identified on BLM-administered lands;
- Provision for annual reports describing activities involving BLM-administered cultural resources;
- Periodic review of the HPMP;
- Site monitoring program for long-term cultural resource monitoring on BLM-administered lands;
- A process for developing site-specific treatment or stabilization measures for previously unidentified historic properties on BLM-administered lands;
- A plan for updated cultural resources inventory to be conducted if the project boundary is modified to include additional land or project operations result in newly exposed, previously un-surveyed lands;
- Provision for consultation with regard to cultural interpretative and educational plans (including signage);
- Provision for making records of cultural resource data gathered by Okanogan PUD on BLM-administered lands available to the BLM; and
- Provision for inadvertent discoveries.

In its response, Okanogan PUD states that the May 2009 HPMP provides procedures for the majority of the issues raised by Interior and that, as provided for in the HPMP, Okanogan PUD would review the HPMP within 1 year of license issuance to address any concerns raised by the CRWG, including by Interior.

As previously mentioned, the Washington SHPO concurred that a portion of the Oroville-Tonasket Irrigation Canal within the project's defined APE is considered "non-contributing" to other portions of the system that have previously been determined National Register eligible. However, the Washington SHPO recommends that the system be re-evaluated for National Register eligibility 5 to 10 years hence.

Our Analysis

Okanogan PUD's May 2009 HPMP addresses many of Interior's recommendations and contains measures for the protection of historic properties within the defined Enloe Project APE. However, we discuss particular measures contained within the HPMP, and where appropriate, Interior's recommendations.

The two APEs defined for the Enloe Project encompass all areas related to, or necessary for, the construction, operation, and maintenance of the entire proposed project. However, the May 2009 HPMP does not identify or discuss the side-channel enhancement site, including its defined APE. While no historic properties have been identified in this area, we find that inclusion of the side-channel enhancement site and a definition of its APE in the HPMP would ensure that measures applied to lands within the project boundary would also apply to lands within the side-channel enhancement site APE. Additionally, as recommended by Interior, the HPMP should include a process for reviewing and revising the APE, particularly where project-related ground-disturbing activities may occur in the future. In particular, this provision would ensure that any design modification to the proposed side-channel enhancement site would be taken into account.

Okanogan PUD's proposal to appoint an HPMP Coordinator would ensure that the requirements of the HPMP are followed. Annual reporting to agencies and the Colville on the status of cultural resources management over the course of the year would provide a regularly scheduled forum for parties to discuss the HPMP and provide comments. A periodic review process for the HPMP undertaken every 5 years would provide a basis for continued implementation of the HPMP. Interior recommended that the May 2009 HPMP be revised within 1 year of license issuance to address its recommendations. Interior's recommended timeframe should allow Okanogan PUD sufficient time to consult with Interior and the CRWG in order to revise the HPMP accordingly.

Okanogan PUD's proposal to conduct training sessions as needed for staff involved with the public or involved in planning and implementation of actions potentially affecting cultural resources at the project would ensure that employees are regularly informed about issues, procedures, and protocols regarding cultural resource. Consulting with the Colville with regard to Okanogan PUD employee training would contribute toward staff understanding properties of traditional religious and cultural importance to the tribe.

Okanogan PUD's implementation of review procedures during the planning of potential ground-disturbing activities, as well as protocols for inadvertent discovery of previously unknown cultural resources (as recommended by Interior), human remains, and emergency procedures as specified in its HPMP, would ensure that cultural resources are not inadvertently affected by project-related actions; and, therefore cultural resources and human remains would be appropriately addressed.

While the May 2009 HPMP does not specifically contain a detailed discussion of public interpretation and education, HIST–03 includes a provision for installing public interpretive panels. Okanogan PUD's proposed measures REC–11 and REC–12 also provide for installing interpretive signs and an information board that would focus on the history of hydroelectric power, the falls, and the fishery resources. Including a provision in the HPMP to coordinate public information on archaeological and historic resources at the project with REC–11 and REC–12 interpretive signage could lead to an enhanced visitor experience and encourage protection of environmental and cultural resources.

Okanogan PUD proposes to: (1) Maintain records relating to cultural resources located within the APE; (2)

ensure confidentiality of these records; (3) provide any recovered cultural materials to BLM for inclusion in its repository; and (4) consider donating historic materials recovered from the historic Enloe powerhouse to the Okanogan Historical Society or another group. This proposal would address Interior's recommendation regarding the collection of cultural resource materials and would ensure that such materials are properly conserved and also accessible, under properly controlled conditions, to those with appropriate research or cultural interests.

Okanogan PUD's proposal to implement a long-term monitoring program at all sites within the project boundary APE would help determine if any observed effects are project-related. This would enable Okanogan PUD to determine the need for and frequency of future monitoring. It would also assist in the development of appropriate treatment measures if disturbances are identified as being related to project-related activities. As recommended by Interior, including a provision in the HPMP to develop a more detailed monitoring plan would ensure that monitoring is undertaken and in a way that documents and quantifies resulting data for consideration. This measure could also apply to the side channel enhancement site.

Okanogan PUD determined that erosion has the potential to adversely affect site 45OK532 and that the site would also be adversely affected by road construction. In its HPMP, Okanogan PUD discusses the possibility of capping the site to protect it from road construction activities and use. A 1992 study by the Corps (Mathewson *et al.,* 1992) found that burial of archaeological resources increases the vertical load on sites, causes changes in chemical characteristics (including pH) of soils, and increases the moisture content. These changes can affect the preservation of site components, particularly organic materials such as botanical and faunal remains. The Corps concluded that site burial "* * * should be used only when preservation of the site by burial is ensured." If the processes that result from burial are deemed to be detrimental to the site components, other preservation techniques should be considered (Mathewson *et al.,* 1992). While capping of site 45OK532 may be viewed as a protective measure, further consideration of this measure within the HPMP, particularly as it may relate to site preservation, would ensure that archaeological materials contained within the site are not inadvertently damaged over the long term.

Okanogan PUD identifies measure ARCH–05 (Determine Potential Recreational Impacts to Archaeological Sites) and states that it is "discussing the proposed recreation plan with the CRWG to determine if there would be impacts on archaeological sites in the vicinity of the recreation facilities" (Okanogan PUD, 2008a). Okanogan PUD further explains that the HPMP would specify necessary mitigation and treatment measures to protect prehistoric sites from recreational effects and that its staff would be provided with information about the potential for archaeological deposits to be found. While the HPMP includes employee training and a protocol for pre-project review, the HPMP does not specifically address measure ARCH–05 and it does not address proposed or future recreational improvements. Revision of the HPMP to specifically address recreational use and currently proposed or future project recreation sites would be consistent with ARCH–05 and would ensure that cultural sites are considered during recreation planning.

Also, Okanogan PUD explains in its May 2009 HPMP that because site 45OK566 is situated on a terrace outcrop above the river, the potential for project-related erosion at the site is limited. However, Okanogan PUD acknowledges that the site may also be affected by increased public use. The site sketch map contained within the site record depicts a foot path leading to the site; however, the HPMP concludes that there would be no adverse effects on site 45OK566 resulting from project operation. Absent information related to the assessment of effects at this site, it is uncertain how the determination of "no adverse effects" to this site was made. A discussion of this assessment within a revised HPMP and how it may related to measure ARCH–05 would provide clarification.

In its HPMP, Okanogan PUD acknowledges that modifications to Enloe dam would affect this historic structure, but recommends that, if undertaken in accordance with the Secretary of the Interior's *Standards for Rehabilitation,* effects would not be adverse. Implementation of Okanogan PUD's proposed guidance contained within the HPMP with respect to construction and maintenance standards would ensure that the qualities of this property that make it eligible for the National Register are not diminished over the license term. However, in its HPMP, Okanogan PUD states that HAER documentation of Enloe dam has been previously undertaken, but does not discuss the purpose of the Enloe dam HAER documentation nor does it provide evidence of Washington SHPO or Park Service acceptance of the documentation as a resolution of an adverse effect. Typically, HAER documentation is completed as mitigation of an adverse effect on a historic property. If HAER documentation was undertaken to resolve such effects, and agency concurrence has been received, additional measures may not be necessary. Including a discussion in a revised HPMP regarding the purpose of HAER documentation and agency consultation would provide clarification.

In section 4.2 of the HPMP, Okanogan PUD states that under this plan, the existing Enloe powerhouse would be demolished. However, in section 5.14 of the HPMP, Okanogan PUD explains that it is soliciting outside parties to assume ownership of the structure. Revision of the HPMP to correct and clarify Okanogan PUD's intent with regard to the powerhouse would be appropriate. Additionally, Appendix C of the HPMP states that the transfer, lease, or sale of property out of federal ownership without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance would be an adverse effect in accordance with the implementing regulations of the NHPA found at 36 CFR800.5(a)(2)(vii). Consequently, consultation with the CRWG regarding the resolution of adverse effects on the historic Enloe powerhouse prior to any transfer or demolition would ensure compliance with section 106.

Two TCPs have been identified within the project boundary APE. In its Section 106 Technical Report, Okanogan PUD (2008b) states that short-term effects on one of the identified TCPs would not be adverse and that construction of the new powerhouse would have an adverse visual effect. In its HPMP, Okanogan PUD also implies that there would be a potential adverse effect on this resource as a result of any demolition activities at the historic Enloe powerhouse. While Okanogan PUD does not propose any measures to mitigate visual effects on this TCP in its HPMP, it proposes to monitor this resource during any powerhouse demolition activities. Inclusion of measures within the HPMP to mitigate adverse visual effects and a requirement to consult with the Colville prior to initiating demolition activities, in addition to monitoring, would ensure that this resource is addressed in accordance with section 106.

3.3.9 Socioeconomics

3.3.9.1 Affected Environment

The City of Oroville is the nearest community, with an estimated population of 1,653 in 2000 (U.S. Bureau of the Census, 2009a). The U.S. Bureau of the Census reports that the top three industries in the City of Oroville in terms of employment were educational, health, and social services (18.2 percent); retail trade (17.1 percent); and agriculture, forestry, fishing and hunting, and mining (11.2 percent).

Table 19 presents population and other demographic data for the City of Oroville, Okanogan County, and for Washington from the U.S. Bureau of the Census.

TABLE 19—POPULATION CHARACTERISTICS OF THE CITY OF OROVILLE, OKANOGAN COUNTY, AND WASHINGTON

[Source: U.S. Bureau of the Census, 2009a,b]

	Population 2000	Population estimate 2008	Private nonfarm employment 2007	Median household income 2008	Persons below poverty level 2008 (percent)
City of Oroville	1,653	.....	.....	[a] $30,114	[a] 28.9
Okanogan County	39,564	40,033	8,718	37,900	19.6
Washington	5,894,143	6,549,224	[b] 2,501,684	58,081	11.3

[a] 1999 statistics.
[b] Includes data not distributed by county.

The U.S. Census Bureau reports that in 2000 there were approximately 7.5 persons per square mile in Okanogan County and 88.6 persons per square mile in Washington as a whole. Population increases between 2000 and 2008 have shown a slight 1.2 percent increase in Okanogan County (U.S. Bureau of the Census, 2009b). The very slow growth in Okanogan County can be accounted for by the remoteness of most of the county from population centers.

3.3.9.2 Environmental Effects

In terms of construction employment, Okanogan PUD estimates a small increase in engineering and construction management employment of 1 person or 0.4 full-time equivalents (FTE) in year one, ramping up to 3.5 FTE at the start of year two. It would peak at 4 FTE during that year, and then stabilize throughout year three at 3 FTE. Construction employment requirements begin at the start of year two, with 2.5 FTE, increasing to 46.5 FTE near the end of year two. Construction during year three would require 27 FTE at the start of the year, ramping down to 9 FTE by the end of the three-year construction phase.

The Enloe Project would have an unmanned power station. The increased human-hours associated with the operation and maintenance of the project would be 8,000 hours (or approximately 4 FTE) per year. However, due to the ability of current Okanogan PUD staff to accommodate these needs, there would be no long-term increase in on-site employment or payroll due to the operation of the project.

The Enloe Project would benefit the local economy by providing a reliable source of power and by providing recreational opportunities. Okanogan PUD did not propose any measures specifically associated with socioeconomic resources.

Our Analysis

Operation of the proposed project by Okanogan PUD would provide an economical source of power to the region, helping to support future economic growth. The additional spending associated with implementing various resource measures, such as the rehabilitation of degraded vegetation and the improvement of developed and dispersed recreation areas, would provide for some additional employment during the period of construction and monitoring.

3.4 No-Action Alternative

Under the no-action alternative, the Enloe Project would not be constructed. There would be no changes to the physical, biological, or cultural resources of the area and electrical generation from the project would not occur. The power that would have been developed from a renewable resource would have to be replaced from nonrenewable fuels.

4.0 Developmental Analysis

In this section, we look at the Enloe Project's use of the Similkameen River for hydropower purposes to see what effect various environmental measures would have on the project's costs and power generation. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.,*[41] the Commission compares the current project to an estimate of the cost of obtaining the same amount of energy and capacity using a likely alternative source of power for the region (cost of alternative power). In keeping with Commission policy as described in *Mead Corp.,* our economic analysis is based on current electric power cost conditions and does not consider future escalation of fuel prices in valuing the hydropower project's power benefits.[41]

For each of the licensing alternatives, our analysis includes an estimate of: (1) The cost of individual measures considered in the EA for the protection, mitigation and enhancement of environmental resources affected by the project; (2) the cost of alternative power; (3) the total project cost (i.e., for construction, operation, maintenance, and environmental measures); and (4) the difference between the cost of alternative power and total project cost. If the difference between the cost of alternative power and total project cost is positive, the project produces power for less than the cost of alternative power. If the difference between the cost of alternative power and total project cost is negative, the project produces power for more than the cost of alternative power. This estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license. However, project economics is only one of many public interest factors the Commission considers in determining whether, and under what conditions, to issue a license.

4.1 Power and Economic Benefits of the Project

Table 20 summarizes the assumptions and economic information we use in our analysis. This information was provided

[41] See *Mead Corporation, Publishing Paper Division,* 72 FERC ¶ 61,027 (July 13, 1995). In most cases, electricity from hydropower would displace some form of fossil-fueled generation, in which fuel cost is the largest component of the cost of electricity production.

by Okanogan PUD in its license application. We find that the values provided by Okanogan PUD are reasonable for the purposes of our analysis. Cost items common to all alternatives include: Taxes and insurance costs; net investment (the total investment in power plant facilities remaining to be depreciated); estimated future capital investment required to maintain and extend the life of plant equipment and facilities; relicensing costs; normal operation and maintenance cost; and Commission fees. We do not include, in our analysis, any measures with minimal, zero, or unknown costs.

TABLE 20—PARAMETERS FOR THE ECONOMIC ANALYSIS OF THE ENLOE HYDROELECTRIC PROJECT

[Source: Okanogan PUD, 2008a, as modified by Staff]

Parameter	Value
Period of analysis (years)	30
Initial construction cost, $[a]	28,887,550
Operation and maintenance of project, $/year[b]	894,470
Energy value ($/MWh)[c]	67.88
Capacity rate ($/kilowatt-year)[d]	157
Interest rate (%)[e]	4.5
Discount rate (%)[f]	4.5

Notes:
[a] License application, table D–1, adjusted to 2010 dollars.
[b] License application, table D–1, adjusted to 2010 dollars.
[c] License application, table D–4, total value divided by total average annual generation.
[d] Staff based on Energy Information Administration Annual Outlook for 2010. This value is based on the amortization and fixed operation and maintenance cost for a simple-cycle combustion turbine.
[e] License application, table D–2.

4.2 Comparison of Alternatives

Table 21 summarizes the installed capacity, annual generation, cost of alternative power, estimated total project cost, and difference between the cost of alternative power and total project cost for each of the alternatives considered in this EA: Okanogan PUD's proposal and the staff alternative.[42]

4.2.1 No-Action Alternative

Under the no-action alternative, the project would not be constructed as proposed. The dam is managed by the Okanogan PUD, but because there are no operational generating facilities, the project is not subject to a Commission license.

TABLE 21—SUMMARY OF ANNUAL COST OF ALTERNATIVE POWER AND ANNUAL PROJECT COST FOR THE ALTERNATIVES FOR THE ENLOE HYDROELECTRIC PROJECT

[Source: Staff]

	Okanogan PUD's Proposal	Staff Alternative
Installed capacity (MW)	9.0	9.0
Annual generation (MWh)	44,409	44,409
Dependable capacity (MW)	1.14	1.14
Annual cost of alternative power	$3,193,460	$3,193,460
($/MWh)	71.91	71.91
Annual project cost	$3,086,990	$3,109,540
($/MWh)	69.51	70.02
Difference between the cost of alternative power and project cost	$106,470	$83,920
($/MWh)	2.40	1.89

4.2.2 Okanogan PUD's Proposal

Okanogan PUD proposes to construct a new hydroelectric project using the existing Enloe dam. Okanogan PUD also proposes to implement numerous environmental measures, as presented in table 23, prior to initial construction, during construction, and after construction once the proposed project is operational. Under Okanogan PUD's proposal, the project would have an installed capacity of 9 MW, and generate an average of 44,409 MWh of electricity annually. The average annual cost of alternative power would be $3,193,460, or $71.91/MWh. The average annual project cost would be $3,086,990, or $69.51/MWh. Overall, the project would produce power at a cost that is $106,470, or $2.40/MWh, less than the cost of alternative power.

4.2.3 Staff Alternative

The staff alternative includes all of Okanogan PUD's proposed environmental measures except for its proposal to place boulder clusters in riffles or in plain-bed portions of the river and entrainment and resident fish monitoring. Additionally, staff made modifications and recommended additional measures. Table 22 shows the staff-recommended additions, deletions, and modifications to Okanogan PUD's proposed environmental protection and enhancement measures and the estimated cost of each. The staff alternative would have the same capacity and energy attributes as Okanogan PUD's proposal. Under the staff alternative, the average annual cost of alternative power would be

[42] There are no mandatory conditions filed at this time.

$3,193,460, or $71.91/MWh. The annual project cost would be $3,109,540, or $70.02/MWh. Overall, the project would produce power at a cost that is $83,920, or $1.89/MWh, less than the cost of alternative power.

4.3 Cost of Environmental Measures

Table 22 gives the cost of each of the environmental enhancement measures considered in our analysis. We convert all costs to equal annual (levelized) values over a 30-year period of analysis to give a uniform basis for comparing the benefits of a measure to its cost.

TABLE 22—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTING AND OPERATING THE PROPOSED ENLOE HYDROELECTRIC PROJECT

[Source: Staff]

Enhancement/Mitigation measures	Entity	Capital cost (2010$) [a]	Annual cost (2010$) ;[a]	Levelized annual cost (2010$)
Geology and Soils Resources				
1. Develop and implement an ESCP (WQ–06).	Okanogan PUD, Interior—10(j), NMFS—10(j), Staff	$21,510	$0	$1,460
2. Develop and implement a CSMP (WQ–08).	Okanogan PUD, Staff	80,660	0	5,460
3. Develop and implement a Spoil Disposal Plan.	Interior, Washington DOE, Staff	5,000 [b]	0	340
Water and Water Quality				
1. Monitor water temperatures at three locations for a period of 5 years (WQ–01).	Okanogan PUD, Interior—10(j), NMFS—10(j), Staff.	0	580	580
2. Provide aeration in the turbine draft tubes (WQ–03).	Okanogan PUD, NMFS—10(j), Staff	43,020	2,150	5,060
3. Monitor TDG and DO at the project intake and in the pool below the falls for a period of 5 years (WQ–04).	Okanogan PUD, Staff	26,890	7,000 for 1st 5 years.	3,850
4. Monitor DO at the project intake and in the pool below the falls for the term of license.	NMFS	0	7,000 for years 6–30.	5,500
5. Develop and file with the Commission, in consultation with the TRG, a water quality monitoring plan including: Selecting the monitoring locations; filing a report at the end of year 5 documenting the results of monitoring and recommendations for the need for continued monitoring development, and conducting water temperature, TDG, and DO monitoring for a period longer than 5 years if needed.	Staff	10,000 [b]	0	680
6. At project initiation, develop and implement the Spill Plan including a hazardous substance plan (WQ–07).	Okanogan PUD, NMFS—10(j), Staff	26,890	0	1,820
Aquatic Resources				
1. Implement a Blasting Plan and use BMPs (FISH–01).	Okanogan PUD, Staff	107,540	0	7,280
2. Place two boulder clusters in riffles or in flat sections of the river (FISH–02).	Okanogan PUD	64,520	0	4,370
3. Ensure that logs and other large woody debris can pass over the dam spillway during the annual flood and, if needed, transport some large woody debris around the dam and place it in the river downstream of the dam to provide fish habitat (FISH–03).	Okanogan PUD, Interior—10(j), Staff	0	4,300	4,300
4. Design and construct the intake trashracks with a 1-inch bar spacing (FISH–04).	Okanogan PUD, Staff	32,260	0	2,180

TABLE 22—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTING AND OPERATING THE PROPOSED ENLOE HYDROELECTRIC PROJECT—Continued

[Source: Staff]

Enhancement/Mitigation measures	Entity	Capital cost (2010$) [a]	Annual cost (2010$) ;[a]	Levelized annual cost (2010$)
5. Design, construct, and file detailed drawings of the intake fish screen with a schedule to build the facility before commercial operation starts.	Interior, Washington DFW	16–24M	0	1.1–1.6M
6. Monitor seasonal variation in entrainment susceptibility; observe trauma and mortality caused by entrainment, and monitor fish population distribution and abundance in the reservoir (FISH–05).	Okanogan PUD, Interior	107,540	0	7,280
7. Install tailrace barrier nets in the powerhouse draft tubes including annual inspection and maintenance (FISH–06).	Okanogan PUD, Interior—10(j), NMFS—10(j), Washington DFW—10(j), Staff.	26,510	5,380	7,180
8. File detailed design drawings of the conical net barrier at least 1 year before the start of land-disturbing or land-clearing activities.	Okanogan PUD, Interior—10(j), NMFS—10(j), Washington DFW—10(j), Staff.	2,000 [b]	0	140
9. Monitor tailrace barriers with video cameras (FISH–07).	Okanogan PUD, Interior—10(j), Staff	0	1,240	1,240
10. Develop and implement a written operation plan for the tailrace barriers.	Okanogan PUD, Interior—10(j), NMFS—10(j), Staff.	5,000 [b]	0	340
11. Develop and implement a postconstruction evaluation and monitoring plan for the tailrace barrier.	Okanogan PUD, Interior—10(j), NMFS—10(j), Staff.	10,000 [b]	0	680
12. Develop and implement an inspection and maintenance plan for the tailrace barrier.	Okanogan PUD, Interior—10(j), NMFS—10(j), Staff.	5,000 [b]	0	340
13. Develop a powerhouse operation plan to provide 48 hours of flow continuation in the event of emergency project shutdown.	Interior	5,000 [b]	0	340
14. Develop and implement a project operations and compliance monitoring plan.	Staff	10,000 [b]	0	680
15. Design and construct the tailrace to avoid effects on fish (FISH–09).	Okanogan PUD, Staff	120,450	0	8,150
16. Enhance an existing side channel (FISH–10).	Okanogan PUD, Interior—10(j), NMFS—10(j), Washington DFW—10(j), Staff.	397,510	3,310	30,210
17. Implement a gravel supplementation program (FISH–11).	Okanogan PUD, Interior—10(j), NMFS—10(j), Washington DFW—10(j), Staff.	0	11,950	11,950
18. File a Resident Fish Habitat Management Plan that includes provisions for WQ–01, FISH–05, BOTA–01, –02, –04, –05, to stock sterile triploid trout, and to implement a fish habitat monitoring plan.	Interior	5,000 [d]	50,000 [d]	50,340
19. File a Fisheries Enhancement Plan that includes provisions for FISH–10, FISH–11, and to stock sterile triploid trout.	Washington DFW	0	50,000 [d]	50,000
20. File a Fisheries Enhancement Plan that includes provisions for FISH–03, FISH–10, and FISH–11.	Interior	0 [d]	0 [d]	0 [d]
21. Develop a biological review process which includes provisions for establishing a TRG to provide ongoing refinement and measure effectiveness of environmental measures (FISH–12).	Okanogan PUD, Washington DFW, Staff.	16,130	10,750	11,840

TABLE 22—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTING AND OPERATING THE PROPOSED ENLOE HYDROELECTRIC PROJECT—Continued

[Source: Staff]

Enhancement/Mitigation measures	Entity	Capital cost (2010$) [a]	Annual cost (2010$) ;[a]	Levelized annual cost (2010$)
22. Develop a fisheries monitoring database for organizing and storing monitoring data related to aquatic resources for use by the TRG to monitor effectiveness of measures (FISH–13).	Okanogan PUD, Staff	48,390	0	3,280
23. Develop an adaptive management plan within 1 year of license issuance for the protection and mitigation of impacts to fish and wildlife resources.	Washington DFW	10,000 [b]	0	680
24. Conduct a paleolimnological study of historical anadromy above Enloe dam.	CRITFC	100,000 [b]	0	6,770
Minimum Flow Proposal				
1. Provide a minimum flow of 10 cfs year-round and 30 cfs from mid-July to mid-September, monitor temperature and DO, select an appropriate minimum flow release location, and make appropriate project modifications to provide minimum flow releases for the bypassed reach.	Okanogan PUD, Washington DFW, Washington DOE, Staff.	5,000 [b]	37,610 [b]	37,940
2. Determine appropriate thresholds for downramping rates after emergency shutdown immediately downstream of Enloe dam.	Okanogan PUD, Washington DFW, Washington DOE, Staff.	5,000 [b]	0	340
3. Establish minimum instream flows in the bypassed reach varying from 400 cfs to 3,400 cfs depending on the month.	American Rivers *et al.*	0	1,295,830 [b]	1,295,830
Terrestrial Resources				
1. Implement the Vegetation Plan, including goals, the species to be used, methods, and benchmarks of success for botanical resources (BOTA–01).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	32,260	0	2,180
2. Develop a Vegetation Resource Management Plan.	Interior—10(j), Washington DFW—10(j).	10,000 [b]	0	680
3. Develop a Wildlife Management Plan including planting native riparian trees, grasses, and shrubs.	Interior, Washington DFW	10,000 [b]	0	680
4. Plant riparian vegetation along the west and east banks of the reservoir shoreline (BOTA–02).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	32,260	0	2,180
5. Return existing shoreline road to natural conditions, eliminate the current interruption between the shoreline and upland habitat, relocate access road segment, and develop trail to provide recreation access to the river below the dam on the east bank (BOTA–03 and part of REC–13).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	376,390	1,450	26,920
6. Plant woody riparian species in the riparian area along the abandoned road corridor (BOTA–04).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	16,130	0	1,090
7. Plant woody riparian vegetation along the east and west banks of the reservoir downstream of Shanker's Bend (BOTA–05).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	21,510	0	1,460

TABLE 22—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTING AND OPERATING THE PROPOSED ENLOE HYDROELECTRIC PROJECT—Continued

[Source: Staff]

Enhancement/Mitigation measures	Entity	Capital cost (2010$) [a]	Annual cost (2010$) ;[a]	Levelized annual cost (2010$)
8. Install grazing control measures including fencing (BOTA–06).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	26,890	0	1,820
9. Monitor restored areas annually for 5 years and replant as necessary, and provide annual reports of the monitoring results (BOTA–07).	Okanogan PUD, Staff	16,130	2,900	3,990
10. Additional monitoring of restored areas.	Interior—10(j), Washington DFW—10(j).	100,000 [b]	0	6,770
11. Employ BMPs including measures such as flagging and temporarily fencing any wetland and riparian vegetation in the vicinity of the project, and limiting construction and maintenance-related disturbance of sensitive habitats to the extent possible (BOTA–08).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	2,690	0	180
12. Develop and implement an environmental training program (BOTA–09).	Okanogan PUD, Staff	5,380	0	360
13. Provide a biological monitor during construction (BOTA–10).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	77,430	0	5,240
14. Implement the Noxious Weed Control Program (BOTA–11).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	13,980	1,340	2,290
15. Survey disposal sites and control noxious weeds by implementing control measures prior to spoil disposal (BOTA–12).	Okanogan PUD, Staff	3,230	0	220
16. Hydroseed disposal sites using native upland species (BOTA–13).	Okanogan PUD, Staff	14,200	0	960
17. Conduct survey for Ute ladies'-tresses prior to, during, and postconstruction (BOTA–14) for 3 years.	Okanogan PUD	0	1,820	1,820
18. Develop an Ute ladies'-tresses plan after agencies consultation, and if present in project areas, develop plan to avoid or minimize effects.	Staff	10,000 [b]	0	680
19. Conduct survey for Ute ladies'-tresses within 1 year of license issuance, and every 5 years thereafter.	Interior—10(j), Washington DFW—10(j).	70,000 [b]	0	4,740
20. GIS mapping and development of a digital database for sensitive species, noxious weeds, and habitat restoration sites.	Interior	15,000 [b]	0	1,020
21. Place the project transmission line in location to reduce adverse effects of the line on raptors and other birds (WILD–01).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	540	0	40
22. Concentrate construction activities to occur in summer and early fall (WILD–02).	Okanogan PUD, Interior—10(j), Washington DFW—10(j), Staff.	134,430	0	9,100
23. Conduct pre-disposal site survey for wildlife and time clearing vegetation at spoil disposal sites (WILD–03).	Okanogan PUD, Staff	3,230	0	220
24. Install nest boxes for small birds in areas that lack snags or natural tree cavities.	Interior, Washington DFW	25/box	0	minimal
25. Retain dead tress and install 10 artificial perch poles along the reservoir shoreline.	Interior, Washington DFW, Staff	10,000 [b]	0	680
26. Install barriers on irrigation canal tunnels to prevent human entry while still allowing use by bats.	Interior, Washington DFW	2,000 [b]	0	140

TABLE 22—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTING AND OPERATING THE PROPOSED ENLOE HYDROELECTRIC PROJECT—Continued

[Source: Staff]

Enhancement/Mitigation measures	Entity	Capital cost (2010$) [a]	Annual cost (2010$) ;[a]	Levelized annual cost (2010$)
Recreation and Land Use Resources				
1. Revise and implement the Fence Plan in coordination with the Recreation Management Plan to include (a) installation of barricades and fencing on the east side of the dam and the area below the dam; (b) use of non-barbed wire at the recreation area; and (c) installation of a stock watering tank north of the proposed recreation site as an alternative source of drinking water for all grazing cattle with rights to this area (REC–01).	Okanogan PUD, Interior, Staff	91,410 [c]	0	6,190
2. Provide recreation access below Enloe dam on the east bank by developing a trail to the river below the dam (REC–02).	Okanogan PUD, Interior, Staff	5,000	2,000	2,340
3. Transfer to Okanogan County ownership rights to the trestle bridge that is located on the west side of the river with certain conditions (REC–03).	Okanogan PUD, Interior, Staff	10,750	0	730
4. Improve the existing informal boat ramp located on the east bank upstream of the dam (REC–04).	Okanogan PUD, Interior, Staff	80,660	0	5,460
5. Clean up and restore wooded area on east bank of the reservoir (REC–05).	Okanogan PUD, Interior, Staff	10,750	0	730
6. Develop an interpretive publication including a map illustrating public access and recreation sites (REC–06).	Okanogan PUD, Interior, Staff	5,380	0	360
7. Remove existing trash and conduct annual cleanup activities (REC–07).	Okanogan PUD, Interior, Staff	5,380	1,610	1,970
8. Develop parking area and install a vault toilet on the east bank and upstream of Enloe dam (REC–08).	Okanogan PUD, Interior, Staff	107,540	0	7,280
9. Install picnic tables near the parking area taking advantage of existing trees for shading (REC–09).	Okanogan PUD, Interior, Staff	16,130	0	1,090
10. Develop primitive campsites near the parking and picnic area (REC–10).	Okanogan PUD, Interior, Staff	26,890	0	1,820
11. Install one interpretive sign near the parking and picnic area and one sign near the abutment of the old powerhouse access bridge (REC–11).	Okanogan PUD, Interior, Staff	5,380	0	360
12. Place an information board near Enloe dam (REC–12).	Okanogan PUD, Interior, Staff	2,690	0	180
13. Finalize and implement the Recreation Management Plan (REC–13).	Okanogan PUD, Interior, Staff	43,020	0	2,910
14. Implement major recreational development at the BLM-owned Miner's Flat site and bring into project boundary.	Interior	125,000 [b]	15,000 [b]	23,460
15. Develop a formal boater take-out area at Miner's Flat, upgrade the access roads to the take-out if necessary, and include approximately 1 acre on which the take-out would be located within the project boundary.	BLM, Staff	35,000 [b]	1,000 [b]	3,370
16. Conduct recreation monitoring and provide Recreation Management Plan updates.	Interior, Staff	0	5,000 [b]	5,000

TABLE 22—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTING AND OPERATING THE PROPOSED ENLOE HYDROELECTRIC PROJECT—Continued

[Source: Staff]

Enhancement/Mitigation measures	Entity	Capital cost (2010$) [a]	Annual cost (2010$) ;[a]	Levelized annual cost (2010$)
17. Provide for recreation site grounds maintenance.	Interior	0	50,000 [b]	50,000
18. Rebuild the footbridge across the Similkameen River.	Interior	10,000 [b]	500 [b]	1,180
19. Develop and post a snow plowing schedule annually for the project access road.	Staff	1,000 [b]	0	70
20. Remove the small, deteriorated, privately-owned pump house at the north end of the proposed Enloe dam recreation area.	BLM	2,500 [b]	0	170
21. Remove the one small, deteriorated building on Okanogan PUD land at the north end of the proposed Enloe dam recreation area.	BLM, Staff	2,500 [b]	0	170
22. Maintain the existing signs and system of safety cables and grab ropes above the dam, install canoe/kayak take-out signs, install dam safety/warning signs for boaters, and install a log boom access the powerhouse intake channel to protect boaters (SAFETY–01).	Okanogan PUD, Staff	10,750	2,690	3,420
23. Identify options for preventing public access to the old powerhouse (SAFETY–03).	Okanogan PUD, Staff	10,750	0	730
24. Develop and implement the Safety During Construction Plan.	Okanogan PUD, Interior, Staff	5,000 [b]	0	340
25. Develop and implement a Law Enforcement, Fire, and Emergency Services Plan.	Interior	5,000 [b]	15,000 [b]	15,340
26. Develop a Fire Suppression Program.	Staff	2,000 [b]	5,000 [b]	5,140
Aesthetic Resources				
1. Use visually-compatible colors and building materials for construction (AES–01).	Okanogan PUD, Interior, Staff	10,750	0	730
2. Consult with the Colville during restoration activities (AES–02).	Okanogan PUD, Interior, Staff	21,510	0	1,460
3. Revise and implement the Aesthetics Management Plan, including provisions of AES–01, AES–02, and AES–04, and consultation with BLM on the revision of the aesthetic analysis.	Interior, Staff	5,000 [b]	0	340
Cultural Resources				
1. Solicit a new owner of the existing historic Enloe powerhouse within 4 years from issuance of a license (HIST–01).	Okanogan PUD, Interior, Staff	5,380	0	360
2. Allow at least 5 years during which Okanogan PUD would solicit and review offers to parties that might be interested in acquiring the historic Enloe powerhouse.	Interior	4,390 [b]	0	300
3. If a qualified owner is not identified for the existing historic powerhouse, consult with the CRWG, which includes the Commission, prior to demolition of the historic Enloe powerhouse (HIST–02).	Okanogan PUD, Staff	129,050	0	8,730

TABLE 22—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTING AND OPERATING THE PROPOSED ENLOE HYDROELECTRIC PROJECT—Continued

[Source: Staff]

Enhancement/Mitigation measures	Entity	Capital cost (2010$) [a]	Annual cost (2010$) ;[a]	Levelized annual cost (2010$)
4. Install interpretive panels about the historic powerhouse (HIST–03).	Okanogan PUD, Interior, Staff	26,890	0	1,820
5. Review and reach agreement on the May 2009 HPMP and incorporate information into a PA (HIST–04).	Okanogan PUD	5,000 [b]	0	340
6. Monitor effects of shoreline fluctuations on archaeological sites in shoreline areas, and mitigate, as needed (ARCH–01).	Okanogan PUD, Interior, Staff	69,900	0	4,730
7. Avoid known National Register-eligible archaeological sites to prevent damage during construction (ARCH–02).	Okanogan PUD, Interior, Staff	16,130	0	1,090
8. Monitor eligible sites during construction activities to avoid damage to these sites (ARCH–03).	Okanogan PUD, Interior, Staff	20,000 [b]	0	1,350
9. Develop and implement an inadvertent discovery plan if a site is discovered during construction and include training of staff and construction workers about the potential for discovery of archaeological deposits (ARCH–04).	Okanogan PUD, Interior, Staff	16,130	0	1,090
10. Determine if there would be effects on archaeological sites in the vicinity of recreation facilities (ARCH–05).	Okanogan PUD, Interior, Staff	10,000 [b]	0	680
11. Revise the May 2009 HPMP (as identified in section 3).	Interior, Staff	16,000 [e]	10,000 [e]	11,080
12. Include in the revised HPMP provisions for: (a) Further consideration of capping site 45OK532; (b) a description of the proposed side-channel enhancement site; (c) two separate defined APEs; (d) consultation with the CRWG regarding the resolution of adverse effects on the historic Enloe powerhouse; and (e) re-evaluating the Oroville-Tonasket Irrigation Canal for National Register-eligibility.	Staff	52,000 [b]	5,000 [b]	8,520

[a] Unless otherwise noted, all cost estimates are from Okanogan PUD.
[b] Cost estimated by Staff.
[c] Cost estimated by Okanogan PUD and Staff.
[d] Cost estimated by Staff and includes only addition measures not proposed by Okanogan PUD.
[e] This staff-estimated cost includes all of the revisions to the HPMP that Interior recommends. Staff does not recommend that Okanogan PUD needs to allow 5 years to solicit entities that might be interested in acquiring the historic Enloe powerhouse; there is no additional cost for this measure.

5.0 Conclusions and Recommendations

5.1 Comparison of Alternatives

In this section we compare the development and non-developmental effects of Okanogan PUD's proposal and Okanogan PUD's proposal as modified by staff (staff alternative).

We estimate the annual generation of the project under the two alternatives identified above. Our analysis shows that the annual generation would be 44,409 MWh for the proposed action and the staff alternative.

We summarize the environmental effects of the action alternatives in Table 23.

TABLE 23—SUMMARY OF KEY DIFFERENCES IN THE POTENTIAL EFFECTS OF OKANOGAN PUD'S PROPOSAL AND THE STAFF ALTERNATIVE

[Source: Staff]

Resource/issue	Okanogan PUD proposal	Staff alternative
Spoil Disposal Plan	No provisions for spoil disposal.	Spoil Disposal Plan to address disposal/storage of waste soil and/or rock materials (spoils) generated by road maintenance, slope failures, and construction projects.
Water Quality	Reduced TDG from diversion of water around falls, and adequate DO from aeration of the draft tube downstream. Adequate temperature and DO in bypassed reach from minimum flows. Adequate levels ensured by monitoring, with potential for additional measures. Protections from erosion and sedimentation during construction.	Same as Okanogan PUD's proposal, but with Water Quality Monitoring Plan to provide more specificity and oversight to ensure intended results.
Project Operations and Compliance Monitoring Plan.	Protection of aquatic, recreation, and aesthetics resources from run-of-river operation, minimum flows in the bypassed reach, and ramping rates both in the project tailrace and in the bypassed reach.	Same as Okanogan PUD's proposal, but with Project Operations and Compliance Monitoring Plan to further define protective operations and ensure compliance.
Aquatic Resources	Potential minor losses of fish from blasting and increased turbidity and sedimentation during construction. Enhanced anadromous fish habitat downstream of project (including critical habitat for threatened UCR steelhead) due to decrease in TDG and maintenance of adequate DO levels and temperature, enhanced side channel habitat, woody debris transfer downstream, gravel augmentation, and new riparian vegetation. Reduced aquatic habitat in short bypassed reach for resident fish. Minor losses to fish entrainment, with further evaluation of potential effects to resident fishery. Potential limited benefits to whitefish in river upstream of project, but potential negative effect on recreational boating and water temperatures.	Same as Okanogan PUD's proposal, but without further evaluation of potential effects to resident fishery, and no potential limited benefit to whitefish or adverse effects from boulder placement in river upstream of project.
Raptor and Other Avian Perching Habitat.	Retention of non-hazard dead trees along the reservoir	Same as Okanogan PUD's proposal, but with addition of 10 artificial perch poles along the reservoir shoreline.
Vegetation	Vegetation Plan and control of noxious weeds	Same as Okanogan PUD's proposal, but with additional oversight.
Ute Ladies'-Tresses Plan	Protection of Ute Ladies'-Tresses during initial construction and continued monitoring.	Same as Okanogan PUD's proposal, but protection measures postconstruction if warranted.
Recreation Management Plan.	Recreation Management Plan, including numerous measures to protect and enhance recreation at the project. Potential negative effect on recreational boating in river upstream of project from boulder placement.	Same as Okanogan PUD's proposal, but with additional provisions for fire suppression, monitoring to ensure resource protection, added assurance of O&M of the entire length of the public access road from the Loomis-Oroville Road to Enloe dam (5 acres), additional river access take-out point at Miner's Flat, and removal of one small, deteriorated building. No potential negative effect on recreational boating from boulder placement in river upstream from project.
Aesthetics	Aesthetics Management Plan, including numerous measures to address aesthetics, and new riparian vegetation enhancing appearance of shoreline over existing condition with trees lost to fire. Restoration of a shoreline road to a natural condition. Reduction of flows in short bypassed reach and over falls.	Same as Okanogan PUD's proposal, but with additional provisions to ensure oversight and compliance, and ensure other resource measures do not detract significantly from aesthetics. Additionally, removal of a deteriorated building.
Cultural Resources	May 2009 HPMP	Same as proposed, but with greater detail, evaluation, consultation, and oversight to ensure protection of cultural resources.
Consultation and Commission approval.	Limited consultation and Commission approvals for plans.	Oversight of resource plans to ensure intended results.

5.2 Comprehensive Development and Recommended Alternative

Sections 4(e) and 10(a)(1) of the FPA require the Commission to give equal consideration to all uses of the waterway on which a project is located. When we review a proposed hydropower project, we consider the water quality, fish and wildlife, recreation, cultural, and other non-developmental values of the involved waterway equally with its electric energy and other developmental values. In deciding whether, and under what conditions a hydropower project should be licensed, the Commission must determine that the project would be best adapted to a comprehensive plan for improving or developing the waterway. This section contains the basis for, and a summary of, our recommendations for licensing the Enloe Project. We weigh the costs and benefits of our

recommended alternative against other proposed measures.

Recommended Alternative

Based on our independent review and evaluation of the environmental and economic effects of the proposed action, the proposed action with additional staff-recommended measures, and the no-action alternative,[43] we recommend the proposed action with staff-recommended measures as the preferred alternative.

We recommend the staff alternative because: (1) Issuance of a new license would allow Okanogan PUD to construct and operate the project as a beneficial and dependable source of electrical energy; (2) the 9.0 MW of electric capacity available comes from a renewable resource which does not contribute to atmospheric pollution; and (3) the recommended environmental measures would protect water quality, enhance fish and wildlife resources, protect cultural resources, and improve public use of the project's recreational facilities and resources.

Measures Proposed by Okanogan PUD

Based on our environmental analysis of Okanogan PUD's proposal discussed in section 3 and the costs discussed in section 4, we conclude that the following measures proposed by Okanogan PUD would protect and enhance environmental resources and would be worth the cost. Therefore, we recommend including these measures in any license issued for the project.

- Develop and implement an ESCP to minimize the effects of construction, repair, and operation of the dam and intake, penstocks, powerhouse, tailrace, impoundment, access roads, powerline, and construction camp (WQ–06).
- Develop and implement a CSMP to minimize sediment disturbance and maximize sediment containment during construction (WQ–08).
- Operate the project in a run-of-river mode so that there are no detectable changes in flows below Similkameen Falls (FISH–08) and avoid flow fluctuations that might affect downstream resources by complying with ramping rate restrictions as recommended by resource agencies.
- Monitor water temperatures at three locations for a period of 5 years to determine if the operation of the new crest gates causes an increase in the water temperatures when compared with upstream of the reservoir (WQ–01) (as modified below).
- Design the powerhouse tailrace so that it discharges to and circulates water in the plunge pool downstream of Similkameen Falls, preventing stagnation and consequently water quality degradation of the pool habitat (WQ–02).
- Provide aeration in the powerhouse turbine draft tubes during low flow summer months (WQ–03).
- Monitor total TDG and DO at the project intake and in the pool below Similkameen Falls for a period of 5 years to assess TDG and DO levels under project operations (WQ–04) (as modified below).
- Design a broad, shallow intake structure and channel to minimize sediment disturbance from project construction and operation in the reservoir near the intake (WQ–05).
- Develop and implement at project initiation a Spill Plan to reduce potential effects from accidental spills when heavy machinery is operating near the river and reservoir (WQ–07).
- Implement the Blasting Plan and use BMPs to avoid and minimize potential blasting effects on aquatic resources, including federally listed or sensitive species, associated with blasting (FISH–01).
- Ensure that logs and other large woody debris can pass over the dam spillway during the annual flood and, if needed, transport some large woody debris around the dam and place it in the river downstream of the dam to provide fish habitat (FISH–03).
- Design the intake trashrack with 1-inch bar spacing so that smaller fish would be able to pass safely through the trashrack and larger fish would be discouraged or prevented from passing through the trashracks and turbines (FISH–04).
- Install tailrace barrier nets in the powerhouse draft tubes to prevent fish in the tailrace from swimming upstream into the draft tubes during low flows and maintain the nets (FISH–06).
- Monitor barrier nets with video cameras to observe if adult salmonids are able to enter the draft tubes past the barrier nets (FISH–07). Develop and implement a written operation plan, a postconstruction evaluation and monitoring plan, and an inspection and maintenance plan to ensure that the tailrace barrier operates effectively.[44]
- Design and locate the tailrace in an area to avoid effects on fish that use the plunge pool below Similkameen Falls (FISH–09).
- Enhance an existing side channel to improve spawning, rearing, and summer thermal refugia downstream of the powerhouse tailrace (FISH–10).
- Implement a gravel supplementation program to increase the amount of gravel in the river downstream of Enloe dam and improve spawning habitat (FISH–11).
- Develop a biological review process which includes establishing a TRG to provide ongoing refinement and evaluate effectiveness of environmental measures (FISH–12).
- Develop a fisheries monitoring database for organizing and storing monitoring data related to aquatic resources for use by the TRG to monitor effectiveness of measures. (FISH–13).
- Provide minimum flows of 30 cfs from mid-July to mid-September, and 10 cfs rest of the year in the bypassed reach for resident fish using the plunge pools.
- Monitor DO and water temperature in the bypassed reach for a period of time postconstruction to be determined in consultation with the TRG, and adopt an adaptive management program to enhance DO and water temperatures should monitoring indicate that state water quality standards are not being met (as modified below).
- Determine appropriate thresholds for downramping rates in the bypassed reach based on monitoring and field observations prior to operations (as modified below).
- Select an appropriate minimum flow release location in consultation with fisheries resource agencies (Washington DOE, Washington DFW, Interior, NMFS, BLM, and the Colville), and make appropriate project modifications to provide minimum flow releases for the bypassed reach (as modified below).
- Implement the Vegetation Plan to minimize effects on riparian and wetland vegetation, including goals, the species to be used, methods, and benchmarks of success for botanical resources (BOTA–01) (as modified below).[45]
- Plant riparian vegetation along the west and east banks of the reservoir shoreline to mitigate the temporary loss of habitat due to higher reservoir levels while fringe riparian vegetation establishes along the new water line (BOTA–02).
- Return the existing shoreline road to natural conditions after project construction to improve wildlife habitat along the reservoir and eliminate the current interruption between the

[43] BLM stated that it would require Okanogan PUD to remove the dam and all associated facilities from the public lands under the existing right-of-way permit if a license is be issued. We discussed dam removal under cumulative effects Section 3.2.

[44] Okanogan PUD proposed these additional plans as modified (April 9, 2010) from NMFS recommendations (February 26, 2010).

[45] The Vegetation Plan (BOTA–01) contains the measures BOTA–2 through BOTA–7, BOTA–11, REC–01, and AES–04.

shoreline and upland habitat (BOTA–03, also analyzed as part of REC–13).

- Plant woody riparian species in the riparian area along the abandoned road corridor (BOTA–04).
- Plant woody riparian vegetation along the east and west banks of the reservoir downstream of Shanker's Bend and upstream of the reservoir (BOTA–05).
- Install grazing control measures, including fencing, to protect riparian plantings and sensitive areas from cattle grazing (BOTA–06, also analyzed as part of REC–1).
- Monitor restored areas annually for 5 years and then once again at 8 years, and plant additional willows if performance criteria are not met; provide annual reports of the monitoring results to the Corps and Washington DOE (BOTA–07) (as modified below).
- Employ BMPs to protect riparian and wetland vegetation, including measures such as flagging and temporarily fencing any wetland and riparian vegetation in the vicinity of the project that would reduce or avoid accidental impacts, and limiting construction and maintenance-related disturbance of sensitive habitats to the extent possible to protect these resources (BOTA–08).
- Develop and implement an environmental training program to inform employees and contractor employees who work on the project site or related facilities during construction and operation about the sensitive biological resources associated with the project area (BOTA–09).
- Provide a biological monitor to check construction sites on a weekly schedule to ensure that protected areas are not disturbed and that fencing and other control measures are intact (BOTA–10).
- Implement the Noxious Weed Control Program to control weeds along roads and construction sites (BOTA–11).
- Survey disposal sites and control noxious weeds by implementing control measures prior to spoil disposal (included in Okanogan PUD, 2009d) (BOTA–12).
- Hydroseed disposal sites using native upland species, following completion of spoil disposal (included in Okanogan PUD, 2009d) (BOTA–13).
- Place and install the project transmission line to minimize effects on raptors and other birds (WILD–01).
- Concentrate construction activities to occur in summer and early fall to minimize effects on overwintering birds and bald eagles (WILD–02).
- Conduct pre-disposal site survey for wildlife and time the clearing of vegetation at spoil disposal sites to minimize wildlife impacts (WILD–03), (included in Okanogan PUD, 2009d).
- Conduct surveys for Ute ladies'-tresses prior to, during, and postconstruction to either confirm that the species does not occur in areas affected by the project or guide the development of avoidance or mitigative measures (BOTA–14) (as modified below).
- Revise and implement the Recreation Management Plan which includes 12 measures for recreation and four measures for safety of and access to the project areas (REC–13) (as modified below).
- Revise and implement the Fence Plan in coordination with the Recreation Management Plan to include: (a) Installation of barricades and fencing on the east side of the dam and the area below the dam; (b) use of non-barbed wire at the recreation area; and (c) installation of a stock watering tank north of the proposed recreation site as an alternative source of drinking water for all grazing cattle with rights to this area (REC–01).
- Provide public access below Enloe dam on the east bank by developing a trail to the river below the dam (REC–02).
- Transfer to Okanogan County ownership rights to the trestle bridge for the development of a future public trail located on the west side of the river downstream of the dam with certain conditions (REC–03).
- Improve the existing informal boat ramp located on the east bank upstream of the dam (REC–04).
- Clean up and restore the wooded area on the east bank of the reservoir (REC–05).
- Develop an interpretive publication, in collaboration with Okanogan County, the Water Trail Committee, and other interested parties, including a map illustrating public access and recreation sites (REC–06).
- Remove existing trash and conduct annual cleanup activities within the wooded area on the east bank of the reservoir and along the OTID Ditch Road leading from the Loomis-Oroville Road to the dam site (REC–07).
- Develop an accessible parking area and install a vault toilet on the east bank and upstream of Enloe dam (REC–08).
- Install picnic tables, at least one of which should incorporate universal design principles, near the parking area taking advantage of existing trees for shading (REC–09).
- Develop primitive campsites near the parking and picnic area (REC–10).
- At a minimum, install one interpretive sign near the parking and picnic area and one sign near the abutment of the old powerhouse access bridge, below Similkameen Falls (REC–11).
- Place an information board near Enloe dam to depict public access areas and information concerning visitor use of the project area (REC–12).
- Maintain the existing signs and system of safety cables and grab ropes above the dam, install dam safety/warning signs for boaters, and install a log boom across the powerhouse intake channel to protect boaters (SAFETY–01).
- Allow limited public access to the project during construction (SAFETY–02).
- Coordinate with BLM and other land owners, as appropriate, to identify options for preventing public access to the old powerhouse (SAFETY–03).
- Develop and implement a Safety During Construction Plan.
- Implement the Aesthetics Management Plan (as modified below), including:
  - Using visually-compatible colors and building materials for construction occurring on the east bank (AES–01).
  - Consulting with the Colville and other stakeholders during restoration activities (AES–02).
  - Using non-reflective surfaces where possible during construction (AES–03).
  - Grading and repairing all slopes where buildings are removed and plant native grasses and other riparian vegetation (AES–04).
- Solicit a new owner for the existing historic powerhouse (HIST–01).
- If a qualified owner is not identified for the existing historic powerhouse, demolish the existing historic powerhouse and create an interpretive site (HIST–02).
- Install interpretive panels about the existing historic powerhouse (HIST–03).
- Review and reach agreement on the draft HPMP and incorporate information into a PA (HIST–04) (as modified below).
- Monitor effects of shoreline fluctuations on archaeological sites in shoreline areas, and mitigate, as needed. (ARCH–01).
- Avoid known National Register-eligible archaeological sites to prevent effects during construction (ARCH–02).
- Monitor eligible sites during construction activities to avoid effects on these sites (ARCH–03).
- Develop and implement an inadvertent discovery plan, specifying required actions and procedures if a site is discovered during construction and including training staff and construction workers about the potential for discovery of archaeological deposits (ARCH–04).

• Determine if there would be effects on archaeological sites in the vicinity of recreational facilities (ARCH–05).

Additional Staff-Recommended Measures

We recommend the measures described above, along with nine additional staff-recommended measures/modifications. The additional staff-recommended measures include the following: (1) A spoils disposal plan; (2) consultation and approval of plans; (3) a water quality monitoring plan; (4) a project operations and compliance monitoring plan; (5) modifications to the proposed Vegetation Plan; (6) provision for eagle perching habitat; (7) modifications to the Recreation Management Plan; (8) modifications to the Aesthetics Management Plan; (9) modifications to the Ute ladies'-tresses survey proposal; and (10) modifications to the proposed HPMP. Below, we discuss the rationale for our modifications and our additional staff-recommended measures.

Spoil Disposal Plan

Although Okanogan PUD proposed to implement an ESCP and a CSMP which would lessen the potential effects associated with land-disturbing activities during project construction and operation, they do not propose anything for spoil disposal. Interior recommends that Okanogan PUD develop and implement a Spoil Disposal Plan prior to any construction activities that may affect the BLM-administered public lands. The plan would address disposal and/or storage of waste soil and/or rock materials (spoils) generated by road maintenance, slope failures, and construction projects. Introduction of waste soil or rock into the Similkameen River would have negative effects on water quality. Implementation of the measures in a Spoil Disposal Plan would minimize effects from excavated materials on water quality or the surrounding environment within the project boundary and that such a plan would be worth the estimated levelized annual cost of $340.

Consultation and Approval of Plans

Okanogan PUD proposes a Blasting Plan, a plan for woody debris, a plan for the side-channel enhancement, a gravel supplementation program, and a Spill Plan. We recommend consultation with the TRG and Commission approval prior to implementation of these plans to ensure that these plans are developed with expertise and recommendations from the TRG. The cost of this additional measure would be minimal.

Water Quality Monitoring Plan

Okanogan PUD's water quality monitoring proposals include a number of aspects that need to be clarified. These include: (1) A description of the methods, equipment, maintenance and calibration procedures, and specific locations that will be used to monitor water temperature, TDG, and DO above the dam and below the dam in both the bypassed reach and in the tailrace; (2) a description of the protocol for annually reporting monitoring data to the Commission and Washington DOE; and (3) an implementation schedule. Therefore, we recommend that Okanogan PUD develop a Water Quality Monitoring Plan for the Enloe project, in consultation with the TRG, to be filed for Commission approval that includes these measures and with this level of detail.

Okanogan PUD proposes to monitor temperature at three unspecified locations in the reservoir for a period of five years and in the bypassed reach to determine if state water quality standards are being met. Additionally, Okanogan PUD proposes to monitor TDG and DO at the project intake and in the project tailrace for the same time period, as well as DO monitoring in the bypassed reach. Interior and NMFS have recommended these same provisions, and NMFS further recommends that DO be monitored for the life of any license granted. Monitoring temperature, TDG, and DO during the first 5 years of operation would provide information on possible project effects on these parameters, but if water quality standards are not met regularly, additional monitoring and alternative measures may be necessary. A report at the end of five years evaluating the need for continued monitoring and/or measures, and implementation of any additional measures as needed, would ensure that water quality is maintained at a level that will support aquatic resources at the project. Therefore, we recommend that the Water Quality Management Plan includes provisions for Okanogan PUD to file a report with the Commission for approval at the end of the five-year monitoring period, developed in consultation with the TRG, documenting the results of the monitoring and any proposals and recommendations for the need for continued monitoring and/or measures. This plan would ensure that water quality at the project is effectively monitored and maintained, and would be worth the estimated levelized annual cost of $680.

Project Operations Compliance and Monitoring Plan

Okanogan PUD proposes to operate the project in a run-of-river mode, to provide minimum flows in the bypassed reach, and to implement ramping rates both in the project tailrace and in the bypassed reach. The proposal includes many details which are yet to be determined, including: (1) How to document compliance with the run-of-river operations, minimum flow requirements (including exact dates to provide the minimum flows), and ramping rates requirements; (2) critical flow thresholds for downramping of flows in the bypassed reach; and (3) the means of flow delivery to the bypassed reach. Therefore, we recommend that Okanogan PUD develop a project operations compliance and monitoring plan for the Enloe project, in consultation with the TRG, to be filed for Commission approval that includes the details above. This plan would ensure that the project operation is clearly defined and that compliance could be demonstrated. The benefit of such a plan would be worth the estimated levelized annual cost of $680.

Reporting Monitoring Results for Restored Areas

In its Vegetation Plan, Okanogan PUD proposes to provide to the Corps and Washington DOE an annual report on its monitoring of restored areas annually for 5 years and then once again at year 8. Comments provided by the FWS, BLM, and Washington DFW indicate interest in reviewing the reports on the restoration efforts, given the agencies' responsibilities. In addition, the Commission would need to be apprised of the success of restoration and the need for any further measures to meet the Vegetation Plan's performance criteria. Therefore, Okanogan PUD should revise its Vegetation Plan to include providing FWS, BLM, and Washington DFW with its monitoring reports at the same time it provides them to the Corps and Washington DOE. In addition, the Vegetation Plan should be revised to include filing with the Commission its monitoring reports for years 1 through 5 and 8, and for approval, any proposals for further measures, developed in consultation with the agencies.

Eagle Perching Habitat

A previous fire resulted in a loss of large shoreline cottonwoods and other trees that could be used by bald eagles and other raptors. Interior and Washington DFW recommend retaining dead trees along the reservoir for bald

eagle perching habitat, with the exception of trees that pose a hazard. Okanogan PUD agrees with this measure in their reply comments. Interior and Washington DFW also recommend installation of 10 artificial perch poles for perching habitat along the reservoir shoreline. The retention of dead trees, until such time as they pose a hazard, and installation and maintenance of artificial perch poles, would enhance the use of the project area by bald eagles and other raptors. We estimate that retaining non-hazard dead trees would have no additional cost than typical maintenance, and the levelized annual cost of the perch poles would be $680. We conclude that the potential benefits of these measures would justify the low cost, and therefore would be in the public interest.

Ute Ladies'-Tresses Plan

Okanogan PUD proposes to conduct additional surveys prior to, during, and postconstruction for the threatened Ute ladies'-tresses. Okanogan PUD should prepare a plan, after consulting with FWS, BLM, and Washington DFW, for conducting these additional surveys, and should include in the plan a provision to provide each year's survey results to the Commission and the consulted agencies. The plan should also include a provision to file with the Commission for approval, an additional plan, after consultation with the agencies, with measures to avoid or mitigate adverse impacts on Ute ladies'-tresses or other listed species if the surveys identify a listed species in areas that would be affected by the proposed project or side channel enhancement. Development of the plan would have an estimated levelized annual cost of $680. Therefore, we recommend development of the plan to ensure that the additional surveys to confirm the presence or absence of Ute ladies'-tresses are conducted and adequate, and that appropriate measures are developed to avoid or mitigate impacts to the species.

Recreation Management Plan

Okanogan PUD proposes to implement a Recreation Management Plan. Staff recommends that Okanogan PUD revise the proposed Recreation Management Plan to coordinate with other proposed plans for the project (specifically, the Aesthetics Management Plan and the HPMP) and include consultation with stakeholders. In addition to Okanogan PUD's proposal, staff recommends Okanogan PUD establish a snow plowing schedule to allow visitors winter access to project lands and waters; develop and implement a recreation use monitoring plan to include monitoring at the falls; develop and implement a fire suppression program; add approximately 5.0 acres to the project boundary incorporating the entire length of the public access road from the Loomis-Oroville Road to Enloe dam; develop a river access take-out point at Miner's Flat and incorporate approximately 1 acre into the project boundary; and removal of the one small, deteriorated building on Okanogan PUD land at the north end of the proposed Enloe dam recreation area. Including consultation with stakeholders and coordinating the Recreation Management Plan with other proposed plans for the project would ensure proposed measures would not adversely affect other environmental resources at the project. Including these measures in the proposed Recreation Management Plan would improve access to existing recreational facilities and opportunities at the project, prevent wildfire on project lands and adjoining wildlife areas, and would be worth the estimated levelized annual cost of $13,580.

Building Removal

BLM recommends that Okanogan PUD remove two small, deteriorating buildings at the north end of the proposed Enloe Dam Recreation Area. Okanogan PUD states that one of two small structures on the north end of the proposed Enloe dam recreation area is owned by a private landowner that maintains a lease with BLM. Okanogan PUD states it is not in a position to remove the BLM-leased structure, however, it will take reasonable measures to secure existing structures from unauthorized entry. Removal of the BLM-leased structure is discussed later in this section under *Measures Not Recommended.* Because the remaining structure is not currently being used as a pump house, nor is it being used for project purposes, staff recommends Okanogan PUD remove this building from the north end of the proposed Enloe Dam Recreation Area. Removal of this deteriorating building would improve visual aesthetics at the proposed Enloe Dam Recreation Area, improve safety at the site, and would be worth the estimated levelized annual cost of $170.

Aesthetics Management Plan

Okanogan PUD proposes to implement an Aesthetics Management Plan. Staff recommends that Okanogan PUD revise the Aesthetics Management Plan to coordinate with other proposed plans for the project (specifically the Recreation Management Plan and the HPMP). Staff also recommends Okanogan include consultation with the Colville and BLM, and file with Commission for approval, to ensure the project area has been appropriately evaluated and that appropriate measures are undertaken to preserve the aesthetic character of the area at a minimal cost of $340.

Cultural Resources

Okanogan PUD proposes to implement its May 2009 HPMP; however, the May 2009 HPMP does not include consideration of Okanogan PUD's proposed side-channel enhancement site. We recommend that Okanogan PUD revise its May 2009 HPMP to include the proposed side-channel enhancement site and additional measures for the protection of historic properties at the Enloe Project. These measures include: (1) Further consideration of the potential effects of capping site 45OK532; (2) a description of the proposed side-channel enhancement site; (3) two separate defined APEs that delineate the proposed Enloe project and the proposed side-channel enhancement site; (4) consultation with the Cultural Resources Working Group (CRWG) regarding the resolution of adverse effects on the historic Enloe powerhouse; (5) re-evaluating the Oroville-Tonasket Irrigation Canal for National Register-eligibility; (6) completing determinations of eligibility for unidentified cultural resources on BLM lands; (7) periodic review of the HPMP; (8) a site monitoring program; (9) cultural interpretative and education measures; and (10) revising the APEs to accommodate modifications to the project boundary, if any. These additional measures would ensure protection of historic properties and would be worth the estimated levelized annual cost of $19,600.

Measures Not Recommended

Some of the measures proposed by Okanogan PUD and recommended by other interested parties would not contribute to the best comprehensive use of the Similkameen River water resources, do not exhibit sufficient nexus to project environmental effects, or would not result in benefits to non-power resources that would be worth their cost. The following discusses the basis for staff's conclusion not to recommend some of the measures proposed by Okanogan PUD and recommended by other entities.

DO Monitoring for Term of License

NMFS recommends that DO be monitored at the project intake and in the tailrace for the life of any license

granted. Monitoring DO during the first 5 years of operation would provide good information on possible project effects on DO, but if water quality standards are not met regularly, additional monitoring and alternative measures may be necessary. For this reason, we recommend that Okanogan PUD file a report with the Commission at the end of five years evaluating the need for continued monitoring and/or measures as part of the Water Quality Management Plan. This plan would be developed in consultation with the TRG and would ensure that the water quality monitoring effort would be designed and implemented in an effective manner. This approach would be sufficiently protective of water quality in the area; therefore, we do not recommend that Okanogan PUD be required to monitor DO for the life of any license that may be granted.

Minimum Flows

Washington DFW, American Rivers *et al.,* Interior, and CRITFC recommend a minimum flow be provided in the bypassed reach immediately downstream of Enloe dam. Washington DFW, Interior, and CRITFC did not specify a recommended minimum flow, but American Rivers *et al.* recommended a minimum flow that would range from 400 cfs to 3,400 cfs depending on the month. In a filing with the Commission on October 28, 2010, Okanogan PUD stated that it has agreed with Washington DOE and Washington DFW to provide a minimum flow of 10 to 30 cfs downstream of Enloe dam. Although American Rivers *et al.* states that their recommended flow is based on Washington regulations to ensure that state water quality standards are met, neither of the Washington agencies has recommended this flow, nor has American Rivers *et al.* provided a technical justification for its flows beyond stating that its flow would provide adequate depth, substrate, cover and velocity in the bypassed reach. The bypassed reach is only 370-feet long and there is no evidence that this short reach provides habitat that is critical for the life stages of any fishes. In addition, anadromous fish do not occur in the bypassed reach because they are unable pass Similkameen Falls. Therefore, American Rivers *et al.'s* recommended minimum flows would not result in benefits that would justify the estimated levelized annual cost of $1,295,830.

Boulder Clusters

Okanogan PUD proposes (FISH–02) to construct and install boulder clusters to improve mountain whitefish habitat and recreational fisheries in the river upstream of the reservoir. Interior does not recommend the boulder clusters because they could be a hazard to recreational boaters and may further increase water temperatures in the reservoir by creating further heat sink. Washington DFW also does not recommend the boulder cluster placement, as it states that boulder clusters are an insufficient measure to mitigate for project impacts on resident fish.

As discussed in section 3.3.3.1, the current reservoir and the river upstream of the reservoir is shallow, has little habitat diversity, and habitat quality is the limiting factor for resident fishes. Most of the fish in the reservoir are non-native species that are better adapted to warmer, slower velocity water than native coldwater fishes, such as the mountain whitefish. The project would raise the elevation of the reservoir by 4 feet, which would result in more warm, slow water habitat and less riverine habitat suitable for coldwater, resident fishes. Okanogan PUD's proposal to add boulder clusters upstream of the reservoir to provide habitat for resident, coldwater fish may create a small amount of pool habitat behind the clusters that could be used by native coldwater fishes, such as the mountain whitefish. However, very few whitefish (0 in 2006; 2 in 2007) have been found in the reservoir during recent surveys, probably due to a combination of northern pikeminnow predation, warm water temperatures, lack of cover, and the sand-silt substrate It is unlikely that the proposed boulder clusters would provide much if any benefit to the limited mountain whitefish fishery due to these limiting factors, while creating additional negative effects on recreational boating and water temperatures. We do not recommend this measure at an estimated levelized annual cost of $4,370.

Entrainment and Resident Fish Population Monitoring

Okanogan PUD proposes to monitor seasonal variation in entrainment susceptibility, to observe trauma and mortality caused by entrainment, and to monitor reservoir fish populations to relate the entrainment observations with the fish distribution and abundance in the reservoir. Interior recommends monitoring resident fish populations in the reservoir as part of its Resident Fish Habitat Management Plan, which is discussed below. As discussed in section 3, both entrainment levels and mortality of entrained fish are expected to be very low since there are very few small fish in the area of the intake due to unsuitable habitat. Likewise, effects of project entrainment on reservoir populations are expected to be nominal for the same reason. Therefore, these data collection efforts likely would not produce useful data. Additionally, Okanogan PUD did not specify if these monitoring efforts could lead to potential additional measures to adjust the proposed measures to reduce any adverse effects associated with operation of the intake. Therefore, we conclude that this monitoring would not be worth the estimated levelized annual cost of $7,280.

Fisheries Enhancement Plan and Resident Fish Habitat Management Plan

Washington DFW recommends a Fisheries Enhancement Plan that would consist of three measures: (1) Side channel enhancement at locations in the lower Similkameen River; (2) gravel supplementation downstream of the tailrace; and (3) stocking of sterile triploid trout above Enloe Dam. Interior also recommends a Fisheries Enhancement Plan that contains three measures, the first two of which were identical to the measures proposed by Washington DFW. The third measure of Interior's recommended plan provides for downstream transport and placement of large woody debris captured at the project intake and trashrack. The first two measures of the Washington DFW plan and all three of the measures in Interior's recommended plan are identical to measures proposed by Okanogan PUD (FISH–10, FISH–11, and FISH–03) and are recommended by staff. We discuss the third measure recommended by Washington DFW (stocking of sterile triploid trout) below.

Interior recommends a Resident Fish Habitat Management Plan. This plan consists of six measures including: (1) A study of resident fish populations and habitat conditions in the project reservoir; (2) a study of the impacts of the project on water temperatures; (3) an evaluation of the possible solutions for lowering water temperatures and improving fish habitat in the Similkameen River, particularly through riparian plantings; (4) the possible stocking of sterile rainbow trout in the reservoir; and (5) a monitoring plan for fish habitat in the project reservoir. Recommendation 1 is identical to Okanogan PUD's proposal for resident fish population monitoring (FISH–05), which we do not recommend as discussed above. Recommendation 2 would be accomplished by Okanogan PUD's proposal to monitor water temperatures at the project for 5 years (WQ–01), which we recommend with the option of continued monitoring after

the preparation of a report at the end of the five years of monitoring. Recommendations 3 and 4 are consistent with Okanogan PUD's recommendations for riparian plantings in the project area (BOTA–01, –02, –04, –05), which we recommend. Recommendation 5 is discussed below. Regarding recommendation 6, the proposed run-of-river operation of the project would likely have no effect on reservoir species, and would have little effect on the riverine habitat upstream of the reservoir. The raising of the reservoir would have short-term effects, but the system would stabilize over time and the habitat would be enhanced by the planting of riparian vegetation. Therefore, we do not recommend the measure because it is not worth the estimated levelized annual cost of $65,110.

As mentioned above, Interior and Washington DFW recommend stocking sterile triploid rainbow trout to support a recreational fishery upstream of Enloe dam. This recommendation could result in a number of adverse effects. While these fish would not live long and cannot reproduce, there is a potential that stocking of fish could introduce disease into native fish populations. The British Columbia Ministry of Environment opposes stocking of fish in the Similkameen River above the falls citing concerns that stocking could introduce disease into upstream native populations. Stocking rainbow trout would also not substantially contribute to the recreational fishery, in that the fishery would be limited to a brief time during cooler months, because of the high water temperatures in the reservoir. Stocked rainbow trout would also compete with resident fishes for resources and could negatively affect their populations. Due to the potential adverse effects and limited benefit to the fishery, we do not recommend the stocking of triploid trout in the project reservoir at an estimated levelized annual cost of $50,000.

Intake Fish Screen

Okanogan PUD proposes to install a modified, narrow-spaced trashrack to prevent fish entrainment. Interior and Washington DFW recommend that Okanogan PUD install a fish screen at the project intake, instead of the narrow-spaced trashrack, but do not specify the kind of screen. Okanogan PUD's proposed trashrack would have a 1-inch spacing between its bars, which would physically exclude most larger fish (greater than 6 inches in length) from entrainment. As discussed in Section 3.3.3.2, smaller fish which would be unable to swim away from the trashrack and would fit though the one-inch spacing would become entrained, but it is estimated that their survival rate would be in the range of 84–95%. Additionally, fish surveys have shown that few fish reside in the area of the proposed intake. A fish screen would likely exclude smaller fish from entrainment, but at a much higher cost to build, install, and maintain. Okanogan PUD estimates that a fish screen in its proposed intake channel would cost between $16 and $24M, or $1.1 and $1.6M annualized, to construct.[46] While we can not verify this number due to the agencies' lack of specificity in their recommendations, we can assume that a fish screen would cost much more than the $32,260 annualized cost of Okanogan PUD's proposed narrow-spaced trashrack. Given the analysis above, and that the proposed narrow-spaced trashrack would provide a sufficient level of protection to resident fish, and at a much lower cost, we do not recommend a fish screen at the project intake. We do, however, recommend that Okanogan PUD consult with Interior and Washington DFW during the final design of the intake structure and trashrack with 1-inch spacing.

Fish Passage

CRITFC and BIA recommended that production potential estimates for salmon and UCR steelhead upstream of Enloe dam be included as part of a fish passage alternative in the current licensing proceeding, and CRITFC recommended a paleolimnological study of historical anadromy above Enloe dam. The BIA also commented that cost estimates for designing, constructing, operating, and maintaining upstream and downstream fish passage facilities for the term of any license need to be developed in case such an action is required in the future.

Both FWS and NMFS recommend that upstream anadromous fish passage facilities not be required now, and have reserved their authority to require fish passage under section 18 in the future. The British Columbia Ministry of the Environment states that it does not support fish passage at Enloe Dam because the introduction of anadromous fishes above Enloe dam would have adverse effects on the ecosystem, in the form of disease transfer and competition for food and space with native fishes.

As discussed in section 3.3.3.2, there are no documented accounts of Chinook salmon, sockeye salmon, UCR steelhead, or Pacific lamprey above Similkameen Falls. In addition, Native Americans who have inhabited the area for thousands of years believe that Similkameen Falls has been a barrier to anadromous fish passage since the beginning of their history. The Okanogan Sub-basin Plan, which was prepared for the Northwest Power and Conservation Council, concluded that Similkameen Falls is an impassable historic barrier to upstream salmon migration. The Upper Columbia Salmon Recovery Board issued a recovery plan that does not identify upstream and downstream passage of fish at Enloe dam as being a short-term or long-term action that would contribute to the restoration of these fish stocks, based on the uncertainty of fish being able to ascend Similkameen Falls. Further, there have been no verified accounts of a sighting of an anadromous fish above the falls. We, therefore, have insufficient evidence to conclude that Enloe dam blocks anadromous fish passage into the upper Similkameen River. Additionally, due to the absence of anadromous fish and the potential adverse effects that could occur upstream if anadromous fish were to be passed, we conclude that any additional studies of historical anadromy above Enloe dam are not worth the estimated levelized annual cost of $6,770.

Flow Continuation

Interior recommends the development of a plan to provide 48 hours of flow continuation in the event of an emergency project shutdown at the unmanned, remotely operated powerhouse. In the case of an unplanned outage, the power plant control system, using battery and diesel generator back-up, would automatically start opening the crest gates to maintain tailwater elevation at the powerhouse within the proposed ramping rate criteria. This would ensure an uninterrupted flow of water downstream of the project tailrace. The proposed crest gate operations, as proposed by Okanogan PUD, would protect and maintain aquatic habitat downstream of the project. Downstream aquatic habitat, including UCR steelhead designated critical habitat and Chinook salmon EFH below Similkameen Falls, would be protected in the event of operating emergencies or planned outages. Based on this, we conclude there would be no need for a specific flow continuation plan as recommended by Interior.

Evidence of Financial Capability for Project Decommissioning

Washington DFW recommends that Okanogan PUD provide evidence of

[46] See Okanogan PUD's response to REA comments filed on April 9, 2010.

financial securities to ensure that at the end of any license, they would be capable of decommissioning the project. The Commission has consistently denied requests for decommissioning cost studies and establishment of decommissioning funds in licenses where the project is determined to be economically and physically sound, not to have significant adverse environmental impacts, no party has suggested decommissioning in the foreseeable future after project construction, and there is no indication that the licensee would lack the financial resources to decommission the project if it were to be decommissioned. Commission policy states that a theoretical risk of licensee's inability to pay for decommissioning is insufficient basis for requiring a decommissioning fund or evidence of financial securities. Therefore, we do not recommend this measure.

Vegetation Resources Management Plan

Interior and Washington DFW recommend the development of a Vegetation Resources Management Plan that would include the measures contained in Okanogan PUD's Vegetation Plan, but also include additional measures, such as long-term monitoring of restored areas, GIS mapping, and creation of a digital database. We discuss the agencies' recommended additional measures in the following sections and conclude that they are not necessary. Therefore, the levelized annual cost of $680 to develop a Vegetation Resources Management Plan that contains those additional measures is not justified, and we do not recommend development of such a plan.

Long-Term Monitoring for Restored (Revegetated) Areas and Surveys for the Ute Ladies'-Tresses

Interior recommends a long-term survey effort for restored (revegetated) areas and threatened and endangered plants. Specifically, Interior recommends that Okanogan PUD monitor restored upland, riparian, and wetland habitat sites every year for 5 years, continue monitoring every 5 years thereafter, and replant sites as needed; and survey for threatened and endangered plants within 1 year of license issuance and every 5 years thereafter for the duration of any license.

Okanogan PUD proposes in its Vegetation Plan to monitor restored areas annually for 5 years and to plant additional willows if performance criteria are not met, but states that monitoring should be discontinued once the criteria are met. We estimated that the levelized annual cost of Interior's recommended monitoring schedule would be $6,770. Monitoring restored areas after the new plantings have met performance criteria would serve no purpose, would not warrant the cost, and would not be in the public interest. Therefore, we cannot support this recommendation.

The only threatened or endangered plant with suitable habitat in the project area is Ute ladies'-tresses, and Okanogan PUD's surveys did not locate any individuals of this species. Monitoring for Ute ladies'-tresses for an additional 3 years, as Okanogan PUD proposes, would be adequate to confirm the presence or absence of this plant. If the surveys identify Ute ladies'-tresses in areas that could be affected by the proposed project, developing a plan, after consultation with the agencies, to avoid or minimize adverse impacts, as staff recommends, would be appropriate to protect these plants. Monitoring according to Interior's recommended schedule would have a levelized annual cost of $4,740, and because the additional monitoring would not be expected to provide greater protection to the species, the cost is not warranted. Therefore, we do not recommend Interior's schedule for threatened and endangered plant monitoring.

GIS Mapping and Digital Database

Interior recommends GIS mapping and development of a digital database for sensitive species, noxious weeds, and habitat restoration sites, to assist in associated management activities at the project. Sufficient information exists on the location of sensitive species, noxious weeds, and habitat, with the exception of the side channel enhancement site that would be included in the proposed 3 years of surveys for Ute ladies'-tresses. Staff estimates that GIS mapping and the creation of a digital database would have an estimated levelized annual cost of $1,020. Staff supports Okanogan PUD's proposals for monitoring restored areas and noxious weeds and conducting Ute ladies'-tresses surveys, but finds that using the monitoring and survey results to create GIS mapping and a digital database is not needed to manage project lands and their cost do not justify the benefits. Therefore, staff does not recommend these measures.

Wildlife Management Plan

Interior and Washington DFW recommend the development of a Wildlife Management Plan that would include Okanogan PUD's proposed wildlife habitat mitigation measures, but also include additional measures, such as visually marking the transmission line, installing a maintaining nest boxes and artificial perch poles, placing seasonal restrictions on project activities, installing barriers on irrigation tunnels, and creating a 200-foot wetland/riparian buffer. We discuss each of the agencies' individual additional measures separately, and conclude that, with the exception of the artificial perch poles as discussed above, the measures are not necessary. Therefore, the levelized annual cost of $680 to develop a Wildlife Management Plan that contains those additional measures is not justified, and we do not recommend development of such a plan.

Visual Marking of Transmission Line

Interior and Washington DFW recommend visual marking of the transmission line crossing the Similkameen River to prevent bald eagles and other birds from colliding with the line. We do not recommend this measure because the line would not cross the Similkameen River.

Nest Boxes

Interior and Washington DFW recommend installing and maintaining nest boxes for small birds in areas that lack natural tree cavities. The agencies have not specified the number of nest boxes or the target species, nor have they documented the need for enhancing such species at the project. Therefore, we cannot estimate the total cost or support this recommendation at this time.

Seasonal Restrictions on Project Activities

Interior and Washington DFW recommend excluding project activities during the winter hibernation period for Townsend's big-eared bats. This recommendation lacks specific activities that would be excluded and could result in Okanogan PUD's inability to operate and properly maintain the project facilities. Therefore, we do not recommend this measure.

Barriers on Tunnels

Interior and Washington DFW recommend installing barriers on the OTID's abandoned irrigation tunnels to prevent human disturbance of Townsend's big-eared bats in the tunnels. Only one OTID tunnel has an entrance within the project boundary. Entrance to this tunnel is prevented due to landslide blockage. Tunnels with greater bat habitat potential are located near Shanker's Bend and further upstream, and are far enough from the

project site that recreational or construction activity associated with the project would be unlikely to affect bats using those tunnels. Therefore, we do not recommend installing barriers on the abandoned irrigation tunnel.

200-Foot Wetland/Riparian Buffer

Washington DFW recommends providing a 200-foot wetland/riparian buffer to protect and enhance wildlife habitat. Under existing conditions, wetlands occur in scattered patches along the reservoir, and riparian shrub and forest communities occur in a narrow fringe along the reservoir, with the largest stand consisting of riparian forest on the east side of the reservoir just upstream from Enloe dam. With the exception of the riparian forest area just upstream from the dam, there are no 200-foot-wide areas of wetland/riparian habitat within the project boundary, and we do not expect the use of flashboards on the dam to foster a 200-foot-wide zone of wetland/habitat area around the reservoir. The substrate along the reservoir is unsuitable in places (i.e., rocks) for wetland/riparian habitat. Therefore, providing a 200-foot wetland/riparian buffer around the entire reservoir would be impossible. Further, we conclude that the measures in the Vegetation Plan, including the planting of riparian vegetation and restoration of the existing shoreline road segment that traverses riparian forest, are adequate to protect and enhance riparian wildlife habitat, and a 200-foot buffer is not warranted.

Recreation and Land Use

BLM recommends that Okanogan PUD provide a footbridge to the west side of the Similkameen River at the project. Access to the west side of the Similkameen River is not needed due to the lack of public facilities and recreation opportunities (existing or proposed) on that side. Therefore, the provision for adding a footbridge to the west side of the Similkameen River downstream of the dam is not warranted because there is no project effect or need that would benefit from the measure BLM recommends.

BLM recommends that Okanogan PUD remove two small, deteriorating buildings at the north end of the proposed Enloe Dam Recreation Area. Okanogan PUD states that one of two small structures on the north end of the proposed Enloe dam recreation area is owned by a private landowner that maintains a lease with BLM. Okanogan PUD states it is not in a position to remove BLM-leased structure. Although staff recommended removal of the unused pump house earlier in this section under *Additional Staff-Recommended* Measures, removal of the BLM-leased pump house at the north end of the proposed recreation area is not warranted because it does not interfere with the project operation and it is being used for private purposes. We conclude that these measures would not be worth the estimated levelized annual cost of $1,350.

Interior recommends that Okanogan PUD provide recreational development at the Miner's Flat site, including parking areas, water access for launching and landing boats, installing an information kiosk with a map, establishing primitive campsites, including picnic tables and steel fire rings, and installing a vault toilet.[47] Miner's Flat is BLM-owned and operated, and it is reasonable to assume BLM will continue to operate and maintain the site throughout a new license term. Moreover, Okanogan PUD has proposed to develop formalized campsites within the project boundary and staff is recommending a river access site within BLM's Miner's Flat recreation site for a boating take-out. These measures provide sufficient access to formal campsites and water-based recreation at the project. Therefore, making BLM's Miner's Flat recreation area a project feature and bringing the entire site into the project boundary would not be justified. We conclude that the cost for BLM's recommendation would not be worth the estimated levelized annual cost of $23,460.

BLM recommends that Okanogan PUD provide for law enforcement and emergency services plan, including funds. The Commission is concerned with protecting resources through specific measures enforceable as to the licensee, rather than requiring a licensee to provide funding to another entity, because the Commission would have no way of assuring that the activity paid for by the licensee would actually serve a project purpose or ameliorate a project effect. Moreover, while enforcement of the requirements of any license would be Okanogan PUD's responsibility, enforcement of local laws within the project area and the river basin is not a matter of Commission jurisdiction but is the responsibility of local law enforcement agencies. Therefore, we do not recommend this provision with an estimated levelized annual cost of $15,140.

[47] BLM also recommends Okanogan PUD provide recreation site grounds maintenance. Grounds maintenance is included in Okanogan PUD's proposal and is included in the normal, day-to-day O&M costs for the project.

Cultural Resources

Interior recommends Okanogan PUD revise its May 2009 HPMP to allow at least 5 years during which Okanogan PUD would solicit and review offers to parties that might be interested in acquiring the historic Enloe powerhouse. We do not recommend this measure. Instead, Okanogan PUD's May 2009 HPMP proposes, and we recommend, a 4-year provision. If a new owner is not identified within 4 years, Okanogan PUD would consult with the CRWG, which includes the Commission, to identify appropriate mitigation options prior to demolishing the structure. If demolition is determined necessary, a Memorandum of Agreement between the Commission and the Washington SHPO would be developed that would identify agreed-upon mitigation measures. We conclude that Interior did not provide any evidence to indicate why 4 years is insufficient to allow parties to come forward with an offer for acquiring the historic Enloe powerhouse.

Conclusion

Based on our review of the agency and public comments filed on the project and our independent analysis pursuant to sections 4(e), 10(a)(1), and 10(a)(2) of the FPA, we conclude that licensing the Enloe Project, as proposed by Okanogan PUD (with the exception of the boulder clusters and entrainment and resident fish monitoring), with additional staff-recommended measures, would be best adapted to a plan for improving or developing the Similkameen River watershed.

5.3 Unavoidable Adverse Effects

Although Okanogan PUD proposes to implement a Blasting Plan and BMPs, it is expected that blasting would cause short-term disturbance to fish. It is not expected that there would be any long-term effects.

Although Okanogan PUD proposes to implement an ESCP, a CSMP, and use appropriate BMPs, it is expected that sediment transport created by project construction would cause short-term disturbances to fish and aquatic species in the project area. These effects are expected to be short-term and should have no lasting impact.

There would be a short-term loss of riparian and wetland habitats resulting from the change in reservoir elevation. The long-term effect of this change would be minimal due to the planting of native riparian species.

There would be a reduction of flow in the bypassed reach which would reduce fish habitat and DO in this short reach

and reduce the aesthetics of flows over Similkameen Falls. Raising of the reservoir by 4 feet would convert 16 acres of riparian habitat to aquatic habitat; however, new riparian habitat would be established and enhanced with vegetative planting.

5.4 Fish and Wildlife Agency Recommendations

Under the provisions of section 10(j) of the FPA, each hydroelectric license issued by the Commission shall include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife resources affected by the project.

Section 10(j) of the FPA states that whenever the Commission believes that any fish and wildlife agency recommendation is inconsistent with the purposes and the requirements of the FPA or other applicable law, the Commission and the agency will attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

In response to our REA notice, the following fish and wildlife agencies submitted recommendations for the project: NMFS (letter filed February 26, 2010); Interior, on behalf of BLM and FWS (letter filed February 26, 2010); and Washington DFW (letter filed February 26, 2010). Table 23 lists the federal and state recommendations filed subject to section 10(j) and whether the recommendations are adopted under the staff alternative. Environmental recommendations that we consider outside the scope of section 10(j) have been considered under section 10(a) of the FPA and are addressed in the specific resource sections of this document and the previous section.

Of the 35 recommendations that we consider to be within the scope of 10(j), we wholly include 28, include 1 in part, and do not include 6. We discuss the reasons for not including those recommendations below in table 24.

TABLE 24—FISH AND WILDLIFE AGENCY RECOMMENDATIONS FOR THE ENLOE HYDROELECTRIC PROJECT

[Source: Staff]

Recommendation	Agency	Within the scope of 10(j)	Annualized cost	Adopted or not adopted
Downstream Water Quality				
Improve DO concentrations during low flow period by providing aeration in the draft tubes.	NMFS	Yes	$5,060	Adopted.
Monitor and report water temperature and TDG concentrations for 5 years.	NMFS	Yes	$3,850	Adopted.
Monitor and report DO concentrations for life of the license.	NMFS	Yes	$5,500	Not adopted—5 years of monitoring likely would be adequate to characterize DO conditions. Also, monitoring could be extended if needed by the TRG after the first 5 years.
Implement the ESCP	NMFS	Yes	$1,460	Adopted.
Implement the spill prevention, containment and clean-up plan.	NMFS	Yes	$1,820	Adopted.
Allow Washington DFW, tribes, and other interested resource agencies to inspect the project site during construction and operation.	Washington DFW	No—not a specific measure to protect fish and wildlife.	n/a	Adopted—provided that adequate notice is given.
Develop an adaptive management plan.	Washington DFW	No—not a specific measure to protect fish and wildlife.	n/a	Adopted—Okanogan PUD's proposed biological review process appears to fulfill the recommendation.
Provide evidence of financial security to ensure that Okanogan PUD would be capable of project decommissioning at the end of any license.	Washington DFW	No—not a specific measure to protect fish and wildlife.	n/a	Not adopted—theoretical risk of applicant's inability to pay for decommissioning is insufficient basis for requiring.
Fisheries Enhancement Measures				
Construct and file detailed design drawings of an intake fish screen.	Interior, Washington DFW	Yes	$16–$24M	Not adopted—Okanogan PUD's proposed trash rack will provide adequate protection at significantly less cost.
Implement a powerhouse operational plan.	Interior	Yes	$340	Adopted.

TABLE 24—FISH AND WILDLIFE AGENCY RECOMMENDATIONS FOR THE ENLOE HYDROELECTRIC PROJECT—Continued

[Source: Staff]

Recommendation	Agency	Within the scope of 10(j)	Annualized cost	Adopted or not adopted
Provide continuous instream flows in the bypassed reach.	Washington DFW	Yes	$37,940	Adopted.
Design and construct tailrace net barriers and implement associated plans.	Interior, NMFS, Washington DFW.	Yes	$9,580	Adopted.
Implement side-channel/off-channel development/enhancement at locations in the lower Similkameen River or near the Okanogan River.	Interior, NMFS, Washington DFW.	Yes	$30,210	Adopted.
Implement gravel supplementation downstream of Enloe dam.	Interior, NMFS, Washington DFW.	Yes	$11,950	Adopted.
Transport downstream and place large woody debris captured at the project's intake and trashrack.	Interior	Yes	$4,300	Adopted.
Stock sterile triploid rainbow trout to support a recreational fishery upstream of Enloe dam.	Interior, Washington DFW	Yes	$10,340	Not adopted—Stocked trout pose a disease and competition risk to native populations.
Provide ramping rates during project start-up and shut-down.	Interior, NMFS, Washington DFW.	Yes	$0	Adopted.
Select the location for ramping rate monitoring in consultation with NMFS, FWS, Washington DFW, the Yakima, and the Colville.	Interior, NMFS, Washington DFW.	Yes	n/a	Adopted.
Develop a Wildlife Management Plan including the following measures:	Interior, Washington DFW	Yes	$680	Adopted (for preparing plan).
Restore the existing unimproved shoreline road along Enloe reservoir to a natural condition, eliminating the current interruption between the shoreline and upland habitat.	Interior, Washington DFW	Yes	[b] $26,920	Adopted.
Relocate access road to the reservoir.	Interior, Washington DFW	Yes	Cost included in measure above.	Adopted.
Locate the project's existing and proposed transmission lines and pole to prevent raptor electrocution and include the line within the project boundary.	Interior, Washington DFW	Yes	minimal	Adopted.
Include a provision to avoid disturbing foraging bald eagles between October 31 and March 31 in the schedules for project and transmission line construction.	Interior, Washington DFW	Yes	$9,100	Adopted.

TABLE 24—FISH AND WILDLIFE AGENCY RECOMMENDATIONS FOR THE ENLOE HYDROELECTRIC PROJECT—Continued

[Source: Staff]

Recommendation	Agency	Within the scope of 10(j)	Annualized cost	Adopted or not adopted
Retain dead trees along the reservoir unless they become a hazard, and install 10 artificial perch poles along the reservoir shoreline and in places where perch trees are sparse or lacking, and maintain, repair, or replace perch poles as necessary.	Interior, Washington DFW	Yes	[a] $680	Adopted.
Plant native riparian trees, grasses, and shrubs, when they are called for. Part of BOTA–02, 04, and 05.	Interior, Washington DFW	Yes	$6,730	Adopted.
Visually mark the section of the project transmission line crossing the Similkameen River.	Interior, Washington DFW	No—no relationship to proposed project.	minimal	Not adopted—The transmission line does not cross the Similkameen River.
Install nest boxes for small birds in areas that lack snags or natural tree cavities.	Interior, Washington DFW	No—number of boxes and type unspecified.	[a] $25/box	Not adopted—Insufficient detail on measure and support for need.
Install barriers on irrigation canal tunnels to prevent human entry while still allowing use by bats.	Interior, Washington DFW	Yes	[a] $140	Not adopted—Tunnel near Enloe dam blocked by landslide and other tunnels are far enough away from activity to not warrant barriers.
Exclude project activities in the winter hibernation period for bats.	Interior, Washington DFW	No—not a specific measure; specific activities undefined.	n/a	Not adopted—Generic exclusion could prohibit necessary project activities.
Provide a 200-foot wetland/riparian buffer.	Washington DFW	Yes	n/a	Not adopted—The measures in the Vegetation Plan are adequate to protect riparian habitat
Develop a Vegetation Resources Management Plan.	Interior, Washington DFW	Yes	$680	Adopted (for preparing plan).
Plant fast-growing native shade producing trees along the reservoir, such as native willows, alders, and/or cottonwoods.	Interior, Washington DFW	Yes	[b] $4,730	Adopted.
Abandon and restore the existing shoreline road.	Interior, Washington DFW	Yes	[b] $26,920	Adopted.
Plant riparian species along abandoned road corridor.	Interior, Washington DFW	Yes	[b] $1,090	Adopted.
Plant riparian species on the east and west banks downstream of Shanker's Bend.	Interior, Washington DFW	Yes	[b] $1,460	Adopted.
Install grazing control measures, including fencing to protect sensitive riparian areas and restored sites.	Interior, Washington DFW	Yes	[b] $1,820	Adopted.
Monitor restored areas (upland sites, riparian and wetland sites) every year for 5 years and continue monitoring every 5 years thereafter and replant sites as needed.	Interior, Washington DFW	Yes	[a] $6,770	Adopted in part—Staff recommends monitoring for 5 consecutive years and once in year 8.

TABLE 24—FISH AND WILDLIFE AGENCY RECOMMENDATIONS FOR THE ENLOE HYDROELECTRIC PROJECT—Continued

[Source: Staff]

Recommendation	Agency	Within the scope of 10(j)	Annualized cost	Adopted or not adopted
Employ BMPs during construction and implementation to protect riparian and wetland vegetation.	Interior, Washington DFW	Yes	[b] $180	Adopted.
Provide biological monitoring during construction to ensure minimal impact to aquatic and terrestrial resources.	Interior, Washington DFW	Yes	[b] $5,240	Adopted.
Implement a noxious weed control program.	Interior, Washington DFW	Yes	[b] $2,290	Adopted.
Survey for and document threatened and endangered plants within one year of the license issuance and every 5 years thereafter for the duration of the license.	Interior, Washington DFW	Yes	$4,740	Not adopted—Okanogan PUD's proposed measures are adequate to protect resources.

Note: Unless otherwise noted, all costs are from Okanogan PUD.
[a] Estimated by Staff.
[b] Part of Okanogan PUD's Vegetation Plan.

5.5 Consistency With Comprehensive Plans

Section 10(a)(2)(A) of the FPA, 16 U.S.C. 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with the federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. We reviewed 23 comprehensive plans that are applicable to the Enloe Project, located in Washington State. No inconsistencies were found.

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6.0 Finding of No Significant Impact

Construction and operation of the Enloe Project, with our recommended measures, involves land disturbing activities associated with access road clearing and grading and excavation of intake channel, powerhouse, and powerhouse tailrace. There would be a temporary loss of riparian and wetland habitats from the increased reservoir operating level. There may also be short-term turbidity and contamination caused from the resuspension of reservoir sediments and in-water excavation of the powerhouse tailrace channel. Our recommended measures would ensure water quality standards are not exceeded, ensure protection of

anadromous and resident fish, restore riparian vegetation, protect and enhance public access and recreation opportunities, and protect cultural and historic resources.

On the basis of our independent analysis, we find that the issuance of a license for the Enloe Project, with our recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

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