satisfy the need for scientifically credible taxonomic information.'' [19] HSUS noted that ITIS lists the common name of *nyctereutes procyonoidos* as ''Raccoon Dog,'' and presented evidence that the scientific community refers to the species by that name.[20] Finally, HSUS asserted that the name ''Asiatic Raccoon'' may confuse consumers because the animal is also found in Europe.[21]

In contrast, the Fur Information Council of America (''Fur Council'') and the National Retail Federation (''NRF'') supported retaining ''Asiatic Raccoon.'' The Fur Council asserted that the name ''Raccoon Dog'' would mislead consumers because *nyctereutes procyonoidos* is no more closely related to domestic dogs than foxes, wolves, or coyotes.[22] In addition, the Fur Council stated that ''[w]ere the Commission to require the use of the term 'raccoon dog,' there would no longer be a market for Asiatic/Finnraccoon fur, and garments with this type of fur would be eliminated.'' [23] NRF concurred with the Fur Council's view that *nyctereutes procyonoidos* is ''not a true-dog or dog-like canine,'' and suggested retaining ''Asiatic Raccoon'' or changing it to ''Tanuki'' or ''Magnut.'' [24]

Finally, the Fur Council and Finnish Fur Sales, supported by the Finnish Ministry for Foreign Affairs and Ministry of Agriculture and Forestry, suggested allowing the name ''Finnraccoon'' for *nyctereutes procyonoidos* raised in Finland. These commenters noted that calling such furs ''Asiatic Raccoon'' could mislead consumers because ''finraccoons'' are not from Asia and are raised under different conditions than those that generally exist in Asia.[25]

II. Issues for Discussion at the Hearing

The Commission invites attendees to share views on any aspect of the Name Guide at the hearing. The Commission specifically requests views on: (1) The appropriateness of using the ITIS system to determine an animal's true English name; (2) whether using the name ''Asiatic Raccoon'' to describe *nyctereutes procyonoidos* fur products accurately informs consumers about the source, quality, and characteristics of those products; (3) what, if any, alternative name, including ''Tanuki'' or ''Magnut,'' should the Name Guide require for *nyctereutes procyonoidos;* (4) whether the Name Guide should allow ''Finnraccoon'' for *nyctereutes procyonoidos* raised in Finland; and (5) whether the Commission should modify, add, or delete other names.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–30050 Filed 11–21–11; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM11–6–000]

Annual Charges for Use of Government Lands

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Power Act requires hydropower licensees to recompense the United States for the use, occupancy, and enjoyment of its lands. The Commission assesses annual charges for the use of Federal lands through Part 11 of its regulations. The Commission is proposing to revise the methodology used to compute these annual charges. Under the proposed rule, the Commission would create a fee schedule based on the U.S. Bureau of Land Management's (BLM) methodology for calculating rental rates for linear rights of way. This methodology includes a land value per acre, an encumbrance factor, a rate of return, and an annual adjustment factor. The fee schedule would include all adjustments described in the BLM rule adopting this methodology, except the allocation of county land values into zones. In addition, the Commission proposes to eliminate its current practice of doubling the per-acre rental rate for non-transmission line lands.

DATES: Comments are due January 6, 2012.

ADDRESSES: Comments, identified by docket number, may be filed by the following methods:

- Electronic Filing through *http://www.ferc.gov*. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

November 17, 2011.

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[19] *Id.*

[20] *Id.* at 8–9.

[21] *Id.* at 9.

[22] Fur Council Comment at 5.

[23] *Id.* at 6.

[24] NRF Comment at 4.

[25] *See, e.g.,* Fur Council Comment at 3–4; Finnish Fur Sales comment at 1–2.

1. The Federal Power Act (FPA) requires licensees using Federal lands to recompense the United States for the use, occupancy, and enjoyment of its lands.[1] The Commission has assessed this portion of annual charges at rental rates established by the U.S. Bureau of Land Management (BLM) (and adopted by the U.S. Forest Service), which are published annually in a fee schedule that identifies per-acre rental rates by state and county for linear rights of way. Under the proposed rule, the Commission would create a fee schedule based on the BLM methodology promulgated in 2008 for calculating rental rates for linear rights of way. This methodology includes a land value per acre, an encumbrance factor, a rate of return, and an annual adjustment factor. The Commission-created fee schedule would base county land values on average per-acre values from the National Agricultural Statistics Service (NASS) Census, and would not use the zone system adopted by the 2008 BLM rule. All other adjustments to the formula components described in the BLM rule would apply to the Commission's creation of a fee schedule.[2] In addition, the Commission proposes to eliminate its current practice of doubling the rental rate for non-transmission line lands.

I. Background

2. Section 10(e)(1) of the Federal Power Act (FPA) requires Commission hydropower licensees using Federal lands to:

> pay to the United States reasonable annual charges in an amount to be fixed by the Commission * * * for recompensing [the United States] *for the use, occupancy, and enjoyment of its lands or other property* * * * and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require * * *.[3]

In other words, where hydropower licensees use and occupy Federal lands for project purposes, they must compensate the United States through payment of an annual fee, to be established by the Commission.[4]

3. Over time, the Commission has adopted a number of methodologies to effectuate this statutory directive. This has included conducting project-by-project appraisals,[5] charging a single national average land value per acre,[6] and using a fee schedule for linear rights of way developed jointly by the BLM and Forest Service.[7]

4. From 1937 to 1942, the Commission based annual charges for the use of Federal lands by hydropower licensees on individual land appraisals for each project.[8] In 1942, the Commission rejected this approach in favor of a single national average per-acre land value because it determined that project-by-project appraisals were more costly to administer than the value collected in rent, the values for inundated lands would become distorted, the values could only be maintained with re-appraisals, and disputes over values may lead to costly litigation.[9] Eventually, the Commission also rejected the use of a single national average per-acre land value because the Inspector General of the Department of Energy concluded that this methodology resulted in an under-collection of over $15 million per year due to the use of outdated land values.[10]

5. In 1987, the Commission adopted use of a fee schedule developed by the BLM and Forest Service that identified per-acre rental rates by county for linear rights of way on Federal lands.[11] BLM and Forest Service produced the fee schedule by taking a survey of market values by county for the various types of land that the agencies had allowed to be occupied by linear rights of way.[12] The range of per-acre land values was divided into eight zones, and each zone value was pegged to the highest raw value within that zone.[13] The rental rate in the fee schedule was calculated by multiplying the zone value by an encumbrance factor of 70 percent,[14] a rate of return of 6.41 percent, and an annual inflation adjustment factor. The resulting fee schedule assigned one of eight rental rates to all counties.[15]

6. BLM would use individual land appraisals to substitute for the fee schedule rental rate only if the resulting rent would be significantly higher than that produced by the schedule.[16]

7. In adopting the 1987 BLM fee schedule, the Commission found that the methodology promulgated by BLM and Forest Service for linear rights of way was the ''*best approximation*

[1] 16 U.S.C. 803(e)(1) (2006).

[2] *Update of Linear Right-of-Way Rent Schedule,* 73 FR 65040 (October 31, 2008) (codified at 43 CFR 2806.20–2806.23).

[3] 16 U.S.C. 803(e)(1) (2006) (emphasis added). Section 10(e)(1) also requires licensees to reimburse the United States for the costs of the administration of Part I of the FPA. Those charges are calculated and billed separately from the land use charges, and are not the subject of this proposed rule.

[4] Pursuant to FPA section 17(a), 16 U.S.C. 810(a) (2006), the fees collected for use of government lands are allocated as follows: 12.5 percent is paid into the Treasury of the United States, 50 percent is paid into the federal reclamation fund, and 37.5 percent is paid into the treasuries of the states in which particular projects are located. No part of the fees discussed in this proposed rule is used to fund the Commission's operations.

[5] *See Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges,* Order No. 469, FERC Stats. & Regs., Regulations Preambles ¶ 30,741, at 30,584 (1987).

[6] *Id. See also Order Prescribing Amendment to Section 11.21 of the Regulations Under the Federal Power Act,* Order No. 560, 56 FPC 3860 (1976).

[7] Order No. 469, FERC Stats. & Regs. ¶ 30,741 at 30,584.

[8] *See* 56 FPC 3860 at 3863.

[9] *See* 56 FPC 3860 at 3863–64.

[10] *See* Assessment of Charges under the Hydroelectric Program, DOE/IG Report No. 0219 (September 3, 1986); see also More Efforts Needed to Recover Costs and Increase Hydropower Charges, U.S. General Accounting Office Report No. RCED–87–12 (November 1986). The single national average land value per acre in 1942 was $50 per acre, and, by 1976, the value was $150 per acre. 56 FPC 3860.

[11] Order No. 469, FERC Stats. & Regs. ¶ 30,741 at 30,584.

[12] 51 FR 44014 (Dec. 5, 1986). BLM explained that the value of timber had not been included, and that the values were not for urban or suburban residential areas, industrial parks, farms or orchards, recreation properties or other such types of land. The agencies tried to avoid using attractive public use areas such as lakeshores, streamsides, and scenic highways frontage.

[13] The per-acre zone values were $50, $100, $200, $300, $400, $500, $600, and $1000.

[14] The encumbrance factor adjusts the zone value to reflect the degree that a particular type of facility encumbers the right-of-way area or excludes other types of land uses. If the encumbrance factor is 100 percent, the right-of-way facility (and its operation) is encumbering the right-of-way area to the exclusion of all other uses.

[15] The per-acre zone fee under the 1987 BLM fee schedule ranged from $2.24 to $44.87. By 2008, the per-acre zone fee under the 1987 BLM fee schedule, having been adjusted each year for inflation, ranged from $3.76 to $75.23.

[16] 51 FR 44014 (Dec. 5, 1986). BLM would use individual appraisals only if it could be determined that sufficient area within a right of way would, at a minimum, exceed the zone value by a factor of ten and the expected return was sufficient to initiate a separate appraisal.

available of the value of lands used for transmission line rights-of-way.'' [17] Therefore, the Commission assessed the schedule rate for transmission line rights of way on Federal lands, and doubled this rate for other project works on Federal lands (*e.g.,* dams, powerhouses, reservoirs) because, historically, appraisers had determined that the market value of transmission line rights of way is roughly half of the market value of other land.[18]

8. In the 1987 proceeding, the Commission found no merit to claims that charging fair market value for Federal lands is prohibited by the FPA:

> All increases in charges will result in some impact on consumers. The statutory provision bars the Commission from assessing unreasonable charges that would be passed along to consumers. Reasonable annual charges are those that are proportionate to the value of the benefit conferred. Therefore, a fair market approach is consistent with the dictates of the Act. Furthermore, as land values have not been adjusted in over ten years, an adjustment upwards is warranted and overdue.[19]

The Commission also rejected the argument that it should intentionally set low land charges based on the public benefits provided by hydropower projects. The Commission explained that the public benefits provided by licensed projects are considered in the licensing decision and these benefits are the *quid pro quo* for the ability to operate the project in a manner consistent with the needs of society. In contrast, the purpose of the rental fee is to establish a fair market rate for the use of government land.[20]

9. In adopting the 1987 BLM fee schedule, the Commission rejected several other proposed methods of assessing annual charges for the use, occupancy, and enjoyment of government lands by hydropower licensees. The Commission rejected a proposal to use an agricultural land value index created by the U.S. Department of Agriculture (USDA), which used a state-by-state average value per acre of farm lands and buildings, concluding that this index would require such major adjustments that it would be an inefficient measure of land value for hydropower projects.[21] The Commission also rejected a proposal to assess a fee based on the percentage of gross revenues from power sales or a rate per kilowatt hour, concluding that such methods would be unreasonable because they would result in a royalty as though the occupied Federal lands themselves were producing power. The Commission explained that this would overlook the fact that power output is the result of many factors (*e.g.,* water rights, head, project structures), and not just the acreage of the Federal lands involved.[22] Finally, the Commission again rejected a proposal to use individual project appraisals because such appraisals would be too costly and result in time-consuming litigation.[23]

10. From 1987 to 2008, the Commission assessed annual charges for the use, occupancy, and enjoyment of government lands according to the BLM fee schedule. Each year, BLM adjusted the fee schedule for inflation, and each year the Commission published notice of the updated schedule.[24]

11. In 2005, Congress passed the Energy Policy Act (EPAct) of 2005, which required BLM ''to update [the schedule] to revise the per acre rental fee zone value schedule * * * to reflect current values of land in each zone.'' [25] Congress further ordered that ''the Secretary of Agriculture shall make the same revision for linear rights-of-way * * * on National Forest System land.''

12. On October 31, 2008, BLM issued a final rule promulgating its updated rental schedule for linear rights of way to satisfy the congressional mandate in EPAct 2005,[26] and the Forest Service subsequently adopted the 2008 BLM fee schedule.[27] As had been the case with the methodology underlying the 1987 BLM fee schedule, the updated fee schedule is based on the same formula, which has four components: (1) An average per-acre land value by county (grouped into zones); (2) an encumbrance factor reduction; (3) a rate of return; and (4) an annual adjustment factor for inflation.

13. Under the updated 2008 BLM fee schedule, the per acre land value by county is based on the NASS Census data. To determine a county per-acre land value, BLM uses the average per acre land value from the ''land and buildings'' category of the NASS Census. The ''land and buildings'' category is a combination of NASS Census land categories, and includes irrigated and non-irrigated cropland, pastureland, rangeland, woodland, and the ''other'' category, which includes roads, ponds, wasteland, and land encumbered by non-commercial or non-residential buildings. BLM consulted with officials from NASS to arrive at an appropriate method for removing the value of irrigated cropland and land encumbered by buildings because these types of land are generally of higher value than the types of lands over which rights of way would be granted. This resulted in a reduction in the average per-acre land value by 20 percent (a 13 percent reduction to remove all irrigated acres and a 7 percent reduction to remove all lands in the ''other'' category, which includes all improved land or land encumbered by buildings) ''to eliminate the value of all land that could possibly be encumbered by buildings or which could possibly have been developed, improved, or irrigated.'' [28]

14. In response to comments that the non-irrigated cropland category also represented higher value lands and therefore should be removed from the ''land and buildings'' category, BLM explained that in comparing the categories from the NASS Census data, it found little difference in the mid-western and western states between the average per acre values of non-irrigated cropland and pastureland/rangeland.[29] Furthermore, if the non-irrigated lands category were removed from the per-acre average, the per-acre average would undervalue Federal land holdings in the eastern U.S., including Forest Service lands, that have largely been acquired from the private sector (primarily farm real estate) and would likely fall into the same land categories covered by the NASS Census.[30]

15. In response to comments objecting to the zone system, BLM explained that it chose to retain the zone system because the 2005 congressional mandate directed it to revise the schedule to reflect current land values in each zone. BLM also explained that it considered using the midpoint of the zone value to base its calculations instead of the upper limit. It chose not to do this because it would have been significantly different from the methodology used in

[17] Order No. 469, FERC Stats. & Regs. ¶ 30,741 at 30,588 (emphasis added).

[18] *Id.* at 30,589.

[19] *Id.* (footnotes omitted).

[20] *Id.* at 30,587.

[21] *Id.* at 30,589. The potential adjustments included accounting for farm buildings, for the cleared, arable, level land that it represented, and for the fact that the index represented private and not federal lands.

[22] *Id.* at 30,589–90.

[23] *Id.* at 30,590.

[24] *See, e.g., Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Charges for the Use of Government Lands,* 73 FR 3626 (Jan. 22, 2008), FERC Stats. & Regs. ¶ 31,262 (2008).

[25] 42 U.S.C. 15925 (2006).

[26] *Update of Linear Right-of-Way Rent Schedule,* 73 FR 65040.

[27] *See Fee Schedule for Linear Rights-of-Way Authorized on National Forest System Lands,* 73 FR 66591 (November 10, 2008). The Forest Service noted it had given notice, in the preambles to BLM's proposed and final rules, that it would adopt BLM's revised fee schedule.

[28] 73 FR 65040 at 65043.

[29] *Id.* at 64044.

[30] *Id.*

the previous schedule (which used the upper zone amount) and its use would have generated significantly lower per acre rent amounts, even though land values have generally increased. Because of the larger range in values, the 2008 fee schedule included twelve zones rather than eight.

16. BLM will update the per-acre land values by county every five years on a defined schedule that is linked to the NASS Census updates, which are also updated every five years. Therefore, the 2011–2015 fee schedules would be based on the 2007 NASS Census data,[31] adjusting in intermediary years with an annual inflation adjustment factor, the 2016–2020 fee schedules would be based on the 2012 NASS Census, the 2021–2025 fee schedules would be based on the 2017 NASS Census, and so on.

17. In promulgating the 2008 fee schedule, BLM made additional changes to the methodology underlying the fee schedule. BLM reduced the encumbrance factor from 70 percent to 50 percent after a review of public comments, industry practices in the private sector, and the Department of Interior's appraisal methodology for right-of-way facilities on Federal lands.[32] BLM revised the fixed rate of return downward from 6.41 percent to 5.27, which is the 10-year average (1998–2008) of the 30-year and 20-year Treasury bond yield rate.[33] To stay current with inflationary or deflationary trends, BLM will apply an annual adjustment factor, which is currently 1.9 percent, to the per-acre rental rate in the fee schedule.[34] The annual adjustment factor is based on the average annual change in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) for the 10-year period immediately preceding the year that the NASS Census data become available.[35] The BLM rule makes clear that the fee schedule is the only basis for determining an annual rental fee for rights of way on Federal lands.[36]

18. On February 17, 2009, the Commission issued notice (February 17 Notice) of the 2008 BLM fee schedule, which was based on its revised methodology, as it had done for every annual update to the 1987 fee schedule.[37] Because of the land value revisions and methodology adjustments in response to EPAct 2005, the 2008 fee schedule resulted, in some cases, in significantly higher annual charge assessments of Commission licensees.[38]

19. On March 6, 2009, a group of licensees requested rehearing of the February 17 Notice, which the Commission denied.[39] The licensees petitioned for review of the Commission's orders in the United States Court of Appeals for the District of Columbia Circuit. On January 4, 2011, the Court granted the petition for review and vacated the Commission's February 17 Notice.[40] The DC Circuit found that the Commission is required by the Administrative Procedure Act to seek notice and comment on the methodology used to calculate annual charges because the Commission's fee schedule is based on the BLM fee schedule, and BLM has made changes to the methodology underlying its fee schedule.

20. On February 17, 2011, the Commission issued a Notice of Inquiry soliciting comments on proposed methodologies for assessing annual charges for the use, occupancy, and enjoyment of Federal lands by hydropower licensees. The Notice of Inquiry identified five requirements that any proposed methodology should satisfy, which are derived from the Commission's statutory obligations under the FPA and the Commission's past practice in implementing various methodologies. Any proposed methodology must: (1) apply uniformly to all licensees; (2) avoid exorbitant administrative costs; (3) not be subject to review on an individual basis; (4) reflect reasonably accurate land valuations; and (5) avoid an unreasonable increase in costs to consumers.

II. Comments on Notice of Inquiry

21. In response to the Notice of Inquiry, comments were filed by eight entities representing licensees, industry trade groups, and Federal agencies. No commenters suggested, and the Commission is unaware of, any existing index other than the NASS Census to determine per acre rental rates by county.

22. *2008 BLM Fee Schedule.* The Forest Service is the only commenter that recommends straight-forward adoption of the 2008 BLM fee schedule for assessing annual charges for the use of Federal lands by hydropower licensees. The Forest Service identified several advantages to adopting the BLM fee schedule, including: (1) Consistent application of linear rights-of-way rental values among Federal agencies; (2) parity in rental rates for projects licensed or exempted from licensing under the FPA; and (3) reduced administrative burden because BLM maintains and updates the schedule with periodic revisions to reflect changes in land values, treasury rates, and inflation.

23. *Per-Acre Land Value.* The Federal Lands Group[41] believes that the NASS Census land values should be reduced by 50 percent, instead of the 20 percent reduction incorporated into the BLM fee schedule, to reflect the fact that lands used for hydropower projects rarely have any value for agricultural purposes. The Federal Lands Group also recommends that the Commission use actual county land values from the NASS Census instead of the zone values created by BLM, which would result in a more accurate valuation of the project lands, with only minimal additional burden on the Commission because it is responsible for assessing Federal lands charges for fewer than 250 projects.

24. Similarly, Southern California Edison (SCE) generally supports use of the 2008 BLM fee schedule but believes that the 20 percent reduction in per-acre county land value does not properly account for the reduced value of vacant land. SCE recommends the Commission use the pastureland average value per acre category from the NASS Census to capture the value of vacant, unimproved lands. In addition, SCE recommends the Commission adjust downward the land values from the NASS Census because of the dramatic decrease in value that has occurred since the 2002 NASS Census.

25. Idaho Power Company (Idaho Power) believes that in order to accurately reflect the fair market value of Federal lands, the NASS Census land and buildings category should be reduced by an additional 26 percent for a total reduction of 46 percent.

[31] There is an 18-month delay in NASS's publication of the census data. In BLM's administration of its formula, it provides another 18-month delay to allow notice of any changes in applicable county values.

[32] *Id.* at 65047.

[33] *Id.* at 65049.

[34] *Id.* at 65050.

[35] The annual adjustment factor will be updated every ten years.

[36] If lands are to be transferred out of federal ownership, BLM allows a right-of-way occupier to submit an appraisal report to determine a one-time rental payment for perpetual linear grants or easements.

[37] *Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands,* 74 FR 8184 (Feb. 24, 2009) FERC Stats. & Regs. ¶ 31,288 (2009).

[38] However, a handful of licensees, in geographical locations throughout the country, had their rates reduced.

[39] *Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Changes for the Use of Government Lands,* 129 FERC ¶ 61,095 (2009).

[40] *City of Idaho Falls, Idaho* v. *FERC,* 629 F.3d 222 (D.C. Cir. 2011).

[41] The Federal Lands Group is a group of 16 private and municipal licensees that operate 37 licensed projects in the western U.S.

26. The National Hydropower Association (NHA) argues that any methodology based on an agricultural index, without an adjustment to more accurately capture the character of lands present at hydroelectric project, is inherently flawed because the lands typically present at hydroelectric projects are steeply sloped, rocky, and remote.

27. PG&E objects to the use of the NASS Census for per acre county land values because the land values reflect values from the beginning of the real estate bubble and may have improperly inflated the true value of the government lands. PG&E states that an agricultural index overvalues government lands used by hydroelectric projects, and points out that the Commission previously found, in Order No. 469, that farm land values were typically much higher than the value of Federal land used for hydroelectric projects.

28. *Individual Appraisals.* The Federal Lands Group argues that the Commission should provide a limited opportunity for a licensee, at its own expense, to demonstrate through periodic, independent appraisals the actual fair market value of Federal lands at a project.

29. Placer County also supports a mechanism for individual licensees to demonstrate, at their own expense, that the fair market value of the Federal lands at a hydropower project are substantially less than the annual charges billed by the Commission. Placer County suggests that a licensee could submit a land sales value appraisal performed by a state certified and licensed real estate appraiser. If that appraised value is substantially lower than the assumed land value used to derive the Commission's default annual charges, then the Commission should adjust the charges.

30. Placer County proposes two alternative approaches to making this adjustment. First, the Commission could reassign the specific project to the BLM fee schedule zone that corresponds to the appraised land value. Second, the Commission could develop a project-specific multiplier based on the difference between the values yielded by the default methodology and the individual assessment. For each subsequent year, the charge yielded by the default methodology would be multiplied by the same percentage. Under either of these proposals, licensees could be required to provide an updated appraisal periodically in order to continue to be assessed a rate other than that produced by the default methodology.

31. NHA also recommends that the Commission allow an alternative land valuation method on a case-by-case basis to resolve anomalies that may occur in the application of an index-based valuation system.

32. PG&E objects to independent appraisals on a case-by-case basis because such a practice would be time consuming and would result in exorbitant administrative costs, ultimately resulting in increased annual charge assessments to licensees for the administration of Part I of the FPA. However, PG&E believes that it might be appropriate for the Commission to allow a licensee to challenge the application of a uniform formula, if it results in an inappropriate annual charge given the peculiar characteristics of particular projects.

33. *Encumbrance Factor.* The Federal Lands Group argues that the encumbrance factor should be 30 percent because, unlike other energy infrastructure, hydroelectric projects encumber Federal lands minimally, and substantially enhance the management objectives of the Federal lands management agencies.

34. Placer County also argues that the Federal lands rental fee should be reduced because hydropower licensees do not fully encumber the Federal lands within their projects, much of those lands remain available for other uses, the Federal government retains significant rights in its lands, and licensees use the Federal lands within their projects to provide benefits to the public. Placer County suggests that the Commission adopt an encumbrance factor between 30 and 50 percent for all project areas occupying Federal lands.

35. SCE believes that a 50 percent encumbrance factor is the highest that is appropriate for a hydropower facility, and that the Commission should consider a public benefit credit system to offset the encumbrance factor when it is determined a hydropower facility provides recreational and other benefits to the general public (*e.g.,* recreational activities, flood control, or water storage).

36. Idaho Power also believes an encumbrance factor of 100 percent for non-transmission line lands is inappropriate because Federal landowners such as BLM and Forest Service issue commercial permits and collect fees for the use of project lands, and licensees are required to make significant investment for the protection of Federal lands from natural and manmade impacts or enhancements to Federal lands. Idaho Power believes an appropriate encumbrance factor is zero.

37. NHA believes that the hydropower industry's contributions to multiple use of Federal lands should be reflected in the Commission's valuation method by significantly reducing the level of encumbrance of hydropower projects on Federal lands. NHA states that Commission-issued licenses reserve authority for Federal land management agencies to authorize non-project uses on Federal lands within the project boundary, such as flood control, navigation, and storage for water supply and irrigation. NHA further states that many projects significantly enhance the multiple use management of the lands they occupy by providing recreational attractions such as fishing, boating, camping, and other activities, and many licensees also provide funding to the land managing agency in addition to the recreation facilities they construct, operate, and maintain.

38. *Non-Transmission Line Lands.* The Federal Lands Group, PG&E, Idaho Power, NHA, and SCE object to the Commission's practice of automatically doubling the linear rights-of-way fee for non-transmission line project areas because this practice does not recognize that these other project areas are frequently used for non-hydroelectric purposes, such as public recreation, private recreation (e.g., residential boat docks), and general environmental preservation, and are accessible by the general public for a variety of uses. PG&E also argues that, in the case of government lands administered by the Forest Service, the Forest Service reserves to itself the right to use, or to permit others to use, project lands for any purpose. PG&E suggests that the Commission charge some lesser factor than doubling for non-transmission line project areas.

39. *Rate of Return and Annual Adjustment Factor.* SCE recommends use of the 30-year Treasury Bond rate rather than the 10-year average of the 30-year Treasury bond yield rate because the former is a more accurate valuation of a long-range asset. SCE proposes that the Commission use the IPD–GDP to track inflation of land values annually.

40. *1987 Fee Schedule.* PG&E recommends the Commission continue use of the 1987 BLM fee schedule, with annual adjustments for inflation. PG&E states that it recognizes that Congress appeared to believe the BLM fee schedule for linear rights of way did not reflect current land values, but asserts there is no indication in the statutory provision that Congress intended that the Commission use the revised fee schedules for hydroelectric projects, or

that the use of the 1987 BLM fee schedule was inappropriate.

41. *Income- or Generation-Based Methodologies.* PG&E and NHA object to any methodology for assessing annual charges that would use an income- or generation-based methodology to establish annual land use charges.

42. *Phase-In of New Fee Schedule.* PG&E requests that the increase in annual charges be phased in over a number of years thereby avoiding an increase to the price of consumers of power.

43. *Edison Electric Institute.* The Edison Electric Institute (EEI) endorses the comments submitted by the Federal Lands Group, PG&E, SCE, Idaho Power, and NHA. EEI emphasizes the importance of such factors as the rural, unfarmed, undeveloped nature of hydropower project lands, the local nature of land values, the modest encumbrance of Federal lands used by hydropower facilities, changes in land values from year to year, use of reasonable long-term discount rates, and the need for project-by-project adjustments in fee assessments.

III. Proposed Rule

44. The Commission proposes to adopt the 2008 BLM methodology for creating a fee schedule of rental rates by county to assess annual charges for the use, occupancy, and enjoyment of Federal lands by hydropower licensees. Four components comprise the proposed formula: (1) An average per-acre land value by county based on the ''land and buildings'' category from the NASS Census; (2) an encumbrance factor; (3) a rate of return; and (4) an annual adjustment factor. The Commission proposes to use this methodology to create its own schedule, based on the NASS Census, without using the zone system incorporated into the BLM fee schedule. Except for this difference, the Commission proposes to adopt all other aspects of the BLM methodology for producing a fee schedule to assess rental rates for the use of Federal lands. In addition, the Commission proposes to eliminate the current practice of doubling the fee schedule rate for non-transmission line lands. The proposed rule does not include a graduated phase-in rate for the new schedule. Thus, the Commission would assess annual charges for the use of Federal lands by multiplying the rate in its fee schedule by the number of Federal acres occupied by a licensee.

45. The per-acre land value would be based on the NASS Census, adjusted downward to remove the value of irrigated lands and buildings, and would be updated with current land values every five years. The encumbrance factor, which adjusts for the degree to which an occupation of Federal lands precludes other uses, would be 50 percent. The rate of return, which converts the per-acre land value into an annual rental value, would be 5.27 percent. Finally, the annual adjustment factor, which adjusts the rental rate to reflect inflationary or deflationary trends, would be 1.9 percent, and would be adjusted every ten years.

46. The Commission proposes to track BLM's timing for incorporating the periodic updates to the NASS Census data. Therefore, the Commission's 2011–2015 fee schedules would be based on the 2007 NASS Census data,[42] adjusting in intermediary years with the annual adjustment factor, the 2016–2020 fee schedules would be based on the 2012 NASS Census, the 2021–2025 fee schedules would be based on the 2017 NASS Census, and so on. The annual adjustment factor would be revised every ten years, and the encumbrance factor and rate of return would remain unchanged unless by future rulemaking.

A. Per-Acre Land Value

47. The Commission proposes to adopt BLM's practice of creating a per-acre land value by using the ''land and buildings'' category from the NASS Census. The ''land and buildings'' category is a combination of all the land categories in the NASS Census, and includes croplands (irrigated and non-irrigated), pastureland/rangeland, woodland, and ''other'' (roads, ponds, wasteland, and land encumbered by non-commercial/non-residential buildings). The Commission would apply a 20 percent reduction to remove the value of irrigated farmland and buildings from the ''land and buildings'' category, but would avoid grouping the resulting land values into zones. Thus, under the BLM zone system, if the per-acre land value for County A, after the 20 percent reduction, is $3,500 and the zone range is $3,000 to $5,000, then County A's per-acre land value for purposes of the BLM formula would be $5,000. In contrast, under the proposed rule, the per-acre land value for County A would be $3,500, rather than $5,000.[43]

48. Using the county-by-county data is the ''best approximation'' of county values of which the Commission is aware. This method would result in more accurate land valuations for all licensees because under the zone system, every county is priced at the highest zone value (and thus the value of every county is inflated). In addition, the use of NASS Census data, which is updated every five years, alleviates commenters' concern that values are based on short-term anomalies in real estate prices.

49. Several commenters disagree with the use of an agricultural index as the basis for per-acre land values, arguing that the Commission has previously rejected use of an agricultural-based index in Order No. 469.[44] In Order No. 469, the Commission determined that the BLM fee schedule, which was based on a survey of lands that had been occupied by BLM and Forest Service linear rights of way, was the best approximation of per-acre rental rates for linear rights of way. The Commission rejected use of the agricultural index produced by the USDA at that time because the index overvalued the types of lands that are used for hydropower purposes, provided values only for states and not by county, and required too many adjustments by the Commission to account for farm buildings, cleared and arable land, and the private ownership of the lands.[45] The Commission concluded that the administrative efficiencies provided by the 1987 BLM fee schedule were superior to the many adjustments the Commission would have had to make to the USDA's agricultural index.

50. This is no longer the case. BLM has adopted use of the NASS Census for determining per-acre land values by county and has incorporated reasonable adjustments to the raw NASS Census data to more accurately value the types of lands used as Federal rights of way. Unlike the previous agricultural index created by USDA, the NASS Census includes land values at the county level, allowing differentiation within each state.

51. In addition, BLM's methodology for producing the fee schedule provides for significant adjustments to the NASS Census land values to account for the same concerns the Commission had when considering use of the USDA agricultural index. BLM uses the total average ''land and buildings'' category from the NASS Census, which includes, irrigated and non-irrigated croplands

[42] There is an 18 month delay in NASS's publication of the census data. In BLM's administration of its formula it provides another 18 month delay to allow notice of any changes in applicable county values.

[43] After the other components of the BLM formula are applied (encumbrance factor reduction, rate of return, and adjustment for inflation), County A's per-acre rent in 2011 under the Commission's proposed rule would be approximately $94.

[44] FERC Stats. & Regs. ¶ 30,741 at 30,589.

[45] *Id.*

(but not the value of crops), pasturelands, rangelands, woodlands, and interstitial lands, such as roads, ponds, wastelands, and lands encumbered by non-commercial or non-residential buildings. In consultation with NASS officials, BLM determined that a 20 percent reduction to the average per-acre ''land and buildings'' category would remove the value of irrigated croplands and lands encumbered by buildings, which are generally not the types of lands used for linear rights of way or hydropower projects. Because the Commission proposes to adopt the BLM fee schedule, the Commission would not be required to make these adjustments itself. Therefore, the NASS Census data and BLM's application of this data alleviates the concerns the Commission once had with USDA's previous agricultural index.

52. Several commenters object to use of the BLM fee schedule because recent NASS Census data was gathered during a national real estate bubble. The Commission recognizes that property values have increased significantly in some parts of the country in the last decade. One of the significant advantages to the new BLM methodology is that the land values will be updated every five years. Because there is a delay in BLM's adoption of the NASS Census data, there will also be a delay in including these values into the fee schedule. However, over time, all increases and decreases in land values will be reflected in the NASS Census data and in the fee schedule.

53. Several commenters believe that licensees should have the opportunity, at their own expense, to submit individual appraisals to demonstrate the NASS Census per-acre land values are inaccurate. The Commission continues to believe that individual land appraisals would be difficult to administer, would increase the costs of administering Part I of the FPA, and would increase the potential for disputes and litigation over annual charges.

54. Commenters argue that the Commission should allow individual appraisals because BLM allows for such an opportunity. This is not accurate. The BLM rule makes clear that all entities with linear rights of way are to be assessed a rental rate according to the published fee schedule. The BLM rule allows appraisals to be submitted where an entity is making a one-time rental payment for a perpetual right of way or easement on land that will be transferred out of Federal ownership. If Federal lands within a licensee's project boundary were transferred out of Federal ownership, then the Commission would no longer collect annual charges for the use of those Federal lands from that licensee.[46]

55. The Commission recognizes that for some licensees regional land values have increased dramatically, resulting in a significant increase in the rental rate for the use of Federal lands by hydropower licensees. This is primarily the result of a shift from a methodology that used land values from 1987 to a methodology that uses current market land values. Because the 2008 BLM methodology incorporates five year updates to the per-acre county land values, it is not anticipated that such a large increase in annual charges for the use of Federal lands will occur again.

B. Encumbrance Factor

56. The encumbrance factor is a measure of the degree that a particular type of facility encumbers the right-of-way area or excludes other types of land uses.[47] If the encumbrance factor is 100 percent, the right-of-way facility (and its operation) is encumbering the right-of-way area to the exclusion of all other uses. Impacts could include visual, open space, wildlife, vegetative, cultural, recreation, and other public land resources. The updated BLM methodology reduces the encumbrance factor from 70 percent to 50 percent.

57. Several commenters believe that the encumbrance factor should be less than 50 percent, particularly because other uses are often authorized on the Federal lands. In promulgating the 2008 fee schedule, BLM revisited its survey of the degrees of encumbrance presumed by utility facilities and infrastructure, and determined that 50 percent was more reasonable than 70 percent because lands often can be used for other purposes. BLM made this change as a result of comments received on its proposed rule, a review of industry practices in the private sector, and a review of the Department of Interior's appraisal methodology for right-of-way facilities located on Federal lands.[48] However, BLM explained that the degree to which Federal lands can be used for multiple purposes does not reduce the rental rate to be assessed, and clarified that grants issued for rights-of-way facilities are non-exclusive, such that BLM reserves the right to authorize other uses within a right-of-way area.[49]

58. Several commenters suggested the public benefits provided by hydropower licensees should result in a reduced encumbrance factor.[50] However, the public benefits required by a license cannot completely offset the rental fee for use of Federal lands. Rather, the public benefits, including aesthetics, recreation, environmental, fish and wildlife, and others, are required by the FPA in order to receive a license, not in exchange for occupying Federal lands. We acknowledge these public uses at many projects by discontinuing the practice of doubling the charges for non-transmission line lands. However, because hydropower projects located on Federal lands do indeed make use of public property for which the FPA requires us to set a reasonable fee, we agree with BLM's use of a 50 percent encumbrance factor.

59. The Commission's practice has been to charge the fee schedule rental rate for transmission line lands and to double this rate for other project areas based on the theory that linear rights of way represent a lesser encumbrance than do rights of way over other project areas. Most commenters request that the Commission discontinue this practice. The 1987 fee schedule was developed for *linear* rights of way on Federal lands, which was based on a survey of market values for the various types of land that the Forest Service and BLM had allowed to be occupied by *linear* rights of way. When the Commission adopted BLM's 1987 fee schedule, it recognized that the values identified in the BLM schedule were the ''best approximation'' available of the value of lands used for transmission linear rights of way. Thus, it was reasonable at that time for the Commission to assess transmission line lands at this rate, but to double the rate for non-linear project areas that involved a more comprehensive occupation of Federal lands than a linear right of way. However, because the NASS Census provides a per-acre value for lands generally, and not specifically for linear sections of land, there is no compelling reason to double the underlying value represented in the NASS Census for non-linear lands. Therefore, we agree with commenters and propose to discontinue this practice.

[46] Annual charges for the use of Federal lands would still be assessed if the lands transferred out of federal ownership were subject to a power site classification under section 24 of the FPA. 16 U.S.C. 818 (2006).

[47] 73 FR 65040 at 65047.

[48] *Id.*

[49] *Id.*

[50] Idaho Power believes the encumbrance factor should be zero, which would zero out the rental rate as well.

C. Rate of Return

60. The BLM fee schedule adopts a fixed rate of return of 5.27 percent, which is the most current 10-year average (1998–2008) of the 30-year and 20-year Treasury bond yield rate. This is a reduction from the rate of return of 6.41 percent under the 1987 fee schedule, which was the 1-year Treasury Securities ''Constant Maturity'' rate from June 30, 1986. The rate of return component used in the fee schedule formula reflects the relationship of income to property value, as modified by any adjustments to property value. BLM reviewed a number of appraisal reports that indicated the rate of return for land can vary from seven to twelve percent and is typically around ten percent. These rates take into account certain risk considerations, and BLM chose to use a ''safe rate of return,'' such as the prevailing rate on insured savings accounts or guaranteed government securities. In its 2008 rule, BLM explained that a 10-year average is more appropriate than a rate selected from one point in time, and that a periodic adjustment of the rate of return would lead to uncertainty in rental fees, which would have a negative impact on utilities and customers and duplicate the changes reflected in the GDP index.

61. SCE commented that the Commission should use the 30-year Treasury bond rate rather than the 10-year average of the 30-year Treasury bond yield rate because use of the actual 30-year rate is the most accurate valuation of a long-range asset. While using the actual 30-year rate would be more accurate, we agree with BLM's rationale that an annual adjustment of the rate of return would result in unnecessary uncertainty with respect to rental rates. Therefore, the Commission finds that BLM's use of the 5.27 percent fixed rate of return is reasonable.

D. Annual Adjustment Factor

62. The BLM fee schedule includes an annual adjustment factor, which is currently 1.9 percent. The annual adjustment factor allows the rental rate to stay current with inflationary or deflationary trends. In its 2008 rule, BLM explained that it will adjust the per-acre rent each calendar year based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS Census data becomes available. Thus, the IPD–GDP will change every ten years. The annual adjustment factor is based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year (2004) that the 2002 NASS Census data became available. This figure is 1.9 percent and will be applied for each calendar year through 2015.

63. BLM will recalculate the annual index adjustment in 2014 based on the average annual change in the IPD–GDP from 2004 to 2013 (the 10-year period immediately preceding the year (2014) when the 2012 NASS Census data will become available) and will apply it annually to the fee schedule for years 2016 through 2025. The Commission proposes to adopt BLM's decadal updates to the annual index adjustment.

IV. Regulatory Requirements

A. Information Collection Statement

64. The Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[51] The proposed regulations discussed above do not impose or alter existing reporting or recordkeeping requirements on applicable entities as defined by the Paperwork Reduction Act.[52] As a result, the Commission is not submitting this proposed rule to OMB for review and approval.

B. Environmental Analysis

65. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[53] Commission actions concerning annual charges are categorically exempted from the preparation of an Environmental Assessment or an Environmental Impact Statement.[54]

C. Regulatory Flexibility Act

66. The Regulatory Flexibility Act of 1980 (RFA) [55] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[56] The SBA has established a size standard for hydroelectric generators, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation, and/or distribution of electric energy for sale and its total electric output for the preceding 12 months did not exceed four million megawatt hours.[57]

67. Section 10(e)(1) of the FPA requires that the Commission fix a reasonable annual charge for the use, occupancy, and enjoyment of Federal lands by hydropower licensees.[58] The Commission has issued 253 licenses that occupy Federal lands to 135 discrete licensees, who will be impacted by the proposed rule. The proposed rule adopts a methodology promulgated by BLM, based on the NASS Census data, to determine the annual charge for the use of Federal lands. The methodology for assessing this annual charge under the existing rule is based on land values from 1987, whereas the proposed rule incorporates current land values, and would update those values every five years. As a result, some of the 135 licensees may experience a one-time increase in their annual charge for the use of Federal lands.

68. Nevertheless, based on a review of the 135 licensees with Federal lands that will be impacted by the proposed rule, we estimate that less than ten percent are small entities under the SBA definition. The 135 licensees represent utilities, cities, and private and public companies in 30 states or territories. Many of the utilities which may seem to be under the four million megawatt hours per year threshold are also engaged in electricity production through other forms of generation, such as coal or natural gas, or also provide other utility services such as natural gas or water delivery. Similarly, many licensees that are small hydropower generators are affiliated with a larger entity or entities in other industries. Therefore, we estimate that less than ten percent of the impacted licensees are actually small, unaffiliated entities who are primarily engaged in hydropower generation and whose total electrical output through transmission, generation, or distribution is less than four million megawatt hours per year.

69. Any impact on these small entities would not be significant. Under the proposed rule there may be a one-time increase for some licensees in the annual charge for the use of Federal lands, but because the new methodology for calculating the annual charge will be updated every five years, any future

[51] 5 CFR 1320.11 (2011).

[52] 44 U.S.C. 3502(2)–(3) (2006).

[53] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[54] 18 CFR 380.4(a)(11) (2011).

[55] 5 U.S.C. 601–612 (2006).

[56] 13 CFR 121.101 (2011).

[57] 13 CFR 121.201, Sector 22, Utilities & n.1 (2011).

[58] 16 U.S.C. 803(e)(1) (2006).

increases or decreases will be incremental. In addition, small, unaffiliated entities generally occupy less Federal lands than larger projects that generate more power. Therefore, as a class of licensees, small entities would be less impacted by an annual charge for the use of Federal lands. Furthermore, this proposed rule does not incur any additional compliance or recordkeeping costs on any licensees occupying Federal lands. Consequently, the proposed rule should not impose a significant economic impact on small entities.

70. Based on this understanding, the Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

D. Comment Procedures

71. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 6, 2012. Comments must refer to Docket No. RM11–6–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

72. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

73. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

74. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

E. Document Availability

75. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page *(http://www.ferc.gov)* and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

76. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

77. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–(866) 208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 11

Dams, Electric power, Indians-lands, Public lands, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Spitzer is not participating.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 11, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

§ 11.2 [Amended]

2. Amend § 11.2 by deleting paragraph (a).

3. Amend § 11.2 by revising paragraph (b) to read as follows:

(b) Pending further order of the Commission, annual charges for the use of government lands will be payable in advance, and will be set on the basis of an annual schedule of rental fees for linear rights-of-way as set out in Appendix A of this part. Annual charges for transmission line rights of way and other project lands will be equal to the per-acre charges established by the above schedule. The Commission, by its designee the Executive Director, will update its fee schedule to reflect changes in land values established by the U.S. National Agricultural Statistics Service Census, and to reflect changes in the annual adjustment factor, as calculated by the U.S. Bureau of Land Management. The Executive Director will publish the updated fee schedule in the **Federal Register**.

4. Amend § 11.2 by deleting existing paragraphs (c)(1) and (c)(2).

5. Amend § 11.2 by redesignating paragraph (b) as new paragraph (a), and by redesignating paragraphs (d) and (e) as new paragraphs (b) and (c), respectively.

[FR Doc. 2011–30110 Filed 11–21–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0875; FRL–9495–1]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from paved and unpaved roads and livestock operations and aggregate and related operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATE: Any comments must arrive by December 22, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0875, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that