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DEPARTMENT OF ENERGY  
FEDERAL ENERGY REGULATORY COMMISSION**

**18 CFR Parts 8 and 141**

**[Docket No. RM18-14-000; Order No. 852]**

**Elimination of Form 80 and Revision of Regulations on Recreational Opportunities and Development at Licensed Hydropower Projects**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) issues this Final Rule to amend its regulations to eliminate the Licensed Hydropower Development Recreation Report, designated as FERC Form No. 80 (Form 80). Form 80 solicits information on the use and development of recreation facilities at hydropower projects licensed by the Commission under the Federal Power Act. In addition, the Commission is revising its regulations on recreational use and development at licensed hydropower projects in order to modernize licensee public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance with these requirements.

**DATES:** This rule is effective **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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**SUPPLEMENTARY INFORMATION:**

165 FERC ¶ 61,256  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Elimination of Form 80 and Revision of Regulations on Recreational Opportunities and Development at Licensed Hydropower Projects      Docket No. RM18-14-000

ORDER NO. 852

FINAL RULE

(Issued December 20, 2018)

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1. The Federal Energy Regulatory Commission (Commission) is amending its regulations to remove § 8.11, thereby eliminating the requirement for licensees to file a Licensed Hydropower Development Recreation Report, designated as FERC Form No. 80 (Form 80). Form 80 solicits information on the use and development of recreation facilities at hydropower projects licensed by the Commission under the Federal Power Act (FPA). In addition, the Final Rule revises §§ 8.1 and 8.2 of the Commission's regulations to modernize licensee public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance with these requirements.

**I. Background**

2. Section 10(a)(1) of the FPA requires the Commission to ensure that any licensed project is best adapted to a comprehensive plan for improving and developing a waterway for a variety of beneficial public uses, including recreational use.<sup>1</sup> Although section 10(a) of the Federal Water Power Act of June 10, 1920<sup>2</sup> did not refer specifically to recreation, in 1935 when the Federal Water Power Act was re-enacted as Part I of the Federal Power Act,<sup>3</sup> the words 'including recreational purposes' were added to section 10(a) to make clear that recreation considerations were to be included in the

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<sup>1</sup> See 16 U.S.C. 803(a)(1) (2012).

<sup>2</sup> 41 Stat. 1063.

<sup>3</sup> 49 Stat. 838, 16 U.S.C. 791a–825r.

comprehensive development of the nation's water resources. Pursuant to this obligation, the Commission required licensees to allow public access to project lands and waters for recreational use and began to include standard conditions in licenses for the provision of recreational facilities.

3. In the 1960s, the Commission developed specific policies and practices to ensure that licensees provided reasonable recreational opportunities and notice of such opportunities to the public. In 1963, the Commission began requiring recreation plans for the public utilization of project water and land,<sup>4</sup> and in 1965 amended its regulations by adding part 8, entitled "Recreation Opportunities and Development at Licensed Projects," in order to require licensees to widely publicize to the general public recreational opportunities at individual projects.<sup>5</sup> Order 313, issued on December 27, 1965, amended the Commission's general policy regulations (18 CFR Part 2) by adding § 2.7 to clarify that licensees whose projects include land and water resources with outdoor recreational potential have a responsibility to develop those resources in accordance with area needs, to the extent that such development is not inconsistent with the primary purpose of the

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<sup>4</sup> Exhibit R, 18 CFR 4.41 (2018), *License Applications – Revision of Regulations*, Order 260-A, 29 FPC 777 (1963).

<sup>5</sup> *Publicizing License Conditions Relating to Recreational Opportunities at Hydroelectric Projects*, Order No. 299, 33 FPC 1131 (1965) (Order 299). Section 1 of part 8 requires licensees to publicize license conditions related to recreation; section 2 requires licensees to post, at points of public access, signs providing recreation use information and requires licensees to make such information available for inspection; and section 3 requires licensees to permit use without discrimination. 18 CFR 8.1 – 8.3 (2018).

project.<sup>6</sup> In 1966, the Commission further amended part 8 of its regulations to require licensees to file Form 80, a report that provides an inventory of the use and development of recreational facilities at each development contained within a licensed project.<sup>7</sup>

4. Over the years, the Commission has continued to revise its regulations to reflect the Commission's current public recreation policies and practices. And once again, the Commission has decided to modify certain recreation-related regulations in order to eliminate unnecessary reporting requirements, modernize licensee public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance with these requirements.

## **II. Notice of Proposed Rulemaking**

5. On May 17, 2018, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to eliminate the Form 80, and further revise its regulations governing recreational use and development at licensed hydropower projects.<sup>8</sup> In response to the NOPR, the Commission received 14 comments from the following entities: eight

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<sup>6</sup> *Recreational Development at Licensed Projects*, Order No. 313, 34 FPC 1546, 1548 (1965) (Order 313).

<sup>7</sup> *Inventory of Recreation Facilities at Licensed Hydroelectric Projects*, Order No. 330, 36 FPC 1030 (1966) (Order 330). Section 8.11 requires the filing of information on the use and development of public recreation opportunities. 18 CFR 8.11 (2018).

<sup>8</sup> *Elimination of Form 80 and Revision of Regulations on Recreational Opportunities and Development at Licensed Hydropower Projects*, FERC Stats. & Regs. ¶ 32,726 (2018) (NOPR).

licensees, two federal land management agencies, two local governments, and two trade associations.<sup>9</sup> The proposal set forth in the NOPR, the comments received, and the Commission's determinations are discussed below.

### **III. Discussion**

#### **A. Removal of § 8.11 – Information Respecting Use and Development of Public Recreational Opportunities**

6. Section 8.11 requires licensees to file Form 80, which is a report on the use and development of recreational facilities at each development contained within a licensed hydropower project, on April 1 of every sixth year, documenting data compiled during the previous calendar year.<sup>10</sup> For each project development,<sup>11</sup> the Form 80 requires

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<sup>9</sup> The eight licensees include: Duke Energy; Public Utility District No. 2 of Grant County, Washington; Idaho Power Company; Pacific Gas and Electric Company; PacifiCorp; KEI (USA) Power Management, Inc.; Public Utility District No. 1 of Chelan County, Washington; and Alabama Power. Comments were also filed by the National Park Service (Park Service); the U.S. Forest Service (Forest Service); Roanoke County, Virginia; the Town of Vinton, Virginia; Alaska Power Association; and the National Hydropower Association (NHA).

<sup>10</sup> *Modification of Hydropower Procedural Regulations, Including the Deletion of Certain Outdated or Non-Essential Regulations*, Order No. 540, FERC Stats. & Regs. ¶ 30,944 (1992) (cross-referenced at 59 FERC ¶ 61,124). Order 330 originally required licensees to file a Form 80 every two years. Order 330, 36 FPC 1030, 1031. The Commission subsequently amended § 8.11 to revise the form and reduce the filing frequency. *See Revision of Licensed Hydropower Development Recreation Report: FERC Form No. 80*, Order No. 179, FERC Stats. & Regs. ¶ 30,295 (1981) (cross-referenced at 16 FERC ¶ 61,248 (consolidating, simplifying, and reducing the size of the Form 80 by approximately 60 percent); *Deletion of a 1987 Filing Requirement for FERC Form No. 80*, Order No. 419, FERC Stats. & Regs. ¶ 30,640 (1985) (cross-referenced at 31 FERC ¶ 61,154) (committing to re-evaluate the need for Form 80, and take further action if Form 80 is found unnecessary or in need of modification).

licensees to report the number of visits (i.e., recreation days),<sup>12</sup> the use capacity of each type of public recreation facility, and the licensee's annual costs and revenues associated with the public recreation facilities within the project boundary. In order to complete the Form 80, licensees must collect data on recreation use, facilities, and capacity for a 12-month period. Licensees may request an exemption from the Form 80 requirement if they demonstrate that a project development has little or no existing use or recreation potential (i.e., less than 100 recreation days per year).<sup>13</sup>

7. In the NOPR, the Commission proposed to remove § 8.11 from its regulations, thereby eliminating the requirement for licensees to file the Form 80. The Commission advanced several reasons for eliminating Form 80.<sup>14</sup> First, unlike in 1965 when Form 80 was adopted, licensed projects with significant recreation opportunities are often now required to comply with project-specific license conditions that direct licensees to prepare and implement a recreation plan, conduct recreation monitoring, and file periodic updates to an approved recreation plan.<sup>15</sup> Second, for licensed projects with limited recreation

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<sup>11</sup> Most licensed projects have only one project development. However, licensees of projects with more than one development must file a separate Form 80 report for each development.

<sup>12</sup> The Form 80 defines a recreation day as each visit by a person to a development for recreational purposes during any portion of a 24-hour period.

<sup>13</sup> 18 CFR 8.11(c) (2018).

<sup>14</sup> NOPR, FERC Stats. & Regs. ¶ 32,726 at PP 5-8.

<sup>15</sup> In addition, between fiscal years 2016 and 2030, over 500 projects will  
(continued ...)

opportunities – many of which are exempt from filing Form 80 – Commission staff relies on a variety of tools other than the Form 80 to determine whether the projects are meeting public recreation needs, including periodic inspections and investigation of non-compliance allegations (e.g., any recreation-related inquiries or complaints submitted by resource agencies, recreation users, or local residents). Third, Commission staff reports limited use of Form 80 data and cites concerns about the data’s validity and lack of specificity. Finally, advances in technology since the advent of the Form 80 (e.g., websites, publicly-available aerial photography, and the Commission’s eLibrary system) allow interested parties and the general public to easily access information about a project’s recreational opportunities and any recreation-related license requirements.

8. All eight licensees that commented on the NOPR support the Commission’s proposal to eliminate the Form 80 reporting requirement. Alaska Power Association and NHA also filed comments in support of the NOPR’s proposal to eliminate the Form 80. The Park Service conditionally supports the Commission’s proposal, provided that the Commission strengthens its oversight of licensees’ recreation-related planning, monitoring, and information dissemination.

### **1. Licensees’ General Recreation Obligations**

#### *NOPR Comments*

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begin the relicensing process. During relicensing, the Commission’s Division of Hydropower Licensing will evaluate the need for, and may require, project-specific recreation monitoring in new licenses on a case-by-case basis.

9. In response to the NOPR's proposal to eliminate Form 80, the Park Service commented that additional guidance, training, and technical assistance is needed to ensure new and existing recreation management plans satisfy the general obligations set forth in § 2.7 of the Commission's regulations. The Park Service recommends that the Commission: (i) conduct a comprehensive evaluation of its recreation planning and monitoring programs for licensing and post-licensing compliance; (ii) develop guidance and offer training and technical assistance for recreation management planning and monitoring;<sup>16</sup> and (iii) establish a public process for periodic review of recreation facilities, conditions, needs, and recreation flows.

*Commission Response*

10. Pursuant to its obligations under the FPA and the Commission's regulations, Commission staff evaluates the existing recreation resources, facilities, and needs at each existing or proposed hydropower project on a case-by-case basis during the licensing process and, as appropriate, also during the amendment process. Similarly, as

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<sup>16</sup> The Park Service recommends that the Commission consider incorporating the basic planning and monitoring framework developed by the Interagency Visitor Use Management Council – a collaboration between six federal agencies (the Bureau of Land Management, Forest Service, National Oceanic and Atmospheric Administration, the Park Service, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service). The Interagency Council's Visitor Use Management Framework describes a process for managing visitor use on federally-managed lands and waters, and can be accessed at <https://visitorusemanagement.nps.gov/VUM/Framework>. The Commission is not a federal land management agency. Staff evaluates and develops recreation planning and monitoring requirements that respond to the unique resource issues and site conditions at individual projects.

appropriate, Commission staff continues to evaluate a project's recreational resources, facilities, and needs over the term of a license by considering license-required recreation plan updates and monitoring reports, conducting periodic project inspections, and addressing allegations of non-compliance.

11. Commission staff frequently provides guidance to licensees on a range of recreation management planning and monitoring matters. Staff regularly participates in recreation and land use management trainings, workshops, and conferences. Staff also strives to provide timely and constructive advice to licensees in response to project-specific recreation inquiries. In addition, Commission staff is currently developing a guidance document for licensees, which will provide general guidance on how to prepare a recreation management plan in consultation with stakeholders. This guidance document will describe the components of an effective recreation management plan, such as recreation use monitoring, periodic plan review and updates, and circumstances warranting a plan amendment.

12. The Commission's hydropower licensing and compliance programs already incorporate a robust public process that allows for periodic review of recreation facilities, conditions, needs, and, where appropriate, recreation flows. Most often, public engagement opportunities arise during the pre-filing consultation process and the Commission's public notice process for license applications and recreation-related compliance proceedings (e.g., consideration of a recreation management plan or amendment application). During the term of a license, agencies, members of the public,

and other stakeholders have additional opportunities to review and provide input on any license-required recreation plan updates, periodic recreation plan assessments, or recreation-related monitoring results. Finally, members of the public may, at any time during the license term, access and review recreation-related documents on the Commission's website, seek available project-specific recreation plans or other information from individual licensees, or contact Commission staff regarding recreation inquiries or complaints.

13. The foregoing demonstrates that there are sufficient safeguards to ensure that our recreation requirements are understood and implemented.

## **2. Recreational Use Monitoring**

### *NOPR Comments*

14. The Park Service expresses concern that the Commission would not require projects with limited recreation opportunities to implement any new or additional recreation monitoring efforts if it eliminates the Form 80 reporting requirement. Rather, for all projects including those with little or no recreation opportunities, the Park Service recommends that the Commission: (i) notice project inspections and invite stakeholders and the public to participate; (ii) inspect projects on a regular basis using staff with recreation expertise; and (iii) improve or clarify the process for submitting recreation-related complaints to the Commission.

15. If Form 80 is eliminated, Roanoke County and the Town of Vinton urge the Commission to include language in every project license requiring licensees to develop a

recreation monitoring plan in consultation with the appropriate federal agencies, state agencies, local governments, and other stakeholders.<sup>17</sup> Roanoke County and the Town of Vinton also ask the Commission to reconsider the NOPR's statement that licensed projects with little to no recreation, including projects previously exempted from the Form 80 reporting requirement pursuant to § 8.11(c), would not be expected to implement any new or additional recreation monitoring efforts, but should continue to comply with any project-specific license conditions related to public recreation.

16. PacifiCorp asks the Commission to clarify that projects that do not have any license-required recreation use reporting other than Form 80 submittals will no longer have any routine recreation use reporting obligations if the Form 80 is eliminated.

*Commission Response*

17. The Commission considers the need for recreation monitoring on a project-specific basis, based on the conditions at that project at the time of licensing and during post-licensing review, as appropriate. Roughly half of all licensed projects will begin the relicensing process within the next 12 years and during the relicensing proceeding the Commission will conduct a comprehensive review of each project's recreational

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<sup>17</sup> Roanoke County and the Town of Vinton acknowledge that their comments on the NOPR are informed by their experience consulting as stakeholders on two licensed projects – Smith Mountain Project No. 2210 and Niagara Project No. 2466.

resources and determine the appropriate level of recreational use monitoring, if any, needed for each project.

18. In addition, Commission staff periodically conducts project inspections that focus on an individual license's environmental and recreation-related requirements. Generally, Commission staff also will conduct an environmental inspection for projects with significant environmental or public use license requirements – e.g., projects with high recreational use, fish passage facilities, or wildlife mitigation areas. These inspections allow Commission staff to inspect project features, facilities, and areas to ensure that licensees are complying with the requirements of their respective project licenses. Commission staff also regularly conducts environmental inspections at projects with ongoing non-compliance or identified resource issues.

19. Finally, the most efficient way to bring a recreation-related complaint or non-compliance allegation to the Commission's attention is by directly contacting the Commission's Office of Energy Projects through its enforcement hotline telephone number.<sup>18</sup> Once a recreation-related allegation of non-compliance is received by the Commission, it is forwarded to staff within the Commission's Office of Energy Projects' Division of Hydropower Administration and Compliance for investigation and any necessary follow-up action.

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<sup>18</sup> For potential violations and wrongdoing involving Commission hydropower projects, individuals or stakeholders are encouraged to contact the Commission's Office of Energy Projects directly at 844-434-0053.

20. In response to PacifiCorp's clarification request, unless recreation use reporting is required by a license condition – including any approved recreation plan or report or mandatory agency condition – licensees will no longer have any specific recreation use reporting obligation once the Form 80 is eliminated.

21. For the reasons discussed above, we will not establish a standard requirement for recreational use monitoring at every licensed project.<sup>19</sup> Considering recreation planning and monitoring needs on a project-by-project basis is the most appropriate method for Commission staff to ensure that each licensed project protects its recreational opportunities and is best adapted to the comprehensive development of the waterway.

### **3. Mandatory Conditioning Authority**

#### *NOPR Comments*

22. The Forest Service comments that it values the type of information reported by licensees in Form 80 submittals.

23. The Forest Service expresses concern that if the Form 80 reporting requirement is eliminated, there will be no long-term baseline information on recreational usage to inform the development of operational plans or license conditions, and suggests that in future relicensing proceedings it will rely increasingly on its mandatory conditioning authority under section 4(e) of the FPA to ensure that licensees monitor recreation usage,

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<sup>19</sup> Doing otherwise would merely be retaining the Form 80's standardized monitoring approach under the guise of a different name (i.e., a standard license condition), defeating the purpose of this Final Rule.

and facility features and operations meet public recreational needs on Forest Service lands.

24. The Forest Service also asks the Commission to clarify how eliminating Form 80 will affect projects that are currently awaiting final license orders, including projects with 4(e) license conditions that may rely on Form 80 information. Under such circumstances, the Forest Service cautions that it may need to revise previously-submitted 4(e) license conditions.

*Commission Response*

25. As previously explained in the NOPR, most projects with significant recreation resources have a recreation management plan or recreation monitoring report requirements and thus are already responsible for recreational monitoring or oversight above and beyond that required by the Form 80 filing requirement.<sup>20</sup> In the absence of the Form 80 reporting requirement, licensees will remain subject to any other recreation monitoring requirements contained within a license condition or approved recreation plan.

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<sup>20</sup> Commission staff estimates that between January 2015 and the end of September 2018, the Commission issued a total of 73 licenses for original or relicensed hydropower projects. Of these licenses, the Commission specifically included conditions requiring the development and implementation of recreation management plans for 54 of these projects and also specifically exempted another nine of these projects from the current Form 80 filing requirement, due to little or no project-specific recreation resources or opportunities. In other words, of the licenses issued between January 2015 and the end of September 2018, licensees for 63 licenses (i.e., 86 percent) were required to develop a project-specific recreation management plan or were exempt from the Form 80 filing requirement.

26. Going forward, Commission staff evaluating future license and amendment applications will continue to make case-by-case determinations on whether recreation monitoring is warranted for a particular project and, if so, the type and degree of monitoring needed. We anticipate that Federal land management agencies will likewise continue to provide input on the appropriateness of recreation monitoring during individual licensing proceedings. In any event, Federal land management agencies, such as Forest Service, are not precluded by this Final Rule from continuing to use their mandatory 4(e) conditioning authority to require recreational monitoring for individual projects during licensing proceedings, as they deem appropriate.

27. As to Forest Service's concern regarding current pending license applications, while we have explained that we believe sufficient information regarding recreation usage and needs will continue to be available after Form 80 is eliminated, the Forest Service may, if it deems it necessary, timely amend its 4(e) license conditions.

#### **4. Recreation Costs, Revenues, and User Fees**

28. The Park Service states that, following the elimination of Form 80, the Commission should require all licensees to report annual recreation costs and revenues, as well as user fees for specific facilities, on a regular basis.

29. The Commission's regulations allow a licensee to charge reasonable fees to help defray the cost of constructing, operating, and maintaining recreation facilities.<sup>21</sup> Form

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<sup>21</sup> 18 CFR 2.7 (2018).

80 required licensees to include data on its annual recreation costs and revenues, but it did not require licensees to identify specific user fees for individual facilities. Typically, the Commission does not review or approve the reasonableness of such fees.<sup>22</sup> However, if the Commission receives an inquiry or complaint regarding recreation costs, revenues, or user fees at a particular project, staff may request that the licensee provide such information to assist in its investigation of a non-compliance allegation. Therefore, the Commission does not believe that establishing a standard requirement for every licensee to report to the Commission recreation costs, revenues, and user fees on an annual basis is necessary, nor does the Park Service elaborate on the utility of such a standard reporting requirement.

#### **5. Commission Determination**

30. For the reasons discussed above, the Commission concludes that the benefits and the reduced burden for licensees and staff that result from eliminating the Form 80 outweigh the potential minor obstacles that may arise during the transition from the Form 80 data to specific recreation data gained through licensee compliance with project-specific license conditions. By this Final Rule, we adopt the NOPR's proposal to delete § 8.11 of our regulations, thereby eliminating the Form 80 filing requirement.

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<sup>22</sup> See, e.g., *Public Utility District No. 2 of Grant County, Washington*, 160 FERC ¶ 61,099, at P 23 (2017).

**B. Removal of § 141.14 – Form No. 80, Licensed Hydropower Development Recreation Report**

31. Added to the Commission’s regulations alongside the Form 80 requirement in 1966,<sup>23</sup> § 141.14 approved licensee use of Form 80 in the manner prescribed in § 8.11 of our regulations.<sup>24</sup> To parallel the proposed removal of § 8.11, the NOPR also proposed to remove § 141.14 of its regulations.

32. The Commission did not receive any comments addressing the NOPR’s proposed removal of § 141.14 of the Commission’s regulations. Therefore, we retain the NOPR’s proposal to delete § 141.14.

**C. Amendments of 18 CFR 8.1 and 8.2**

33. The Commission amends §§ 8.1 and 8.2 of its regulations to modernize licensee public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees’ compliance with these requirements. All licensees that filed comments in response to the NOPR generally support the Commission’s proposal to revise §§ 8.1 and 8.2 of the Commission’s regulations to update licensee public notice practices. Forest Service also expressed support for the Commission’s efforts to modernize and diversify licensee options for keeping the public informed of recreation opportunities at licensed projects.

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<sup>23</sup> Order 330, 36 FPC 1030.

<sup>24</sup> 18 CFR 141.14 (2018).

1. **Section 8.1 – Publication of License Conditions Relating to Recreation**

34. Section 8.1 directs licensees to publicize information about the availability of projects lands and waters for recreational purposes, and any recreation-related license conditions.<sup>25</sup> Section 8.1 requires licensees, at a minimum, to publish notice in a local newspaper once each week for four weeks of any recreation-related license conditions that the Commission may designate in an order issuing or amending a license.<sup>26</sup>

35. In addition to publishing notice in the local newspaper, the NOPR proposed to require licensees with project websites to also post notice of recreation-related license conditions on its website. This requirement would only apply to a licensee that already has an existing project website, or decides to develop a project website in the future. As explained in the NOPR, this additional publication method will ensure that the public is informed of recreational opportunities and recreation-related license conditions regardless of whether members of the public rely on a newspaper or the internet as their main information source.

a. **Availability of Information**

36. The Park Service recommends that the Commission ensure that the information it receives from licensees is available to the public, and develop standardized information

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<sup>25</sup> 18 CFR 8.1 (2018).

<sup>26</sup> *See id.*

about recreation facilities and flows at licensed projects.<sup>27</sup> In addition, the Park Service recommends that the Commission require every licensee to create and maintain a project website that publicizes information about available public recreation opportunities. To this end, the Park Service recommends that all licensees be required to maintain a project website that, at minimum, provides: (i) operating status of recreation facilities; (ii) notice of future recreation reviews and inspections, and the outcome of any such evaluations; (iii) recreation management plans, recreation-related reports, and the entire license instrument; and (iv) a map that provides standard Geographic Information System (GIS) layers identifying recreation facilities, public access, and the project boundary.

37. As revised by this Final Rule, §§ 8.1 and 8.2 of the Commission's regulations require licensees to publicize specific recreation use and availability information to the public for its licensed project through newspaper notices, project signage, its local office, and any existing licensee website. We are satisfied that the existing publication requirements provide a variety of ways to sufficiently inform the public of recreation and

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<sup>27</sup> Specifically, the Park Service suggests that the Commission consider partnering with the Department of Energy's National Laboratories to develop standardized reporting of flow data, including scheduled recreational flow releases. The Park Service also encourages the Commission to consider a partnership with the Park Service to publicize information about public recreation opportunities at licensed hydropower projects on the National Rivers Project website. As discussed further below, we are satisfied that our existing publication requirements keep the public informed of recreation opportunities at licensed projects. Commission staff will continue to evaluate and include, where appropriate, license conditions that require licensees to notify the public of scheduled recreation flows on a case-by-case basis.

public access information. Therefore, we decline to adopt the Park Service's recommendation that all licensees be required to create and maintain a project website.

38. On occasion, the Commission has required a licensee to provide recreation information to the public on a recurring basis through telephone recordings or website updates (e.g., periodic notifications communicating recreational streamflow data, whitewater boating opportunities, or recreation site accessibility). However, we do not believe that a blanket requirement directing licensees to regularly notify the public of recreation flows or recreation site accessibility is appropriate for all licensed projects. In addition, members of the public may obtain information about a project's recreational opportunities – including detailed information about recreation facility availability and use, project boundary maps, and inspection reports – by searching the project docket on the Commission's eLibrary website, registering for the Commission's e-Subscription service, and participating in publicly-noticed licensing and post-licensing proceedings, such as the consideration of a recreation plan or significant recreation-related license amendment.

**b. Newspaper Publication**

39. NHA supports the proposed changes to § 8.1, but asks the Commission to eliminate the newspaper publication requirement for licensees that publicly notice recreation-related license conditions by publication on a project website. In addition, where a licensee does not maintain a project website and there is no local newspaper,

NHA posits that licensees should be allowed to post notice on municipal or county websites.

40. We decline to eliminate the requirement that licensees publish notice of recreation-related license conditions in a local newspaper. As we noted in the NOPR, requiring licensees to publish notice in a local newspaper and, if applicable, on a project website ensures that the public is on notice of recreational opportunities and recreation-related license conditions or amendments regardless of whether a particular member of the public relies on a newspaper or the internet as their primary news source. Further, the possibility that newspaper publication will reach local community members that may not have reliable internet access outweighs the negligible time and expense necessary to publish a notice in a local newspaper. Licensees are not precluded from supplementing the required methods of public notice by also posting notice on municipal or country websites or at local government offices.

**c. Project Website Definition**

41. Pacific Gas and Electric Company (PG&E) asks the Commission to clarify which types of websites will be considered “project websites.” PG&E recommends that the Commission exclude from its definition “relicensing websites,” which it describes as websites maintained during the relicensing process for stakeholders to access documents associated with the pre-filing process and the relicensing application process. PG&E further explains that relicensing websites are generally targeted to the stakeholders

participating in the relicensing process, and do not provide specific information about the recreation opportunities provided near or on project reservoirs.

42. We agree that temporary websites developed specifically for a relicensing proceeding do not constitute the type of project website the Commission expects to be used for the purposes of § 8.1 publication. To clarify, by using the term “project website,” the Commission intended to capture any existing website, or webpage, used by a licensee to communicate information to the public about recreation opportunities provided by a particular project over the duration of the project’s license. We anticipate that the information required by § 8.1 is the type of information that is already offered by many website-ready licensees in an electronic format or can be easily uploaded to an existing project webpage.

**2. Section 8.2 – Posting of Project Lands as to Recreation Use and Availability of Information**

43. Section 8.2(a) requires the licensee to post at each public access point a visible sign that identifies: the project name, project owner, project number, directions to project areas available for public recreation, permissible times and activities, and other regulations regarding recreation use. Section 8.2(a) also requires licensees to post visible notice that project recreation facilities are open to all members of the public without discrimination. Section 8.2(b) directs the licensee to make available for inspection at its local offices the Commission-approved recreation plan and the entire license order indexed for easy reference to the recreation-related license conditions designated for publication in accordance with § 8.1 of the Commission’s regulations. As the

Commission explained in Order 299, the rationale behind the types of public notice required by §§ 8.1 and 8.2 is two-fold: (i) it puts prospective purchasers of land in the project vicinity on notice of the project's public access and recreation purposes; and (ii) it informs the general public of the location and terms of use of the project's recreation facilities.<sup>28</sup>

**a. Recreation Signage**

44. To streamline the amount of information that must appear on recreation signage, the NOPR proposed revisions to § 8.2(a) that would require signs to, at a minimum, identify: the project name and number, and a statement that the project is licensed by the Commission; the licensee name and contact information for obtaining additional project recreation information; and permissible times and activities. As explained in the NOPR, the revisions reduce the information licensees must include on recreation signage at each public access point and afford licensees greater flexibility to design signs that effectively communicate recreation information to the public.

45. A number of commenters filed comments in support of this aspect of the Commission's proposal.<sup>29</sup> No negative comments were filed. The Final Rule retains the NOPR's revisions to § 8.2(a).

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<sup>28</sup> Order 299, 33 F.P.C. 1131.

<sup>29</sup> The Park Service asks the Commission to supplement recreation signage by encouraging licensees to provide on-site interpretive kiosks that explain the history of the project. As a general matter, we agree with the Park Service and encourage the use of interpretive kiosks or signage to educate visitors about a unique or important aspect of the (*continued...*)

**b. Recreation Document Availability**

46. The NOPR also proposed to revise § 8.2(b) to require licensees with project websites to include on their websites copies of any approved recreation plan, recreation-related reports approved by the Commission, and the entire license instrument. This requirement would only apply to a licensee that already has an existing project website, or establishes a project website in the future.

47. No negative comments were filed on this aspect of the Commission's proposal.

The Final Rule retains the NOPR's revisions to § 8.2(b).

**IV. Regulatory Requirements**

**A. Information Collection Statement**

48. The Paperwork Reduction Act<sup>30</sup> requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (including reporting, record keeping, and public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in

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project area (e.g., cultural resources, special-status species, etc.). However, installation of interpretive kiosks in addition to recreation-related signage is not appropriate or necessary for every licensed project. Commission staff will continue to consider the appropriateness of on-site interpretive kiosks on a project-by-project basis as part of any relevant licensing or amendment proceeding before the Commission.

<sup>30</sup> 44 U.S.C. 3501-3521 (2012).

final rules published in the *Federal Register*.<sup>31</sup> Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date.

Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

49. **Public Reporting Burden:** By eliminating the Form 80 filing requirement, this Final Rule eliminates an existing data collection, FERC-80 (OMB Control No. 1902-0106). In addition, the Final Rule modifies certain reporting and recordkeeping requirements included in FERC-500 (OMB Control No 1902-0058)<sup>32</sup> and FERC-505 (OMB Control No. 1902-0115).<sup>33</sup>

50. Under the most recent Form 80 reporting cycle,<sup>34</sup> 346 licensees prepared and filed 843 Form 80 reports.<sup>35</sup> Every three years, the Commission is required to request from OMB an extension of any currently approved information collection. Since the Form 80

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<sup>31</sup> See 5 CFR 1320.12 (2018).

<sup>32</sup> FERC-500 includes the reporting and recordkeeping requirements for “Application for License/Relicense for Projects with Capacity Greater Than 5MW.”

<sup>33</sup> FERC-505 includes the reporting and recordkeeping requirements for “Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination.”

<sup>34</sup> Licensees were required to file Form 80 reports by April 1, 2015, containing recreational use and development data compiled during the 2014 calendar year.

<sup>35</sup> For projects with more than one development, the licensee is required to submit a Form 80 report for each development.

is only filed every six years, the most recent annual burden and cost figures provided to OMB were based on an estimate of 400 respondents. To determine the total number of responses per year for OMB submittal purposes, we multiplied the number of respondents (400) by the annual number of responses per respondent (0.167) to arrive at 67 responses per year. The Commission estimated the current public reporting burden to be an average of three hours per form, with an associated cost of approximately \$224 per form. Because the Form 80 is filed every six years, the estimated annualized cost to complete each form is \$37.44, with a total annual cost for all licenses of approximately \$14,974.50.<sup>36</sup> This estimate includes the time required to review instructions, research existing data sources, and complete and review the collection of information.

51. This Final Rule eliminates certain information collection and recordkeeping requirements. The removal of the Form 80 report eliminates the estimated annual information collection burden (201 hours) and cost (\$14,974.50) associated with FERC-80 (OMB Control No. 1902-0106).<sup>37</sup>

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<sup>36</sup> These estimates, from the current OMB-approved inventory figures for Form 80, used \$74.50 per hour for wages and benefits. The most recent OMB approval of the Form 80 was issued December 8, 2016.

<sup>37</sup> These figures are annual averages (for Paperwork Reduction Act purposes) of the burden and cost for the six-year cycle for the Form 80. The most recent OMB approval of the Form 80 was issued December 8, 2016.

52. In addition, the revisions to §§ 8.1 and 8.2, associated with the FERC-500 and FERC-505 information collections,<sup>38</sup> are intended to modernize licensee public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance with these requirements. With regard to modernized public notice practices, the revisions require licensees that have a project website to (1) publish notice on its website of license conditions related to recreation; and (2) maintain on its website copies of any approved recreation plan, recreation-related reports, and the license instrument. If a licensee does not have a project website, the website publication requirements would not apply. Accordingly, there is a slight increase in the reporting requirements and burden for FERC-500 and FERC-505.

53. The estimated changes to the burden and cost of the information collections affected by this Final Rule follow.

<b>Annual Changes Implemented by the Final Rule in RM18-14-000<sup>39</sup></b>
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<sup>38</sup> As of September 30, 2018, the Commission currently has 480 licenses for projects with an installed capacity more than 5 MW (reporting requirements covered by FERC-500) and 573 licenses for projects 5 MW or less (reporting requirements covered by FERC-505).

<sup>39</sup> Hourly costs are based on Bureau of Labor Statistics figures for May 2017 wages in Sector 22 – Utilities ([https://www.bls.gov/oes/current/naics2\\_22.htm](https://www.bls.gov/oes/current/naics2_22.htm)) and December 2017 benefits (<https://www.bls.gov/news.release/pdf/ecec.pdf>). For web developers (code 15-1134), the estimated average hourly cost (salary plus benefits) is \$53.53.

	No. of Respondents (1)	No. of Responses per Respondent (2)	Total No. of Responses (1)X(2)=(3)	Avg. Burden Hrs. & Cost Per Response (4)	Total Annual Burden Hours & Total Annual Cost (3)X(4)=5	Cost per Respondent (\$) (5)/(1)
FERC-80 (reduction) <sup>40</sup>	400	0.167 <sup>41</sup>	67 (rounded)	3 hrs.; \$224 (rounded); (reduction)	201 hrs.; \$14,974.50 (rounded); (reduction)	\$224 (reduction)
FERC-500	432 <sup>42</sup>	1	432	0.5 hr.; \$26.77 (rounded)	216 hrs.; \$11,565 (rounded)	\$26.77 (rounded)
FERC-505	287 <sup>43</sup>	1	287	0.5 hr.; \$26.77 (rounded)	144 hrs.; \$7,683 (rounded)	\$26.77 (rounded)

54. **Titles:** FERC-80 (Licensed Hydropower Development Recreation Report), FERC-500 (Application for License/Relicense for Water Projects with More than 5 Megawatt (MW) Capacity), and FERC-505 (Small Hydropower Projects and Conduit

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<sup>40</sup> The figures are annualized figures contained in the current OMB inventory for FERC-80. While OMB requires existing information collections to be submitted for approval every three years, the Commission's hydropower licenses are only required to submit the Form 80 every six years. Therefore, the estimated figures for the entire six-year Form 80 cycle would be a total of 400 respondents, spending an estimated three hours per report, for a total of 1,200 hours. Form 80 will be discontinued.

<sup>41</sup> This figure indicates that a respondent files a Form 80 once every six years.

<sup>42</sup> We assume approximately 90 percent of the 480 licenses for projects with an installed capacity of more than 5 MW (i.e., an estimated 432 licenses) have project websites.

<sup>43</sup> We assume approximately 50 percent of the 573 licenses for projects 5 MW or less (i.e., an estimated 287 licenses) have project websites.

Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination).

55. **Action:** Deletion of information collection (FERC-80), and revisions to existing collections FERC-500 and FERC-505.

56. **OMB Control Nos.:** 1902-0106 (FERC-80), 1902-0058 (FERC-500), and 1902-0115 (FERC-505).

57. **Respondents:** Hydropower licensees, including municipalities, businesses, private citizens, and for-profit and not-for-profit institutions.

58. **Frequency of Information:** Ongoing (FERC-500 and FERC-505).

59. **Necessity of Information:** The revised regulations eliminate unnecessary reporting requirements, modernize licensee public notice practices, and clarify recreational signage requirements.

60. **Internal Review:** The Commission has reviewed the revisions and has determined they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

61. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], by email to [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), by phone (202) 502-8663, or by fax (202) 273-0873.

62. Comments concerning the collections of information and the associated burden estimates may also be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following e-mail address: oira\_submission@omb.eop.gov. Comments submitted to OMB should refer to FERC-80, FERC-500, and FERC-505 and OMB Control Nos. 1902-0106 (FERC-80), 1902-0058 (FERC-500), and 1902-0115 (FERC-505).

**B. Environmental Analysis**

63. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant effect on the human environment.<sup>44</sup> Excluded from this requirement are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.<sup>45</sup> This Final Rule updates the Commission's recreation-related regulations by clarifying public notice and signage requirements, and eliminating unnecessary reporting requirements. Because this rule is clarifying and procedural in

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<sup>44</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

<sup>45</sup> 18 CFR 380.4(a)(2)(ii) (2018).

nature, preparation of an Environmental Assessment or Environmental Impact Statement is not required.

**C. Regulatory Flexibility Act**

64. The Regulatory Flexibility Act of 1980 (RFA)<sup>46</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rulemaking while minimizing any significant economic impact on a substantial number of small entities.<sup>47</sup> In lieu of preparing a regulatory flexibility analysis, an agency may certify that a final rule will not have a significant economic impact on a substantial number of small entities.<sup>48</sup>

65. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>49</sup> The SBA size standard for electric utilities (effective January 22, 2014) is based on the number of employees, including affiliates.<sup>50</sup>

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<sup>46</sup> 5 U.S.C. 601-612 (2012).

<sup>47</sup> 5 U.S.C. 603(c) (2012).

<sup>48</sup> 5 U.S.C. 605(b) (2012).

<sup>49</sup> 13 CFR 121.101 (2018).

<sup>50</sup> SBA Final Rule on "Small Business Size Standards: Utilities," 78 FR 77343 (Dec. 23, 2013).

Under SBA's current size standards, a hydroelectric power generator (NAICS code 221111)<sup>51</sup> is small if, including its affiliates, it employs 500 or fewer people.<sup>52</sup>

66. This Final Rule directly affects all hydropower licensees that are currently required to file the Form 80. The Final Rule removes the Form 80 filing requirement, eliminating (for small and large entities) the cost of \$224 associated with filing the Form 80 every six years.

67. In addition, the revisions to §§ 8.1 and 8.2 of the Commission's regulations would directly affect all hydropower licensees of projects that offer existing or potential recreational use opportunities. These revisions are intended to modernize licensee public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance with these requirements. We expect the clarified signage requirements to benefit licensees by providing them more flexibility to design recreation-related signage strategies that best fit the needs of their individual projects. To modernize public notice practices, the revisions will require licensees that have a project website, or develop one in the future, to publish and maintain certain recreation-related information on its website. If a licensee does not have a project website, the website

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<sup>51</sup> The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, *North American Industry Classification System*, <https://www.census.gov/eos/www/naics/> (accessed April 11, 2018).

<sup>52</sup> 13 CFR 121.201, Sector 22, Utilities (2018).

publication requirements would not apply. Therefore, there is a slight increase in the information collection reporting requirements and burden for FERC-500 and FERC-505.<sup>53</sup> However, we do not anticipate the impact on affected entities, regardless of their status as a small or large entity, to be significant.

68. Based on this understanding, pursuant to section 605(b) of the RFA, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

**D. Document Availability**

69. 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 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 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

70. 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

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<sup>53</sup> In the Information Collection section, we estimated the average burden and cost per respondent to be approximately 30 minutes and \$26.77 per year.

document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

71. User assistance is available for eLibrary and the Commission's website 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](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

**E. Effective Date and Congressional Notification**

72. This regulation is effective **[INSERT DATE (90) DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>54</sup> This rule is being submitted to the Senate, House, Government Accountability Office, and Small Business Administration.

List of Subjects

18 CFR Part 8

Electric power, Recreation and recreation areas, Reporting and recordkeeping requirements.

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<sup>54</sup> 5 U.S.C. 804(2) (2012).

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner McIntyre is not voting on this order.  
Commissioner McNamee is voting present.

Issued: December 20, 2018.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

In consideration of the foregoing, the Federal Energy Regulatory Commission amends parts 8 and 141, chapter I, title 18, Code of Federal Regulations, as follows:

**PART 8 – RECREATIONAL OPPORTUNITIES AND DEVELOPMENT AT LICENSED PROJECTS**

1. The authority citation for part 8 continues to read as follows:

Authority: 5 U.S.C. 551-557; 16 U.S.C. 791a-825r; 42 U.S.C. 7101-7352.

2. Revise § 8.1 to read as follows:

§ 8.1 Publication of license conditions relating to recreation.

Following the issuance or amendment of a license, the licensee shall make reasonable efforts to keep the public informed of the availability of project lands and waters for recreational purposes, and of the license conditions of interest to persons who may be interested in the recreational aspects of the project or who may wish to acquire lands in its vicinity. Such efforts shall include, but are not limited to: the publication of notice in a local newspaper once each week for 4 weeks, and publication on any project website, of the project's license conditions which relate to public access to and the use of the project waters and lands for recreational purposes, recreational plans, installation of recreation and fish and wildlife facilities, reservoir water surface elevations, minimum water releases or rates of change of water releases, and such other conditions of general public interest as the Commission may designate in the order issuing or amending the license.

3. Revise § 8.2 to read as follows:

§ 8.2 Posting of project lands as to recreational use and availability of information.

(a) Following the issuance or amendment of a license, the licensee shall post and maintain at all points of public access required by the license (or at such access points as are specifically designated for this purpose by the licensee) and at such other points as are subsequently prescribed by the Commission on its own motion or upon the recommendation of a public recreation agency operating in the project vicinity, a conspicuous sign that, at a minimum, identifies: the FERC project name and number, and a statement that the project is licensed by the Commission; the licensee name and contact information for obtaining additional project recreation information; and permissible times and activities. In addition, the licensee shall post at such locations conspicuous notice that the recreation facilities are open to all members of the public without discrimination.

(b) The licensee shall make available for inspection at its local offices in the project vicinity, and on any project website, the approved recreation plan, any recreation-related reports approved by the Commission, and the entire license instrument, properly indexed for easy reference to the license conditions designated for publications in § 8.1.

**§ 8.11 [Removed]**

4. Remove § 8.11.

## **PART 141 – STATEMENTS AND REPORTS (SCHEDULES)**

5. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 15 U.S.C. 717–717z; 16 U.S.C. 791a-828c, 2601-2645;  
31 U.S.C. 9701; 42 U.S.C. 7101-7352.

### **§ 141.14 [Removed]**

6. Remove § 141.14.

[FR Doc. 2018-28250 Filed: 12/27/2018 8:45 am; Publication Date: 12/28/2018]