

163 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 8 and 141

[Docket No. RM18-14-000]

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

(May 17, 2018)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend 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 proposes to further revise its regulations related to recreational use and development at licensed projects in order to modernize public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance efforts.

DATES: Comments are due **[INSERT DATE (60) days after date of publication in the FEDERAL REGISTER]**.

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

- 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

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SUPPLEMENTARY INFORMATION:

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

NOTICE OF PROPOSED RULEMAKING

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Docket No. RM18-14-000

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(May 17, 2018)

1. The Federal Energy Regulatory Commission (Commission) proposes to remove section 8.11 of its regulations, 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 Commission proposes to revise sections 8.1 and 8.2 of its regulations to modernize public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance efforts.

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.¹ Although

¹ See 16 U.S.C. 803(a)(1) (2012).

section 10(a) of the Federal Water Power Act of June 10, 1920² 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,³ the words ‘including recreational purposes’ were added to section 10(a) to make clear that recreation considerations were to be included in 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 such recreational facilities. 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 recreational use plans for the full public utilization of project waters and lands for recreation,⁴ 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.⁵

² 41 Stat. 1063.

³ 49 Stat. 838, 16 U.S.C. 791a–825r.

⁴ Exhibit R, 18 CFR 4.41, Order 260-A, on April 18, 1963, 29 FPC 777.

⁵ *Publicizing License Conditions Relating to Recreational Opportunities at Hydroelectric Projects*, Order No. 299, 33 F.P.C. 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

Order 313, issued on December 27, 1965, amended the Commission's general policy regulations (18 C.F.R. Part 2) by adding section 2.7 to clarify that licensees whose projects include land and water resources with outdoor recreational potential have a responsibility for the development of those resources in accordance with area needs, to the extent that such development is not inconsistent with the primary purpose of the project.⁶ 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.⁷

3. Over the years, the Commission has continued to revise its regulations to reflect the Commission's current public recreation policies and practices. Once again, in this Notice of Proposed Rulemaking the Commission proposes to modify certain recreation-related regulations in order to eliminate unnecessary reporting requirements, modernize public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance efforts. The regulations proposed for modification are discussed below.

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.

⁶ *Recreational Development at Licensed Projects*, Order No. 313, 34 F.P.C. 1546, 1548 (1965) (Order 313).

⁷ *Inventory of Recreation Facilities at Licensed Hydroelectric Projects*, Order No. 330, 36 F.P.C. 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 (2017).

II. Proposed Rule

A. Removal of Section 8.11 – Information Respecting Use and Development of Public Recreational Opportunities

1. Background

4. Section 8.11 requires licensees to file Form 80, a report on the use and development of recreational facilities at each development contained within a licensed project, on April 1 of every sixth year, documenting data compiled during the previous calendar year.⁸ For each project development,⁹ the Form 80 requires licensees to report the number of visits (i.e., recreation days),¹⁰ the use capacity of each type of public recreation facility, and the total annual cost to develop, operate, and maintain the public recreation facilities. 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

⁸ *Modification of Hydropower Procedural Regulations, Including the Deletion of Certain Outdated or Non-Essential Regulations*, Order No. 540, FERC Stats. & Regs. ¶ 30,944 (1992). Order 330 originally required licensees to file a Form 80 every two years. 36 F.P.C. 1030, 1031. However, the Commission subsequently amended section 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) (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. ¶ 60,640 (1985) (committing to re-evaluate the need for Form 80, and take further action if Form 80 is found unnecessary or in need of modification).

⁹ 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.

¹⁰ 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.

exemption from the Form 80 requirement if they demonstrate that a project development has little or no existing or potential recreational use (i.e., less than 100 recreation days per year).¹¹

2. **Proposed Elimination of Form 80**

5. In 1965, when use of the Form 80 was first adopted, most licensed projects did not have individual recreation plans or specific recreation development requirements set out in the license. However, today many licensed projects with significant recreation opportunities have project-specific license conditions that require licensees to prepare and implement a recreation plan, conduct recreation monitoring, and/or file periodic updates to an approved recreation plan.¹² Such project-specific license requirements are tailored to the recreation opportunities provided by the individual project, allowing licensees and Commission staff to better evaluate and address public recreation needs over time. Consequently, the information contained in the Form 80 may be duplicative and of limited use to Commission staff when compared to the more detailed and descriptive recreation information submitted to the Commission in response to project-specific recreation requirements.

¹¹ 18 CFR 8.11(c) (2017).

¹² In addition, between fiscal years 2016 and 2030, over 500 projects will 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.

6. Licensees for projects with limited recreation opportunities are also required to file Form 80 reports every six years, unless exempted from this requirement. Although these projects may not have approved recreation plans or recreation-related monitoring requirements given the limited recreation opportunities at such projects, the periodic submission of Form 80 reports does not provide an effective means to determine whether these projects are meeting public recreation needs. Commission staff utilizes other tools to evaluate recreation development and use at the licensed projects with minimal recreation opportunities, such as periodic project inspections and investigation of non-compliance allegations (e.g., any recreation-related inquiries or complaints submitted by resource agencies, recreation users, or local residents).

7. Moreover, Commission staff reports limited use of Form 80 data and cites concerns about the data's validity and lack of specificity. Commission staff generally views the Form 80 as a secondary source, using the reported data to confirm existing recreation data or to identify additional information to be requested from the licensee. Similarly, Commission staff experience indicates that resource agencies and outside entities often view Form 80 data as unreliable or insufficient to accurately document recreation use and facility capacity. Finally, advances in technology since the advent of the Form 80 (e.g., websites, Google Earth, and the Commission's eLibrary system) allow interested parties and the general public to more effectively obtain information about a project's recreational opportunities and any recreation-related license requirements.

8. For these reasons, the Commission proposes to remove section 8.11 from its regulations, eliminating the requirement for licensees to file the Form 80. This proposed

change would result in reduced burden for licensees and Commission staff alike. If eliminated, licensees would no longer be required to collect and validate Form 80 data and Commission staff resources would not be allocated to performing Form 80-related responsibilities (e.g., responding to licensee inquiries; performing database maintenance; addressing non-compliance matters related to overdue, incomplete, or inaccurate Form 80 filings; and acting on exemption requests).

3. Implications for Existing Licenses

9. With the removal of section 8.11, existing licensees would no longer be required to collect, validate, and submit recreational data through Form 80. Nonetheless, the Commission will expect licensees to monitor the recreational resources provided by their projects in order to fulfill any project-specific license requirements and the general obligations set forth in section 2.7 of the Commission's regulations. Among other things, section 2.7 requires licensees to develop suitable recreation facilities, provide adequate public access, and determine public recreation needs.¹³ Implicit in these obligations is the expectation that a licensee will ensure that recreation development is operated and maintained in a manner that is safe for public use, responsive to public recreation needs, and consistent with project purposes throughout the license term.

10. The Commission expects that licensees will continue to monitor project recreation resources in a manner appropriate for the type, size, and quantity of public recreation opportunities provided by the project. Projects with moderate to significant public

¹³ 18 CFR 2.7(a)-(c) (2017).

recreation opportunities typically require a greater level of monitoring and oversight than projects that have little to no recreation opportunities. Generally, licensees of projects with significant recreational resources must comply with one, or several, project-specific license articles requiring the licensee to: develop certain recreation facilities, prepare and implement a recreation management plan, submit recreation reports, or conduct recreational use monitoring. A licensee's continued compliance with such project-specific conditions would satisfy this general monitoring obligation.¹⁴

11. Licensed projects with little to no recreation, including projects that were previously exempted from the Form 80 reporting requirement pursuant to section 8.11(c),¹⁵ are not 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.

12. In the case where an existing license contains a condition, or a recreation plan contains a provision, that ties a future filing or other action to the Form 80 reporting

¹⁴ If necessary, the Commission may require additional recreation development or measures (e.g., recreation use monitoring) during the license term. Licenses for major projects (i.e., projects with an installed capacity that exceeds 1.5 megawatts) include a standard condition (Article 17) that reserves authority for the Commission to require a licensee to undertake additional recreation development or measures during the license term based on its own determination or in response to a request from Federal or State fish and wildlife agencies, after opportunity for notice and hearing.

¹⁵ 18 CFR 8.11(c) (2017).

schedule (i.e., April 1, 2021, and every six years thereafter), licensees would still be required to timely file any recreation-related plan, report, update, or other specific information required by an existing license condition.¹⁶ Despite the proposed elimination of the Form 80 reporting requirement, licensees would still be required to file the required recreation submittal by April 1, 2021, and every six years thereafter, unless otherwise specified in the license condition. A licensee may file an application to amend any license condition or recreation plan that ties the timing of future recreation filings to the Form 80 reporting schedule. Such amendment applications would be considered by the Commission on a case-by-case basis as a separate project-specific proceeding.

4. Removal of Section 141.14 – Form No. 80, Licensed Hydropower Development Recreation Report

13. Added to the Commission’s regulations alongside the Form 80 requirement in 1966,¹⁷ section 141.14 approved licensee use of Form 80 in the manner prescribed in section 8.11 of our regulations.¹⁸ Concurrently with the proposed removal of section 8.11, the Commission proposes to remove section 141.14 of its regulations.

¹⁶ For example, certain license articles may require a licensee to: (1) file a recreation use monitoring report in conjunction with the Form 80 report; (2) file documentation showing consultation on recreation use levels in conjunction with the Form 80 report; (3) conduct recreation use monitoring every six years in conjunction with the Form 80 report; (4) file a report that assesses whether a recreation plan update is needed every six years in conjunction with the Form 80; and/or (5) file a report describing whether public recreation needs are being met by the project every six years in conjunction with the Form 80.

¹⁷ Order 330, 36 F.P.C. 1030.

¹⁸ 18 CFR 141.14 (2017).

B. Amendments of 18 C.F.R. 8.1, and 8.2

14. In addition to the elimination of section 8.11, the Commission proposes to amend sections 8.1 and 8.2 of its regulations to modernize public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance efforts.

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

15. 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.¹⁹ 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.²⁰

16. In addition to publishing notice in the local newspaper, the Commission proposes 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. This proposed change 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 source of news and information.

¹⁹ 18 CFR 8.1 (2017).

²⁰ *See id.*

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

17. 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 section 8.1 of the Commission's regulations. As the Commission explained in Order 299, the rationale behind the types of public notice required by sections 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.²¹

18. The proposed amendments to section 8.2 clarify project signage requirements and reflect modern public dissemination methods, such as website publication. The Commission proposes to revise section 8.2(a) to streamline the information licensees must include on recreation signage at each public access point. The proposed revisions

²¹ Order 299, 33 F.P.C. 1131.

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. This proposed change reduces the information that must be included on recreation signage, providing licensees greater flexibility to design signs that effectively communicate the appropriate information needed by public to use and enjoy the recreational opportunities afforded by a particular project.

19. In addition, the Commission proposes to revise section 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. As with the proposed revision to section 8.1, 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. This proposed change would allow the public to obtain information about a project's recreation requirements by accessing the licensee's website, if applicable, or by visiting the licensee's local office in the project vicinity.

III. Regulatory Requirements

A. Information Collection Statement

20. The Paperwork Reduction Act²² 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)

²² 44 U.S.C. 3501-3521 (2012).

directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contemplated by proposed rules (including deletion, revision, or implementation of new requirements).²³ 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.

21. **Public Reporting Burden:** In this NOPR, the Commission proposes to delete the Form 80 and to update the recreation-related requirements of FERC-500 and FERC-505.

22. This proposed rule would eliminate an existing data collection, FERC-80 (OMB Control No. 1902-0106), as well as modify certain reporting and recordkeeping requirements included in FERC-500 (OMB Control No 1902-0058)²⁴ and FERC-505 (OMB Control No. 1902-0115).²⁵

²³ See 5 CFR 1320.11 (2017).

²⁴ FERC-500 includes the reporting and recordkeeping requirements for “Application for License/Relicense for Projects with Capacity Greater Than 5MW.”

²⁵ FERC-505 includes the reporting and recordkeeping requirements for “Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination.”

23. Under the most recent Form 80 reporting cycle,²⁶ 346 licensees prepared and filed 843 Form 80 reports.²⁷ Every three years, the Commission is required to request from OMB an extension of any currently approved information collection. Since the Form 80 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. This estimate includes the time required to review instructions, research existing data sources, and complete and review the collection of information.

24. This proposed rule, if adopted, would eliminate certain information collection and recordkeeping requirements. The proposed removal of the Form 80 report would eliminate the estimated annual information collection burden (201 hours) and cost (\$14,974.50) associated with FERC-80 (OMB Control No. 1902-0106).²⁸

²⁶ Licensees were required to file Form 80 reports by April 1, 2015, containing recreational use and development data compiled during the 2014 calendar year.

²⁷ For projects with more than one development, the licensee is required to submit a Form 80 report for each development.

²⁸ These figures are annual averages (for Paperwork Reduction Act purposes) of

25. In addition, the proposed revisions to sections 8.1 and 8.2, associated with the FERC-500 and FERC-505 information collections,²⁹ are intended to modernize public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance efforts. With regard to modernized public notice practices, the proposed revisions would 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.

26. The estimated changes to the burden and cost of the information collections affected by this NOPR follow.

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.

²⁹ The Commission currently has 477 licenses for projects with an installed capacity more than 5 MW (reporting requirements covered by FERC-500) and 572 licenses for projects 5 MW or less (reporting requirements covered by FERC-505).

Annual Changes Proposed by the NOPR in Docket No. RM18-14-000³⁰						
	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) ³¹	400	0.167 ³²	67 (rounded)	3 hrs.; \$224 (rounded); (reduction)	201 hrs.; \$14,974.50 (rounded); (reduction)	\$224 (reduction)
FERC-500	429 ³³	1	429	0.5 hr.; \$26.77 (rounded)	215 hrs.; \$11,484 (rounded)	\$26.77 (rounded)
FERC-505	286 ³⁴	1	286	0.5 hr.; \$26.77 (rounded)	143 hrs.; \$7,656 (rounded)	\$26.77 (rounded)

³⁰ 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) 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.

³¹ 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.

³² This figure indicates that a respondent files a Form 80 once every six years.

³³ We assume approximately 90 percent of the 477 for projects with an installed capacity of more than 5 MW licenses (i.e., an estimated 429 licenses) have project websites.

³⁴ We assume approximately 50 percent of the 572 licenses for projects 5 MW or less (i.e., an estimated 286 licenses) have project websites.

27. **Titles:** FERC Form 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 Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination)
28. **Action:** Deletion of information collection (FERC-80), and revisions to existing collections FERC-500 and FERC-505.
29. **OMB Control Nos.:** 1902-0106 (FERC-80), 1902-0058 (FERC-500), and 1902-0115 (FERC-505).
30. **Respondents:** Hydropower licensees, including municipalities, businesses, private citizens, and for-profit and not-for-profit institutions.
31. **Frequency of Information:** Ongoing.
32. **Necessity of Information:** The Commission proposes the changes in this NOPR in order to eliminate unnecessary reporting requirements, modernize public notice practices, and clarify recreational signage requirements.
33. **Internal Review:** The Commission has reviewed the proposed changes and has determined that such changes 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.
34. 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, by phone (202) 502-8663, or by fax (202) 273-0873.

35. 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

36. 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.³⁵ 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.³⁶ This proposed rule would update the Commission's recreation-related regulations by clarifying public notice and signage requirements, and eliminating unnecessary reporting requirements. Because this rule is clarifying and

³⁵ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

³⁶ 18 CFR 380.4(a)(2)(ii) (2017).

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

C. Regulatory Flexibility Act

37. The Regulatory Flexibility Act of 1980 (RFA)³⁷ generally requires a description and analysis of proposed 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 proposed rule and minimize any significant economic impact on a substantial number of small entities.³⁸ In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.³⁹

38. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.⁴⁰ The SBA size standard for electric utilities (effective January 22, 2014) is based on the number of employees, including affiliates.⁴¹

³⁷ 5 U.S.C. 601-612 (2012).

³⁸ 5 U.S.C. 603(c) (2012).

³⁹ 5 U.S.C. 605(b) (2012).

⁴⁰ 13 CFR 121.101 (2017).

⁴¹ SBA Final Rule on "Small Business Size Standards: Utilities," 78 Fed. Reg. 77,343 (Dec. 23, 2013).

Under SBA's current size standards, a hydroelectric power generator (NAICS code 221111)⁴² is small if, including its affiliates, it employs 500 or fewer people.⁴³

39. This proposed rule directly affects all hydropower licensees that are currently required to file the Form 80. The proposal, if adopted, would remove the Form 80 filing requirement, eliminating (for small and large entities) the cost of \$224 associated with filing the Form 80 every six years.

40. In addition, the proposed revisions to sections 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. The proposed revisions are intended to modernize public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees' compliance efforts. 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 proposed revisions would 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

⁴² 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).

⁴³ 13 CFR 121.201, Sector 22, Utilities (2017).

website, the website publication requirements would not apply. Therefore, there is a slight increase in the information collection reporting requirements and burden for FERC-500 and FERC-505.⁴⁴ However, we do not anticipate the impact on affected entities, regardless of their status as a small or large entity, to be significant.

41. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Comment Procedures

42. 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 **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM18-14-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

43. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website 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

⁴⁴ In the Information Collection section, we estimated the average burden and cost per respondent to be approximately 30 minutes and \$26.77 per year.

not in a scanned format. Commenters filing electronically do not need to make a paper filing.

44. 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.

45. 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

46. 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.

47. 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.

48. 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, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of subjects

18 CFR Part 8

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

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

By direction of the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Federal Energy Regulatory Commission proposes to amend 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.

§ 8.1 [Amended]

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.

§ 8.2 [Amended]

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.

6. Remove § 141.14.