

during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.”

Finally, this action updates the airport name from Olympia Airport to Olympia Regional Airport, updates the geographic coordinates of the airport to match the FAA’s aeronautical database, and replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the associated Class D and Class E airspace legal descriptions. This airspace redesign is necessary for the safety and management of IFR operations at the airport.

### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

#### ANM OR D Olympia, WA [Amended]

Olympia Regional Airport, WA  
(Lat. 46°58′10″ N, long. 122°54′09″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4-mile radius of Olympia Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

\* \* \* \* \*

#### ANM OR E2 Olympia, WA [Amended]

Olympia Regional Airport, WA  
(Lat. 46°58′10″ N, long. 122°54′09″ W)

That airspace within a 4-mile radius of Olympia Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.*

\* \* \* \* \*

#### ANM OR E4 Olympia, WA [Amended]

Olympia Regional Airport, WA  
(Lat. 46°58′10″ N, long. 122°54′09″ W)

That airspace extending upward from the surface within the area bounded by a line beginning at lat. 46°57′14″ N, long. 122°48′28″ W; to lat. 46°56′44″ N, long. 122°47′08″ W; to lat. 46°55′28″ N, long. 122°47′10″ W; to lat. 46°54′42″ N, long. 122°47′45″ W; to lat. 46°55′28″ N, long. 122°49′51″ W; thence counter-clockwise along the 4-mile radius of the airport to the point of beginning.

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

#### ANM OR E5 Olympia, WA [New]

Olympia Regional Airport, WA  
(Lat. 46°58′10″ N, long. 122°54′09″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Olympia Regional Airport from the airport 211° bearing clockwise to the airport 088° bearing, and within an 8.2-mile radius of the airport from the airport 088° bearing clockwise to the airport 122° bearing, and within a 12.4-mile radius of the airport from the airport 122° bearing clockwise to the airport 211° bearing, and within 1 mile each side of the 011° bearing from the airport extending to 11.6 miles north of the airport.

Issued in Seattle, Washington, on December 14, 2018.

**Byron Chew,**

*Acting Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2018–28098 Filed 12–27–18; 8:45 am]

**BILLING CODE 4910–13–P**

## 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, Department of Energy.

**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 March 28, 2019.

#### FOR FURTHER INFORMATION CONTACT:

Jon Cofrancesco (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8951, [jon.cofrancesco@ferc.gov](mailto:jon.cofrancesco@ferc.gov).

Tara DiJohn (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8671, [tara.dijohn@ferc.gov](mailto:tara.dijohn@ferc.gov).

**United States of America**  
**Federal Energy Regulatory Commission**

Docket No. RM18-14-000

Elimination of Form 80 and Revision of Regulations on Recreational

Opportunities and Development at Licensed Hydropower Projects

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 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

<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).

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 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.

<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>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.

## 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 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 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 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

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 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

<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).

<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).

<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 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.

<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.

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 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 on-going 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.

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

<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.

<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.

<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.

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, 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.

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 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.

#### 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.

#### 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

<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.

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

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

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

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

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

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

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 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 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

<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.

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).

#### 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 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 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>

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.

<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 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).

<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.

<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.

<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).



ANNUAL CHANGES IMPLEMENTED BY THE FINAL RULE IN RM18-14-000<sup>39</sup>

	Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & cost per response	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = 5	(5) / (1)
FERC-80 (reduction) <sup>40</sup> .....	400	<sup>41</sup> 0.167	67 (rounded) .....	3 hrs.; \$224 (rounded); (reduction).	201 hrs.; \$14,974.50 (rounded); (reduction).	\$224 (reduction).
FERC-500 .....	<sup>42</sup> 432	1	432 .....	0.5 hr.; \$26.77 (rounded) .....	216 hrs.; \$11,565 (rounded) ...	\$26.77 (rounded).
FERC-505 .....	<sup>43</sup> 287	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 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](mailto: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 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> 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

<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.

<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.

<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).

<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).

<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).



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 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 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 March 28, 2019. 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.

##### 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–825f; 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:

<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.

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

**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 12–27–18; 8:45 am]

**BILLING CODE** 6717–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**19 CFR Part 4**

[CBP Dec. 18–16]

**RIN 1651–AB32**

**Civil Monetary Penalty Adjustments for Inflation**

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule adjusts for inflation the amounts that U.S. Customs and Border Protection (CBP) can assess as civil monetary penalties for the following two violations—transporting passengers coastwise for hire by certain vessels (known as Bowaters vessels) that do not meet specified conditions; and employing a vessel in a trade without a required Certificate of Documentation. These adjustments are being made in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) which was enacted on November 2, 2015. Other CBP civil penalty amounts were adjusted pursuant to this 2015 Act in rule documents published in the **Federal Register** on July 1, 2016; January 27, 2017; December 8, 2017; and April 2, 2018, but the adjustments for these two civil penalties were inadvertently left out of those documents.

**DATES:** This rule is effective on December 28, 2018. The adjusted penalty amounts will be applicable for penalties assessed after December 28, 2018 if the associated violations occurred after November 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Millie Gleason, Office of Field Operations, U.S. Customs and Border Protection. Phone: (202) 325–4291.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory and Regulatory Background**

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74 section 701 (Nov. 2, 2015)) (2015

Act).<sup>1</sup> The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (1990 Inflation Adjustment Act) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial “catch-up” adjustment through issuance of an interim final rule (IFR) and (2) make subsequent annual adjustments for inflation. Through the “catch-up” adjustment, agencies were required to adjust the maximum amounts of civil monetary penalties to more accurately reflect inflation rates. The 2015 Act directed the Office of Management and Budget (OMB) to issue guidance to agencies on implementing the initial “catch-up” adjustment. The 2015 Act required that agencies publish their IFRs in the **Federal Register** no later than July 1, 2016 and that the adjusted amounts were to take effect no later than August 1, 2016.

For the subsequent annual adjustments, the 2015 Act requires agencies to increase the penalty amounts by a cost-of-living adjustment. The 2015 Act directs OMB to provide guidance to agencies each year to assist agencies in making the annual adjustments. The 2015 Act requires agencies to make the annual adjustments no later than January 15 of each year and to publish the adjustments in the **Federal Register**.

The Department of Homeland Security (DHS) undertook a review of the civil penalties that DHS and its components administer to determine which penalties would need adjustments. On July 1, 2016, DHS published an IFR adjusting the civil monetary penalties with an initial “catch-up” adjustment, as required by the 2015 Act. *See* 81 FR 42987. DHS calculated the adjusted penalties based upon nondiscretionary provisions in the 2015 Act and upon guidance issued by OMB on February 24, 2016.<sup>2</sup> The adjusted penalties were effective for civil penalties assessed after August 1, 2016 (the effective date of the IFR) where the associated violations occurred after November 2, 2015 (the date of enactment of the 2015 Act).<sup>3</sup> On January 27, 2017, DHS published a final

rule adopting as final the civil monetary penalty adjustment methodology from the IFR and making the 2017 annual inflation adjustment pursuant to the 2015 Act and upon guidance OMB issued to agencies on December 16, 2016.<sup>4</sup> *See* 82 FR 8571. On April 2, 2018, DHS published a final rule making the 2018 annual inflation adjustment pursuant to the 2015 Act and the guidance OMB issued to agencies on December 15, 2017.<sup>5</sup> *See* 83 FR 13826.

As discussed in Section II below, several civil monetary penalties assessed by CBP and subject to the 2015 Act were inadvertently omitted from these DHS rulemakings.

**II. CBP Penalties**

CBP assesses or enforces penalties under various titles of the United States Code (U.S.C.) and the Code of Federal Regulations (CFR). These penalties include civil monetary penalties for certain violations of title 8 of the CFR pursuant to the Immigration and Nationality Act of 1952,<sup>6</sup> as well as certain civil monetary penalties for customs violations for laws codified in title 19 of the U.S.C. and the CFR. CBP assesses many of the title 19 penalties under the Tariff Act of 1930, as amended, and as discussed in the IFR preamble at 81 FR 42987, the 2015 Act specifically exempts Tariff Act penalties from the inflation adjustment requirements in the 2015 Act. For that reason, DHS did not list those penalties in the tables of CBP penalty adjustments in the DHS rulemakings. There are also various other monetary penalties found throughout the U.S.C. and CFR which CBP may seek to issue or enforce but which were not included in the tables because they fall within the purview of

<sup>4</sup> OMB, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, December 16, 2016. [https://obama.whitehouse.archives.gov/sites/default/files/omb/memoranda/2017/m-17-11\\_0.pdf](https://obama.whitehouse.archives.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf).

<sup>5</sup> OMB, Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, December 15, 2017. <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf>.

<sup>6</sup> Public Law 82–414, as amended (INA). The INA contains provisions that impose penalties on persons, including carriers and aliens, who violate specified provisions of the INA. While CBP is responsible for enforcing various provisions of the INA and assessing penalties for violations of those provisions, all the penalty amounts CBP can assess for violations of the INA are set forth in one section of title 8 of the CFR—8 CFR 280.53. For a complete list of the INA sections for which penalties are assessed, in addition to a brief description of each violation, see the IFR preamble at 81 FR 42989–42990.

<sup>1</sup> The 2015 Act was enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015).

<sup>2</sup> OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, February 24, 2016. <https://obama.whitehouse.archives.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

<sup>3</sup> DHS published a correction to the IFR on August 23, 2016 to correct one amendatory instruction. *See* 81 FR 57442.