DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3100

Environmental Effects Abroad

AGENCY: Office of Environmental Quality (OEQ), United States Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This action incorporates a provision in USDA procedures for compliance with the National Environmental Policy Act (NEPA) to ensure USDA agency compliance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (January 4, 1979).

EFFECTIVE DATE: June 19, 1980.

FOR FURTHER INFORMATION CONTACT: Barry R. Flamm, Director, Office of Environmental Quality, USDA, Washington, D.C. 20250, phone (202) 447-3965.

A final Impact Statement covering the NEPA provisions of Part 3100 has been prepared and is available from the Office of Environmental Quality.

SUPPLEMENTARY INFORMATION: This Final Rule has been reviewed under the USDA procedures established in Secretary's Memorandum 1955, to implement Executive Order 12044, and has been classified "not significant". On January 4, 1979, President Carter signed Executive Order 12114, entitled Environmental Effects Abroad of Major Federal Actions.

This rule sets forth a general procedural directive to assist the individual agencies of USDA in complying with the mandates of the Executive Order, NEPA, the Council on Environmental Quality and Department of State. Each USDA agency is responsible for preparing more specific procedures, if necessary, in light of this broad directive. Those agencies whose programs and activities do not come within the types of actions covered by Executive Order 12114 should consult with OEQ regarding the need for developing specific implementation procedures. On November 15, 1979, USDA published a proposed rule setting forth this provision for public comment (44 FR 65768). USDA did not receive any comments on the proposed rule. Therefore, this final rule is adopted as proposed. Accordingly, 7 CFR Part 3100 is amended as set forth below:

Part 3100 [Amended]

1. By adding to the table of contents for Subpart B—National Environmental Policy Act, a new section heading:

Sec.
3100.36 Environmental effects abroad.

2. By revising the citation of authority to read as follows:

Authority.—National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4321 et seq.; E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12114, 44 FR 1957; 5 U.S.C. 301; 40 CFR 1507.3

3. By adding a new § 3100.36 to read as follows:

§ 3100.36 Environmental effects abroad.

In conjunction with the policies and requirements set forth in this subpart, all USDA agencies are required to comply with E.O. 12114, Environmental Effects Abroad of Major Federal Actions, to the extent that their programs and activities come within the scope of the E.O.

Agencies shall consult with OEQ as to whether their programs or activities require preparation of separate agency procedures, environmental assessments or impact statements regarding environmental effects abroad. Such environmental documents shall be prepared in accordance with the E.O. which specifies the activities for which environmental documents shall be prepared and the types of documents and review procedures required. When an agency anticipates that its action may cause significant impact abroad it shall consult with OEQ and the Department of State and CEQ.

Dated: June 12, 1980.

Barry R. Flamm,

Director, Office of Environmental Quality.

[FR Doc. 80-18556 Filed 6-18-80; 8:45 am]

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Thursday
June 19, 1980

Part III

Department of Transportation

Federal Aviation Administration

Operations Review Program

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121 and 127

[Docket No. 17897; Amdt. Nos. 25-53, 121-159 and 127-39]

Operations Review Program: Amendment No. 8

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments update and improve certain requirements for the certification and operation of domestic, flag, and supplemental air carriers and commercial operators of large aircraft, for the certification and operation of scheduled air carriers with helicopters, and for the airworthiness standards for transport category airplanes. These amendments are part of the Operations Review Program and are based on a compilation of proposals discussed at the Operations Review Conference.

EFFECTIVE DATE: August 31, 1980. Compliance dates for certain provisions are different from the effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Norman C. Miller, Regulatory Review Branch, AVS-22, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

History

This amendment is issued as part of the Operations Review Program. The following amendments have previously been issued as part of this program:

Title and Federal Register (FR) Citation

Amendment No. 1: Clarifying and Editorial Changes (41 FR 47227; October 28, 1976).

Amendment No. 2: Rotorcraft External-Load Operations (42 FR 24196; May 12, 1977 and 42 FR 32531; June 27, 1977).

Amendment No. 2A: Special Federal Aviation Regulation No. 36, Development of Major Repair Data (43 FR 3084; January 23, 1978).

Amendment No. 3: Airspace, Air Traffic, and General Operating Rules (44 FR 15654; March 15, 1979).

Amendment No. 4: Miscellaneous Amendments (43 FR 22636; May 25, 1978).

Amendment No. 5: Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft (43 FR 22643; May 25, 1978, 43 FR 28403; June 29, 1978, and 44 FR 25201; April 30, 1979).

Amendment No. 6: General Operating and Flight Rules and Related Airworthiness Standards and Crewmember Training (43 FR 46230; October 5, 1978).

Amendment No. 10: Airworthiness, Equipment, and Operating Rules (44 FR 61323; October 25, 1979).

These amendments are based on three notices of proposed rule making: Notice 78-7 (43 FR 20448; May 11, 1978), Notice 78-7A (43 FR 33158; August 10, 1978), and Notice 75-31 (40 FR 29410; July 11, 1975). Interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review by the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and the reasons for their adoption are the same as those contained in Notices 78-7, 78-7A, and 75-31. Several comments were received which discussed matters not proposed in the notice. These comments are beyond the scope of the notice and cannot be considered without further notice and public participation.

Discussion of Comments

Airworthiness Review Program

The proposal to add a new § 25.819 (Proposal 8-40) was deferred from Airworthiness Review Program Amendment No. 8, Cabin Safety and Flight Attendant Amendments, and is included in this amendment with other cabin safety rules.

New § 25.819 establishes a level of safety for occupants of lower deck service compartments equivalent to that now provided for occupants of the main deck. To do this, § 25.819 requires several things: (1) Two emergency evacuation routes (one at each end of each lower deck service compartment or two having sufficient separation within the compartment); (2) Automatic emergency illumination for each lower deck service compartment; (3) Two-way voice communication between the flight deck and each lower deck service compartment; and (4) An emergency alarm system and a public address system. Specific safety requirements are adopted for the powered lift system and for other safety related features. The rule provides design requirements that assume occupancy of the lower deck service compartment during taxi and flight. Under § 25.819, occupancy of the compartment is not allowed during takeoff or landing.

Several wide-body airplanes have lower deck service compartments, located below the main cabin, which are used during flight for food service. One operator uses the compartment during taxi, but not during takeoff or landing. This amendment provides design criteria that would allow all operators to use the compartment during taxi if certain strict safety design standards are met during the certification process.

A commenter suggests that the heading of § 25.819 include the term "galley" because that word (with the words "service compartment") is used in the text. The term "service compartment" includes a galley, but for clarity, the parenthetical phrase "(including galleys)" is added to the heading of § 25.819 and the word "galley" is deleted in the text of § 25.819.

A commenter suggest that § 25.819 should apply to airplanes having a service compartment that is located above (as well as below) the main deck. Section 25.819 addresses the unique aspects of lower deck service compartments. Existing rules are adequate for the safe design of other service compartments.

Several commenters object to allowing (in the lead-in sentence of § 25.819) occupancy of the lower deck service compartments "during taxi." They contend that flight attendant occupants of these compartments during taxi are subject to injury because they cannot see outside the compartment and they may not be able to evacuate the compartment if an accident occurs. The provisions of § 25.819 are specifically designed to warn occupants of any emergency and to ensure their safe evacuation to the main deck. As part of the warning system, the rule requires a two-way voice communication system, an emergency alarm system, and a public address system. Main deck flight attendants cannot always see outside and the FAA is unaware of data which shows a correlation between the ability to see outside and the potential for flight attendant injury. To assure that occupants of the lower deck service compartment can get out in an emergency, § 25.819(a) is changed and requires two emergency evacuation routes (one at each end of each lower deck service compartment or two having sufficient separation within the compartment) which can be used under

normal and emergency lighting conditions.

Several commenters contend that flight attendants should be stationed on the main deck during taxi operation so they are available to perform safety functions if an accident occurs. New § 121.391 (see the discussion of proposal 8–4) provides that required flight attendants remain seated at their assigned station during taxi except to perform safety related functions. Thus, flight attendants in the lower deck during taxi would not affect the demonstrated emergency evacuation of the airplane.

A commenter recommends that § 25.819(a) include a requirement that the evacuation escape route be designed to minimize the possibility of blockage which might result from "persons standing on top of or against escape routes." The possible blockage of evacuation escape routes (hatches and other cabin openings) by persons standing on top of or against them is examined during airplane type certification. The comment has merit and § 25.819(a) is revised to include this recommendation as a design requirement.

A commenter suggests that § 25.819(b) be revised by substituting the words "a two-way voice communication system to and from" for the words "two-way voice communication between," to clarify the need for communication between occupants of the various compartments covered. The language in § 25.819(b) is clear in this respect.

Two commenters suggest clarification of the term "emergency alarm system" in § 25.819(c). They observe that this term could be interpreted to call for a visible signal, an audible signal, or even an intercommunication system. The comment has merit and § 25.819(c) is revised to require an aural emergency alarm system. A commenter suggests that the emergency alarm system in § 25.819(c) should be "suitable for inflight audibility" at all required locations. This comment has merit and § 25.819(c) is revised to require that the aural emergency alarm system be audible during normal and emergency conditions.

A commenter suggests that there might be some overlap between § 25.819(b) and Proposal 7–45 in Airworthiness Review Notice No. 7 (40 FR 24810; June 10, 1975). Section 25.819(b) deals with emergency evacuation of lower deck service compartments to the main passenger deck. Proposal 7–45 deals with emergency evacuation of passenger compartments. Thus, there is no overlap.

A commenter points out that on wide-body airplanes there are frequently more flight attendant seats than the required number of flight attendants. The commenter suggests the word "required" should be inserted before the phrase "main deck flight attendant stations" in § 25.819(c). In response to this comment, the amendment is changed to read "required floor level exit" instead of "main deck flight attendant stations." This change will provide an adequate aural emergency alarm system to alert occupants of each lower deck service compartment, by requiring that an aural emergency alarm system be located at each required floor level emergency exit. Since new § 121.391 provides that required flight attendants remain seated at their assigned stations during taxi, locating the alarm systems at required floor level emergency exits will insure that they are readily available to required flight attendants to alert occupants of lower deck service compartments if an emergency occurs.

A commenter suggests that the emergency alarm system described in § 25.819(c) should require that crew occupants of each compartment be capable of alerting crew occupants of each other compartment that an emergency condition exists. This requirement was proposed as Proposal 7–53 in Airworthiness Review Notice No. 7 (40 FR 24812; June 10, 1975). In Airworthiness Review Amendment No. 7 (43 FR 50578; October 30, 1978), that proposal was withdrawn because there was not enough information to specify intercommunication equipment requirements appropriate for all transport category airplanes.

Another commenter asks whether the emergency alarm system described in § 25.819(c) should be connected to the electrical system emergency bus bar. The emergency bus bar is reserved for those electrical loads essential for safe flight and landing if a power interruption occurs. The emergency alarm system is not essential for safe flight and landing under emergency conditions. The alarm system should not be connected to the emergency bus bar.

A commenter recommends that § 25.819(d) be revised to require a means readily detectable by occupants of upper, main, and lower deck service compartments to indicate when seat belts should be fastened. This is unnecessary. Present § 25.791 requires passenger information signs in all passenger compartments. Section 25.819(d) requires the same signs in the lower service compartment.

A commenter suggests that § 25.819(e) require that a public address system be installed with speakers suitable for inflight audibility. Section 121.318 requires a public address system for airplanes engaged in passenger operations under Part 121. Under § 121.318(b)(4), this public address system must be audible at each flight attendant seat. Requiring the installation of the public address system as a condition for type certification under Part 25 is inappropriate since some of the certificated airplanes will not be operated in passenger operations under Part 121. Thus, Part 121 all-cargo operators and persons who do not operate under Part 121 would be required to bear the cost of an expensive installation that is not required for their operation.

A commenter points out that, since the lower deck service compartment would not be occupied during takeoff and landing, the seat prescribed in § 25.819(f) need not be limited to forward or aft facing. The FAA issued an Airworthiness Directive on February 23, 1976 (41 FR 8766) which stated that injuries have been experienced in sideward facing seats during relatively mild incidents of turbulence. Since the seat may be occupied during flight, safety of the occupant requires that the seat be forward or aft facing and meet the requirements of § 25.785(c). The commenter also states that the seat should only be designed to flight loads, and to loads that might occur during taxi, rather than to the emergency landing loads of § 25.561. Since § 25.785(a) applies only to seats that may be occupied during takeoff and landing, the seats prescribed by § 25.819(f) need not comply with the emergency landing conditions specified in § 25.561, but must be able to withstand maximum flight loads when occupied.

Another commenter suggests that § 25.819(f) be revised to require that both supplemental and portable oxygen systems be immediately available to each occupant of the lower deck service compartment. Section 25.1447(c)(4) requires that portable oxygen equipment must be immediately available for each cabin attendant. Section 25.1447 also contains oxygen system requirements that apply to all occupants, wherever located on the airplane. These rules are sufficient.

One commenter objects to the phrase "if the lift is occupied" in § 25.819(g)(1) stating that the language obviously implies occupancy by a person. The commenter asks how the lift knows whether it is occupied by a person or a cart. To design a system to distinguish between a person and a cart would

unnecessarily complicate the design of the lift control system. The commenter further states that the rule would also prohibit the operation of an empty lift. The commenter's points are valid and the phrase "if the lift is occupied" is deleted from § 25.819(g)(1).

In response to another commenter, the control switch must prevent activation of the lift if either the hatch in § 25.819(g)(4) or the lift door in § 25.819(g)(1) or both are open. Section 25.819 is revised to make this clear.

A commenter objects to § 25.819(g)(2) as unclear. The commenter contends that the rquirement to provide an alternate method of operating the lift (after failure of its primary power source) would unnecessarily complicate the system. Section 25.819(g)(3) requires an alternate means for evacuating persons from an inoperative lift, with the lift in any position. Accordingly, proposed § 25.819(g)(2) is withdrawn, and proposed §§ 25.819(g)(3) and (g)(4) are redesignated §§ 25.819(g)(2) and (g)(3), respectively.

A commenter suggests that the words "evacuating persons from the lift" in § 25.819(g)(3) be replaced with the words "evacuation which is of the size and shape to safely remove persons from the lift." The suggested language would not add to or improve the requirement.

Concurrently with this amendment, the FAA is issuing Operations Review Notice No. 8A for reasons explained in the preamble of that notice. The notice proposes that all flight attendants remain seated during taxi, except to perform duties related to the safety of the airplane and its occupants. The notice also requests commenters to submit specific data on flight attendant injuries during taxi. If the proposal in the notice is adopted as proposed, operations requiring occupancy of the lower lobe during taxi as allowed under new § 25.891 may be severely limited.

Public Address System

Amendment 25–46 (43 FR 50578; October 30, 1978) amended § 25.1411 to require at least one public address system microphone intended for flight attendant use to be positioned at each floor level exit and to be readily accessible to a flight attendant seated in any seat adjacent to that exit. Amendment No. 121–149 (43 FR 50578; October 30, 1978) amended § 121.318 to require compliance, after December 1, 1980, with the new public address system microphone requirements.

Since publication of Amendments 25–46 and 121–149, it has come to the attention of the FAA that these rules inadvertently failed to refer to only required floor level exits. Sections 25.1411(a)(2) and 121.318(b)(2) are revised to provide that each public address system microphone intended for flight attendant use must be positioned adjacent to a flight attendant seat that is located near each required floor level emergency exit in the passenger compartment and be readily accessible to the seated flight attendant.

Amendment 121–149 allows a compliance date of 2 years, until December 1, 1980, for installation of the public address system. Approximately 18 months have passed since the issuance of the amendment, during which the operators have not fully complied with Amendment 121–149 because of the ambiguity in the rule. Recognizing that the operators have already initiated compliance with the rule, the compliance date for § 121.318(b)(2) is extended 1 year to December 1, 1981, to allow the intended 2-year compliance period.

With these amendments, §§ 25.1411(a)(2) and 121.313(b)(2) continue to require: (1) Installation of a public address system microphone at a seat located near each floor level exit that is designated for use by a required flight attendant; (2) That only one public address system microphone need be installed for arrangements in which more than one required flight attendant is seated near the same required floor level exit; and (3) That the public address system microphone need not be usable by the required flight attendant while standing next to a required floor level exit.

Since these amendments are clarifying in nature and do not impose a burden on the public, notice and public procedure are unnecessary and these changes are adopted as noted.

Operations Review Program

The following discussions are keyed to like-numbered proposals contained in Notice 78–7.

Proposal 8–1. No unfavorable comments were received on § 121.177(b) that requires corrections to be made for the effective runway gradient when determining takeoff limitations. Section 121.177(b) is adopted without substantive change.

Proposal 8–2. This proposed revision of § 121.311(b) would require passengers to have their seat belts fastened during flight time and allow them to leave their seats only for physiological needs or when authorized by a crewmember. The majority of the many commenters strongly oppose what they consider unnecessary regulatory restrictions on passengers. Many believe that a passenger should retain the right to decide whether or not to fasten the seat belt after being properly informed of potential risks involved. Several commenters support the requirement to keep the seat belt fastened while seated but object to requiring a passenger to obtain a crewmember's permission to leave the seat. Many commenters point out that they customarily keep their seat belt fastened while seated. Others state that adoption of this regulation would dilute the present procedure for mandatory fastening of seat belts (such as on landing, takeoff, or when flying through turbulent air) and would result in confusion and possible compromise of safety.

In light of these comments, the FAA has determined that current §§ 121.571(a)(2) and 121.317(b) provide sufficient advisory information to the passengers. Executive Order 12044 and the Department of Transportation Regulatory Policies and Procedures are intended to reduce unnecessary burdens on the public. Accordingly, the FAA concludes that this rule would impose unnecessary burdens on passengers, industry, and the FAA not commensurate with an increase in safety. Accordingly, the proposal to amend § 121.311(b) is withdrawn. A proposal to amend § 127.109 in a similar manner (Proposal 8–23) is withdrawn for the same reasons.

Proposal 8–3. Several commenters favor § 121.317(b) which requires that a fasten seat belt sign be affixed to each seat back as a reminder to passengers to fasten their seat belts when they return to their seats.

One commenter objects and states that if § 121.317(b) means that passengers should remain in their seats with seat belts fastened at all times, then leaving the present seat belt sign lighted at all times would accomplish that end. The sign required by § 121.317(b) reminds passengers to fasten their seat belts when they return to their seats. The present seat belt sign is used during landings, takeoffs, turbulent air, or emergency conditions and passengers must remain in their seats and fasten their seat belts when that sign is used.

Another commenter objects to the cost of installing the signs, to the lack of specifications for installing them, and to the passenger confusion that would result in trying to comply with two fasten seat belt signs (the lighted sign and the seat back sign). The signs will enhance safety by reducing injuries from inflight turbulence. This offsets any minimal increase in cost. Specifications were not proposed to allow operators maximum flexibility in designing and installing the signs. Passenger confusion

would be reduced because the briefing required by § 121.571(a) will include an explanation to passengers of the purpose of both signs. The proposal is adopted without substantive change.

None of the comments received addressed the time needed to comply with § 121.317(b). Under this requirement, the certificate holder must install a sign for each passenger seat. There are more than 3,250 airplanes operated under Part 121 with an average seating configuration in excess of 100 seats. The FAA estimates that it will take several months to design and obtain the over 325,000 signs needed to comply with the rule. Based on the number of seats and airplanes involved, the FAA estimates that installation of the signs will take several more months. The required installations can be accomplished during routine scheduled maintenance. Based on these facts, the FAA concludes that 1 year is needed to comply with § 121.317(b) and that section takes effect 1 year after the effective date of these amendments.

The amendment to § 127.115 (Proposal 8–24) is adopted for the same reasons.

Proposal 8–4. Section 121.391(d) requires flight attendants, required by Part 121, to be seated with seat belts and shoulder harnesses fastened during taxi except to perform safety related duties. The majority of the commenters favor adoption of § 121.391(d). Their reasons include personal safety of flight attendants, flight attendant availability at duty locations during emergencies requiring evacuation, and passenger reaction to observing flight attendants moving freely about the cabin. Many flight attendants cite injuries occurring when they are thrown about the cabin during sudden turns or stops while taxiing. One commenter objects to allowing flight attendants to perform duties related to safety since that may be harmful to the flight attendants' personal safety. This objector fails to recognize that the duties enumerated are essential to passenger safety. Flight attendants must brief passengers to ensure their safe evacuation as well as perform other safety-related functions.

Three commenters object to § 121.391(d). Based on limited research, one commenter could find no instance of passenger fatalities or serious injuries during taxi. A search of FAA accident/incident records and NTSB files for a 7-year period shows 18 instances of airplane evacuation during taxi which resulted in 71 passenger and 4 flight attendant injuries. As an example, a flight attendant was thrown down the stairs and hospitalized for at least 48 hours by a sudden stop of a Boeing 747 airplane while taxiing for takeoff in Honolulu, Hawaii, on February 2, 1980. One commenter states that flight attendants receive adequate notice to enable them to return to their required stations before an emergency evacuation. However, notice cannot always be provided and if the flight attendant is not at the station when an emergency occurs, precious seconds may be lost during an evacuation.

This commenter also says that the rule is vague as to what safety related duties are. Duties related to the safety of the airplane and its occupants include the checking of seat belts and seat backs, preflight briefings, directing an emergency evacuation, responding to a cabin emergency, or aiding a passenger or crewmember who requires emergency assistance.

This commenter also points out that the rule makes it virtually impossible to offer the passengers any form of refreshment service while on the ground. Requiring flight attendants to be seated during taxi may result in a reduction of refreshment service. The safety benefits of having the required flight attendants at their assigned stations and ready to execute an emergency evacuation far outweigh the customer service benefits derived from early refreshment service. Also, refreshment service is not allowed during takeoff and landing because of its possible impact on safe evacuation if an emergency occurs. Another commenter states that a flight attendant moving through the aisle and returning passenger belongings during taxi-in helps ensure that passengers remain in their seats. Although this comment may have some merit, the overall safety of passengers and flight attendants is more important than the possible benefit to be received by allowing required flight attendants to return passenger belongings during taxi.

In printing the text of the proposed sentence to be added to § 121.391(d), the **Federal Register** inadvertently changed the wording proposed by the FAA and documented in public docket number 17897. As published in the **Federal Register**, the sentence began: "During taxi, required by this section, flight attendants must * * *" As transmitted to the **Federal Register**, the sentence began: "During taxi, each flight attendant required by this section must * * *" The language the FAA proposed would impose the rule on required flight attendants only. As adopted, the sentence reflects the original language that FAA proposed.

Section 121.391(d) as already noted is based upon FAA accident/incident records and NTSB files that include 18 emergency evacuations during taxi over a 7-year period which resulted in 71 passenger and 4 flight attendant injuries. When conducting the emergency evacuation demonstration required under § 121.291(a) for a particular airplane, a required number of flight attendants is established. Section 121.397 specifies that the required crewmembers, which includes flight attendants, be assigned functions to be performed in an emergency evacuation. If an evacuation is necessary because of an emergency during taxi it is important that the required flight attendants be seated at their assigned duty stations to assist in the evacuation. Should they be up and injured or unable to reach their assigned station by passengers blocking the aisle, the time required to evacuate the airplane could be increased, the evacuation process itself possibly impeded, and passengers and crewmembers subjected to a higher probability of injury. For this reason, § 121.391(d) applies to required flight attendants who must be seated at their duty station during taxi and be able to perform their safety related duties if necessary. Thus, § 121.391(d) is adopted with the typographical errors corrected.

Concurrently with this amendment, the FAA is issuing Operations Review Notice No. 8A for reasons explained in the preamble to that notice. The notice proposes to extend applicability of § 121.391(d) to all flight attendants by requiring that they remain seated during taxi, except to perform duties related to safety. The notice also requests commenters to submit specific data on injuries to flight attendants.

Proposal 8–5. Several commenters object to the words "except for length" in § 121.434(e). They argue that cabin training devices should simulate actual cabin length so flight attendant trainees experience proper distance to emergency exits under simulated emergency conditions. Some commenters want to add the word "realistic" following "full-scale" to assure the certificate holder provides adequate training. Simulated cabin training realistically duplicates the actual cabin training and is equivalent to or better than the training that is received in an actual airplane. Before the FAA approves a training program, the certificate holder must show that the device realistically duplicates cabin duties and emergencies. Therefore, the suggested changes are not made.

One commenter wants to include training time accomplished in a parked aircraft to reduce flight attendant operating experience under § 121.434(e). A parked aircraft may be used as a training device if approved as part of the training program, but that is no

substitute for experience gained in a line operation. Another commenter wants to reduce flight attendant operating experience based upon the number of additional takeoffs and landings (as for flight crewmembers). Based on experience gained under § 121.434(e), the FAA has determined that the present requirement of 5 hours of operating experience in an airplane and the proposed revision to allow the substitution of 50 percent of the operating experience for training conducted in an approved training device, is the minimum requirement for flight attendants.

Proposed § 121.434(e) should have used the words "training device" rather than "simulator." Accordingly, § 121.434(e) is adopted with this change.

Proposal 8–6. Several commenters object to § 121.441(a) because pilots qualified and serving in more than one type of airplane would have to complete an unnecessary number of qualifying proficiency checks and simulator training courses. The intent of the proposal was to clarify that the proficiency check requirements of § 121.441 should not be fulfilled in an airplane other than the type in which the person is to serve. However, if adopted as proposed, § 121.441 would require a pilot in command qualified in more than one type airplane to take a proficiency check and a simulator course of training in each type of airplane during a 12-month period. The FAA did not intend to place these additional requirements on a pilot in command qualified in more than one type of airplane and the current rule adequately ensures safety of flight. The elimination of this unnecessary proposal is consistent with Executive Order 12044 and the Department of Transportation Regulatory Policies and Procedures which are intended to reduce unnecessary burdens on the public. The FAA concludes that § 121.441(a) would impose burdens not commensurate with the increase in safety and § 121.441(a) is withdrawn.

Proposal 8–7. No unfavorable comments were received on the proposal to revise § 121.443, except one objection to § 121.443(b). The commenter claims that the word "ensures" is unnecessary and is subject to misinterpretation. The commenter argues that airlines accept full responsibility by providing crew training and appropriate information for flight operations. Thus, there should be no requirement to ensure knowledge and the ability to use that knowledge. The certificate holder is responsible for the training program. The certificate holder also is responsible (through that training program) to ensure that the pilot in command has adequate knowledge of, and the ability to use, the information provided for the flight.

The commenter also suggests deleting "holding procedures" in § 121.443(b)(6) and "Notices to Airmen" in § 121.443(b)(8). Information on holding procedures and notices to airmen must be provided to ensure that the pilot in command has all available information necessary for the safety of each flight. Finally, the commenter suggests substituting "appropriate" for "all" in § 121.443(b)(6). The word "authorized" better describes the instrument approach procedures that must be provided under § 121.443(b)(6). The word "all" could require that information to be provided on procedures which are unnecessary. Section 121.433(b)(6) is revised by substituting "authorized" for the word "all."

Proposal 8–8. One commenter wants § 121.445(b)(2) changed to allow the use of "other" than pictorial means, but does not say what they are. Without a specific alternative, the FAA cannot evaluate this comment. This commenter also states that the ceiling requirements of § 121.445(c) are not specific enough and need clarification. The commenter suggests that the "altitude prescribed for the instrument approach" means the "initial approach altitude." The comment has merit and the words "initial approach altitude" are used in § 121.445(c).

The commenter also has difficulty with the "special area" qualification in § 121.445(d) which requires either a qualification flight or approved training every 12 calendar months. The commenter argues that a pilot who is qualified with the special type of cockpit navigation in one area also is qualified in any other area. This comment has merit and § 121.445(d) is revised to allow a pilot to meet the qualification requirement by using the special type of cockpit navigation over any route or area within the preceding 12 calendar months. In addition, the word "route" is added to "area" so that possible single routes requiring specialized navigation systems are included as well as specific areas (such as the Minimum Navigation Performance Systems over the Atlantic Ocean).

Proposal 8–9. No unfavorable comments were received on deleting § 121.447 on pilot and airport qualifications and the section is deleted.

Proposal 8–10. One commenter objects to § 121.563 because insignificant, non-safety, mechanical irregularities would be entered in the maintenance log book and then "cleared" at both maintenance and nonmaintenance stations, causing increased costs and unnecessary delays. Section 121.153 does not require maintenance log book entries to be cleared any differently than the existing rule does. This rule requires mechanical irregularities to be entered in the maintenance log at the next place of landing. The rule is particularly appropriate with the increasing complexity of aircraft systems and the minimum equipment lists.

The FAA proposed to delete the last sentence of § 121.563 because this requirement is covered in other sections of Part 121. Further study reveals that the requirement for a pilot in command to ascertain the status of the airplane before each flight is not covered elsewhere. Therefore, the last sentence is not deleted from § 121.563 as proposed.

Proposal 8–11. This change to § 121.571(a)(2) proposed to require an announcement after takeoff that all passengers must keep their seat belts fastened as required by Proposal 8–2. Since Proposal 8–2 is withdrawn, this proposal also is withdrawn.

Proposal 8–12. No unfavorable comments were received on § 121.574(a)(4) requiring the written statement of medical need by the doctor to be kept in the possession of the person using the oxygen equipment. It is adopted as proposed.

Several commenters object to changing § 121.574(b) because the current minimum distance of 10 feet between a person who is smoking and a person using oxygen is adequate. Another commenter suggests that the distance be reduced. After review of the comments and a reexamination of this proposal, the FAA concludes that the current rule should be retained. The proposal is confusing and would be difficult to enforce. The definition of a row is not uniform and the distances are not readily measurable. The proposal to amend § 121.574(b) is withdrawn.

Proposal 8–13. Proposed § 121.579 would have revised the rules for minimum altitudes for the use of autopilots in approaches. Comments received from the Airline Pilots Association and Civil Aviation Authority of England on proposed § 121.579(b) reflect inconsistencies between the existing rule and supporting documents (Advisory Circular 25.1329–1A and Agency Order 8110.8) which proposed § 121.579(b) does not resolve. The comments received consisted of 24 pages of technical evaluations of the present rule, proposed rule, and Advisory Circular 25.1329–1A. After a

thorough review of the submitted material the FAA concludes that the commenters are correct and that a further review of the present operational and certification criteria is necessary to correct the problems and accordingly proposed § 121.579(b) is withdrawn.

Proposal 8–14. No unfavorable comments were received on § 121.583(a)(4)(iii) regarding the safe handling of hazardous materials and it is adopted without substantive change.

Proposal 8–15. Several commenters favor § 121.589. Many are flight attendants who deal directly with the problem associated with carry-on baggage on aircraft. They cite instances of being forced to stow baggage which cannot be properly stowed. This is because boarding agents allow passengers to board the aircraft carrying this baggage. These commenters also state that passengers who carry their baggage aboard often become irate and troublesome when a flight attendant attempts to take their baggage and stow it properly. The commenters argue that lack of adequate regulatory requirements puts the flight attendants in a position of opposing the passenger, the company, and the boarding agent when they try to deal with the baggage. Properly stowed baggage is important to safe emergency evacuation, and the burden of compliance more appropriately rests on the certificate holder.

One commenter suggests that certain articles of clothing in garment bags be allowed in open overhead racks. These bags cannot be allowed in open overhead racks because of the potential hazard from heavy or sharp items on or in the garment bags. Section 121.589(b) allows these articles to be stowed overhead if the overhead rack has approved restraining devices or doors.

One commenter objects to § 121.589(d) regarding sideward restraint of under seat baggage because it is unnecessary. The commenter argues standard airline operating procedures are effective. Current airline standard operating procedures are not effective. This is reflected in the comments of flight attendants who deal directly with carry-on baggage. Section 121.589(a) prevents baggage from coming aboard if it cannot be properly stowed. Sections 121.589(b) and (d) require that carry-on baggage be prevented from becoming dislodged from overhead racks and underseat stowage areas during hard or crash landings and inflicting injuries to passengers or hampering the emergency evacuation of the aircraft. Section 121.589(c) requires passengers to comply with crewmember instructions concerning stowage of carry-on baggage. Passengers who fail to comply with these instructions are subject to a civil penalty. This rule lessens the number of problems crewmembers face and enables them to concentrate on their safety-related duties.

The commenter also objects to the high cost impact on the certificate holders and submits estimated aisle seat installation cost data for 17 airlines which vary from $21.00 to $150.40 for each aisle seat. The two largest operators' estimates indicate a cost of $25.75 and $31.50 for each aisle seat. These estimates are more in line with the FAA estimate of $30.00 for each aisle seat. In view of these figures, the cost is not considered to be significant in comparison to the resulting safety benefits.

One commenter points out that § 121.589(d) requires a sideward restraint on each passenger seat. Sideward restraint now is provided on most non-aisle seats by the seat track attachments. Section 121.589 is changed to require sideward restraint only on each aisle seat.

Two commenters object to § 121.589(d) because an adequate period of time was not proposed to allow for the installation of sideward restraints. The Air Transport Association of America and Delta Airlines submitted data to support their contention that from 4 months to 7 years are needed to comply with the rule without special scheduling. Under § 121.589(d), the certificate holder must install sidward restraints on each aisle seat. For the 17 airlines on which data was submitted, over 71,000 seats are involved. Based on the data submitted, the FAA estimates that it will take up to 1 year to design, test and obtain the over 71,000 sideward restraints needed to comply with the rule. The commenter submitted no data to support the contention that it would need 7 years to comply and the FAA concludes that a 7-year compliance period is not realistic. The data does indicate a 2- to 3-year period is an appropriate time to complete these installations. Based on all of the comments received, the FAA concludes that a 3-year compliance period will allow time for installation of sideward restraints on aisle seats with little, if any, special scheduling. A shorter compliance time would require inordinate special scheduling and result in higher costs which are not commensurate with the incremental advance in safety that would result. Accordingly, § 121.589(d) takes effect 3 years after the effective date of these amendments.

Proposals 8–16 and 8–17. These changes reduce the 2-hour weather requirement for alternate airports to 1 hour. They also change the ceiling requirement of 1,000 feet above the MEA or MOCA to 1,500 feet above the MDA, if a circling approach is required and authorized, or 1,500 feet above the lowest published minimums or 2,000 feet above the airport elevation, whichever is higher.

Three commenters favor § 121.619. However, they object to any visibility increase beyond the present 3-mile requirement and state that the phrase "or 2 miles or more than the lowest applicable visibility minimums, whichever is greater, for the instrument approach procedure to be used at the destination airport" would, at times, require a visibility greater than 3 miles. They consider this too restrictive. Section 121.619 satisfies this objection.

One commenter wants to reduce the visibility minimum to 2 miles. Three miles visibility is considered the minimum acceptable requirement since the aircraft could be operated under visual flight rules in accordance with § 91.105 if 3 miles or greater visibility existed.

One commenter objects to reducing the forecast time period from 2 hours to 1 hour before and after the estimated time of arrival because present weather forecasting capabilities are not precise enough to provide an acceptable prognosis within those time limits. The proposed time limit is sufficient since the pilot in command, under §§ 121.601 and 121.603, is provided with updated weather data en route.

One commenter objects to the deletion of the word "or" following § 121.621(a)(1). This would remove the air carrier's option to operate under the provision of either § 121.621(a)(1) or § 121.621(a)(2) as presently provided in the rule. There is no need to meet both requirements and § 121.621(a) retains the word "or" to preserve the option. The same commenter also notes that present § 121.621(a)(2) incorrectly refers to § 121.645(b). The correct reference is § 121.645(c).

A substantively identical proposal was made in Operations Review Notice No. 6 (42 FR 44205; September 1, 1977) for § 91.23, fuel requirements for flight in IFR conditions. In Operations Review Amendment No. 6 (43 FR 46230; October 5, 1978), § 91.23 was amended to reduce the weather requirements to 1 hour before and after the estimated time of arrival and required a ceiling of at least 2,000 feet above the airport elevation and a visibility of at least 3 miles. Commenters to Notice No. 6 argued that the proposed rule was simpler than the current rule but was still cumbersome. They suggested it would be much

simpler if criteria were established which would require the pilot to determine only that a certain ceiling and visibility would exist. The FAA, in adopting Amendment No. 6, agreed with the comments and is aware of no adverse effects of the new rule.

At the time changes to §§ 91.23, 121.619, and 121.621 were proposed in Operations Review Notice Nos. 6 and 8, the FAA intended that, eventually, all three sections would be substantively identical. A review of the airport approach minimums shows that this intent can be safely realized for domestic operations under §§ 91.23 and 121.619. The FAA has not determined that the requirement for a 1,500 foot ceiling above the lowest circling MDA or published minimum approach or a visibility of 2 miles more than the lowest applicable visibility minimum (proposed in Operations Review Notice No. 8) can be safely deleted for flag air carrier operations under § 121.621. Accordingly, § 121.619(a) is adopted with the changes noted and § 121.621(a) is adopted as proposed.

Proposal 8–18. For comments relating to the deletion of § 121.691 see Proposal 8–19. Section 121.691 is deleted and the section marked "reserved."

Proposal 8–19. Several comenters object to § 121.693(e) on the grounds that scheduled air carriers would suffer unnecessary administrative and economic burdens with no significant increase in safety. They claim that air travel is the only mode of transportation which requires names of passengers and indicate that the requirement may be an invasion of the privacy of the traveling public. They were particularly against requiring the addresses of passengers. The names of passengers are necessary for identification purposes in case of an accident or other emergency situations. The nature of aircraft accidents is such that other means of identification may not be feasible. A requirement to obtain the addresses of passengers may be an unnecessary burden on certificate holders and is unnecessary for identification purposes. Therefore, § 121.693(e) is revised by deleting the words "and home addresses". One commenter feels that passenger identification would have to be confirmed at the boarding gate to satisfy the requirements of § 121.693(e). Section 121.693(e) only requires use of the name given by each passenger. Accordingly, § 121.693 is adopted with the revisions discussed.

No unfavorable comments were received on combining the load manifest requirements for domestic and flag carriers of § 121.691 with the requirements of § 121.693 for supplemental air carriers and commercial operators. Thus, § 121.691 is deleted and reserved.

Proposal 8–20. No unfavorable comments were received on the amendment to Appendix E. However, after reconsideration, the FAA withdraws the proposed amendments to Items III(l) (1) and (2). This change proposed to allow the normal ILS approach with a simulated powerplant failure, the missed approach from an ILS approach, and the missed approach that includes a powerplant failure to be accomplished in a visual simulator during initial training. The FAA is not convinced that all visual simulators currently in use have sufficient capability to fully train initial training candidates in these maneuvers. The FAA proposed in Notice 79–18 (44 FR 65550; November 13, 1979) simulator requirements to accomplish these maneuvers for initial training in a simulator. Therefore, these items of the proposal are withdrawn. The remainder of the changes are adopted as proposed.

Proposal 8–21. No unfavorable comments were received on the proposal to amend Appendix F. However, after further examination, the FAA has concluded that this proposal has several inconsistencies. In most cases, the FAA does not directly observe a pilot during training. The primary means used by the FAA to evaluate a pilot's knowledge and skill is the practical examination conducted under Appendix A of Part 61 or Appendix F of Part 121. The oral examination is an integral part of this evaluation and must be retained to ensure that a pilot has an understanding of the airplane and its systems and that an operator's training program is conveying the required knowledge to the pilot. Therefore, the proposal to delete the equipment examination in Item I(a) under certain conditions is withdrawn.

The proposal to delete the "B" symbol in the "Inflight" column and add it to the "Visual Simulator" column for Item III(c)(2) allows any pilot to perform the ILS approach with a simulated powerplant failure in a visual simulator. Section 121.441 allows the entire proficiency check (other than the initial second in command proficiency check) to be conducted in an approved visual simulator if the pilot performs two landings in the airplane during a line check. This means that all pilots (except for a flight engineer upgrading to a second in command and flying the airplane for the first time) are already allowed to accomplish the ILS approach with a simulated powerplant failure in a visual simulator. Since an upgrading flight engineer may not have piloted an airplane for a number of years, all of the inflight requirements in Appendix F should be retained to assure that the person is capable of performing this maneuver in the airplane.

Deleting the requirement that at least one missed approach must be performed in flight would set a precedent of eliminating the necessity for a pilot flying the actual airplane to completely plan and execute an instrument approach which includes the missed approach procedure.

Accordingly, the proposal to amend Appendix F is withdrawn.

Proposal 8–22. The change to Appendix G of Part 121 would add additional requirements to make it compatible with all long-range navigation systems. One commenter correctly states that present Appendix G, and § 121.355(a) which refers to Appendix G, apply only to doppler radar and inertial navigation systems.

Another commenter states that the change is too specific and limits design. The intent is not to restrict the development of new and improved long-range navigation systems.

Two commenters object to the addition of a requirement in paragraph 5(d) for recurrent training and a line check each 12 calendar months. The intent is to ensure proficiency in the use of the long-range navigation systems by the line check. If performance during this check is unsatisfactory, then recurrent training will be required. The proposal does not make this clear.

Both the proposal and comments received have merit. Although the proposal for Appendix G refers to navigation equipment other than doppler radar and inertial navigation, those systems are not specifically allowed under § 121.355(a). The FAA in a future Operations Review Notice will propose changes to § 121.355(a) to specifically allow other systems as well as changes to Appendix G. This approach will produce more meaningful criteria.

Accordingly, the proposal to amend Appendix G of Part 121 is withdrawn.

Proposal 8–23. For comments related to the proposal to revise § 127.109(b), see Proposal 8–2. Accordingly, the proposal to revise § 127.109(b) is withdrawn.

Proposal 8–24. For comments relative to new § 127.115(b), see Proposal 8–3. Accordingly, the proposal to add a new § 127.115(b) is adopted without substantive change.

Proposal 8–25. No unfavorable comments were received on new § 127.226. However, after further review and consideration, the FAA has determined that passengers should not

be required to fasten their seat belts at all times when they are seated. For related comments see Proposal 8–2. An announcement must be made to alert passengers that they "should" keep their seat belts fastened while seated, even when the "Fasten Seat Belt" sign is off. This is similar to the requirement in § 121.571.

Accordingly, § 127.226 is adopted with the change discussed.

Adoption of the Amendments

Accordingly, Parts 25, 121, and 127 of the Federal Aviation Regulations (14 CFR Parts 25, 121, and 127) are amended as follows, effective August 31, 1980.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. By adding a new § 25.819 to read as follows:

§ 25.819 Lower deck service compartments (including galleys).

For airplanes with a service compartment located below the main deck, which may be occupied during taxi or flight but not during takeoff or landing, the following apply:

(a) There must be at least two emergency evacuation routes, one at each end of each lower deck service compartment or two having sufficient separation within each compartment, which could be used by each occupant of the lower deck service compartment to rapidly evacuate to the main deck under normal and emergency lighting conditions. The routes must provide for the evacuation of incapacitated persons, with assistance. The use of the evacuation routes may not be dependent on any powered device. The routes must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape routes. In the event the airplane's main power system or compartment main lighting system should fail, emergency illumination for each lower deck service compartment must be automatically provided.

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment.

(c) There must be an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each required floor level emergency exist to alert occupants of each lower deck service compartment of an emergency situation.

(d) There must be a means, readily detectable by occupants of each lower deck service compartment, that indicates when seat belts should be fastened.

(e) If a public address system is installed in the airplane, speakers must be provided in each lower deck service compartment.

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of § 25.785(c) and must be able to withstand maximum flight loads when occupied.

(g) For each powered lift system installed between a lower deck service compartment and the main deck for the carriage of persons or equipment, or both, the system must meet the following requirements:

(1) Each lift control switch outside the lift, except emergency stop buttons, must be designed to prevent the activation of the life if the lift door, or the hatch required by paragraph (g)(3) of this section, or both are open.

(2) An emergency stop button, that when activated will immediately stop the lift, must be installed within the lift and at each entrance to the lift.

(3) There must be a hatch capable of being used for evacuating persons from the lift that is openable from inside and outside the lift without tools, with the lift in any position.

2. By revising § 25.1411(a)(2) to read as follows:

§ 25.1411 General.

(a) * * *

(2) At least one public address system microphone intended for flight attendant use must be positioned adjacent to a flight attendant seat that is located near each required floor level emergency exit in the passenger compartment and be readily accessible to the seated flight attendant.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

§ 121.177 [Amended]

3. By amending § 121.177(b) by deleting the word "any" in the first sentence and inserting in its place the words "the effective".

4. By revising § 121.317 by redesignating paragraph (b) as (c) and adding a new paragraph (b) to read as follows:

§ 121.317 Passenger information.

* * * * *

(b) After August 31, 1981, no person may operate a passenger-carrying airplane under this part unless there is affixed to each forward bulkhead and each passenger seat back a sign or placard that reads "Fasten Seat Belt While Seated." These signs or placards need not meet the requirements of paragraph (a) of this section.

* * * * *

5. By revising § 121.318(b)(2) to read as follows:

§ 121.318 Public address system.

* * * * *

(b) * * *

(2) It must be accessible for use from at least one normal flight attendant station in the passenger compartment, and, after December 1, 1981, each public address system microphone intended for flight attendant use must be positioned adjacent to a flight attendant seat that is located near each required floor level emergency exit in the passenger compartment and be readily accessible to the seated flight attendant

* * * * *

6. By revising § 121.391(d) by adding a sentence at the end to read as follows:

§ 121.391 Flight attendants

* * * * *

(d) * * * During taxi, flight attendants required by this section must remain at their duty stations with safety belts and shoulder harnesses fastened except to perform duties related to the safety of the airplane and its occupants.

7. By amending § 121.434(f) by inserting the words "for flight crewmembers" after the word "experience"; by amending the flush paragraph at the end of paragraph (f) by adding an "s" to the word "paragraph" to make it plural and inserting the words "(e) and" after the word "paragraphs"; and by amending paragraph (e) by adding a sentence at the end to read as follows:

§ 121.434 Operating experience.

* * * * *

(e) * * * Flight attendants who have satisfactorily completed training time acquired in an approved training program conducted in a full-scale (except for length) cabin training device of the type airplane in which they are to serve may substitute this time for 50 percent of the hours required by this paragraph.

* * * * *

8. By revising § 121.443 to read as follows:

§ 121.443 Pilot in command qualification: Route and airports.

(a) Each certificate holder shall provide a system acceptable to the Administrator for disseminating the information required by paragraph (b) of this section to the pilot in command and appropriate flight operation personnel. The system must also provide an acceptable means for showing compliance with § 121.445.

(b) No certificate holder may use any person, nor may any person serve, as pilot in command unless the certificate holder has provided that person current information concerning the following subjects pertinent to the areas over which that person is to serve, and to each airport and terminal area into which that person is to operate, and ensures that that person has adequate knowledge of, and the ability to use, the information:

(1) Weather characteristics appropriate to the season.

(2) Navigation facilities.

(3) Communication procedures, including airport visual aids.

(4) Kinds of terrain and obstructions.

(5) Minimum safe flight levels.

(6) En route and terminal area arrival and departure procedures, holding procedures and authorized instrument approach procedures for the airports involved.

(7) Congested areas and physical layout of each airport in the terminal area in which the pilot will operate.

(8) Notes to Airmen.

9. By revising § 121.445 to read as follows:

§ 121.445 Pilot in command airport qualification: Special areas and airports.

(a) The Administrator may determine that certain airports (due to items such as surrounding terrain, obstructions, or complex approach or departure procedures) are special airports requiring special airport qualifications and that certain areas or routes, or both, require a special type of navigation qualification.

(b) Except as provided in paragraph (c) of this section, no certificate holder may use any person, nor may any person serve, as pilot in command to or from an airport determined to require special airport qualifications unless, within the preceding 12 calendar months:

(1) The pilot in command or second in command has made an entry to that airport (including a takeoff and landing) while serving as a pilot flight crewmember; or

(2) The pilot in command has qualified by using pictorial means acceptable to the Administrator for that airport.

(c) Paragraph (b) of this section does not apply when an entry to that airport (including a takeoff or a landing) is being made if the ceiling at that airport is at least 1,000 feet above the lowest MEA or MOCA, or initial approach altitude prescribed for the instrument approach procedure for that airport, and the visibility at that airport is at least 3 miles.

(d) No certificate holder may use any person, nor may any person serve, as pilot in command between terminals over a route or area that requires a special type of navigation qualification unless, within the preceding 12 calendar months, that person has demonstrated qualification on the applicable navigation system in a manner acceptable to the Administrator, by one of the following methods:

(1) By flying over a route or area as pilot in command using the applicable special type of navigation system.

(2) By flying over a route or area as pilot in command under the supervision of a check airman using the special type of navigation system.

(3) By completing the training program requirements of Appendix G of this part.

§ 121.447 [Reserved]

10. By deleting § 121.447 and marking it [Reserved].

11. By revising § 121.563 to read as follows:

§ 121.563 Reporting mechanical irregularities.

The pilot in command shall ensure that all mechanical irregularities occurring during flight are entered in the maintenance log of the airplane at the next place of landing. Before each flight the pilot in command shall ascertain the status of each irregularity entered in the log at the end of the preceding flight.

§ 121.574 [Amended]

12. By amending § 121.574(a)(4) by inserting the words ", to be kept in that person's possession," between the words "statement" and "signed."

13. By revising § 121.583(a)(4)(iii) to read as follows:

§ 121.583 Carriage of persons without compliance with the passenger-carrying requirements of this part.

(a) * * *

(4) * * *

(iii) The safe handling of hazardous materials whose carriage is governed by regulations in 49 CFR Part 175.

* * * * *

14. By revising § 121.589 to read as follows:

§ 121.589 Carry-on baggage.

(a) No certificate holder may allow the boarding of carry-on baggage on an aircraft unless the baggage can be stowed in accordance with this section. No certificate holder may allow an aircraft to take off or land unless each article of baggage carried aboard the aircraft is stowed—

(1) In a suitable closet or baggage or cargo stowage compartment placarded for its maximum weight and providing proper restraint for all baggage or cargo stowed within, and in a manner that does not hinder the possible use of any emergency equipment; or

(2) As provided in § 121.285(c); or

(3) Under a passenger seat.

(b) Baggage, other than articles of loose clothing, may not be placed in an overhead rack unless that rack is equipped with approved restraining devices or doors.

(c) Each passenger must comply with instructions given by crewmembers regarding compliance with paragraphs (a) and (b) of this section.

(d) Each passenger seat under which baggage is allowed to be stowed shall be fitted with a means to prevent articles of baggage stowed under it from sliding forward. In addition, after August 31, 1983, each aisle seat shall be fitted with a means to prevent articles or baggage stowed under it from sliding sideward into the aisle under crash impacts severe enough to induce the ultimate inertia forces specified in the emergency landing condition regulations under which the aircraft was type certificated.

15. By revising the last sentence of § 121.619(a) and §§ 121.619(a) (1) and (2) to read as follows:

§ 121.619 Alternate airport for destination: IRF or over-the-top domestic air carriers.

(a) * * * However, no alternate airport is required if for at least 1 hour before and 1 hour after the estimated time of arrival at the destination airport the appropriate weather reports or forecasts, or any combination of them, indicate—

(1) The ceiling will be at least 2,000 feet above the airport elevation; and

(2) Visibility will be at least 3 miles.

* * * * *

16. By amending § 121.621(a)(2) by deleting the reference to § 121.645(b) and inserting in its place § 121.645(c) and by revising § 121.621(a)(1) to read as follows:

§ 121.621 Alternate airport for destination: Flag air carriers.

(a) * * *

(1) The flight is scheduled for not more than 6 hours and, for at least 1 hour before and 1 hour after the estimated time of arrival at the destination airport, the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling will be:

(i) At least 1,500 feet above the lowest circling MDA, if a circling approach is required and authorized for that airport; or

(ii) At leat 1,500 feet above the lowest published instrument approach minimum or 2,000 feet above the airport elevation, whichever is greater; and

(iii) The visibility at that airport will be at least 3 miles, or 2 miles more than the lowest applicable visibility minimums, whichever is greater, for the instrument approach procedures to be used at the destination airport; or

* * * * *

§ 121.691 [Reserved]

17. By deleting § 121.691 and marking it [Reserved].

18. By amending § 121.693 by inserting the words, "loading of the" between the words "the" and "airplane" in the introductory phrase of the section and by revising the title and § 121.693(e) to read as follows:

§ 121.693 Load manifest: Air carriers and commercial operators.

* * * * *

(e) Names of passengers, unless such information is maintained by other means by the air carrier or commercial operator.

§ Part 121 Appendix E [Amended].

19. By amending Appendix E of Part 121 as follows:

1. Item I(a) by adding the following sentence at the end:

* * * If a flight engineer is a required crewmember for the particular type of airplane, the visual inspection may be replaced by using an approved pictorial means that realistically portrays the location and detail of preflight inspection items.

2. Item III(g)(3) by:

a. Deleting the symbols "B", "AT", and "BU" from the "Inflight" column under the captions "Initial Training", "Transition Training", and "Upgrade Training";

b. Adding the "B" symbol in the "Non-Visual Simulator" column under the caption "Initial Training";

c. Adding the "AT" symbol in the "Non-Visual Simulator" column under the caption "Transition Training"; and

d. Adding the "BU" symbol in the "Non-Visual Simulator" column under the caption "Upgrade Training."

3. Item III(h) by deleting the "P" symbol in the "Inflight" column and by adding the "P" symbol in the "Non-Visual Simulator" column under the caption "Initial Training."

4. Items III(i) and (j) by:

a. Deleting the "B" symbols in the "Inflight" column under the caption "Initial Training";

b. Adding the "B" symbols in the "Non-Visual Simulator" column under the caption "Initial Training";

c. Deleting the "SF" symbol in the "Inflight" column and deleting "PS" in the "Non-Visual Simulator" column under the caption "Upgrade Training"; and

d. Adding the "BU" symbol in the "Non-Visual Simulator" column under the caption "Upgrade Training."

5. Items III(p) (1) and (4) by deleting the "B" symbols in the "Inflight" column and adding the "B" symbols in the "Visual Simulator" column under the caption "Initial Training."

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

20. By redesignating § 127.115 as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 127.115 Passenger information.

(a) * * *

(b) After Aug. 31, 1981, no person may operate a passenger-carrying helicopter under this part unless there is affixed to each forward bulkhead and each passenger seat back a sign or placard that reads "Fasten Seat Belt While Seated." These signs or placards need not meet the requirements of paragraph (a) of this section.

21. By adding a new § 127.226 to read as follows:

§ 127.226 Briefing passengers after takeoff.

After each takeoff of a helicopter that has separate passenger and crew compartments, immediately before or immediately after turning the seat belt sign off, an announcement shall be made that passengers should keep their safety belts fastened while seated, even when the seat belt sign is off.

(Secs. 313, 314, 601 through 610, Federal Aviation Act of 1958 (49 U.S.C. 1354, 1355, 1421 through 1430); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the individual and address listed in the "For Further Information Contact" paragraph.

Issued in Washington, D.C., on June 16, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-18581 Filed 6-18-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 17897; Notice No. 78-7A]

Operations Review Program: Notice No. 8A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In Operations Review Notice No. 8, the FAA proposed to amend § 121.391(d) of the Federal Aviation Regulations (FAR) to provide that required flight attendants must remain seated during taxi except to perform duties related to the safety of the airplane and its occupants. However, the **Federal Register** misprinted language critical to the proposal which created the impression that the FAA would require *all* flight attendants to remain seated during taxi (with the exception noted). This notice is issued to allow interested persons an opportunity to be heard on the issue of whether the rule should be applied to *all* flight attendants. In the spirit of Executive Order 12044, Improving Government Regulations, this action reopens the issue that may have been confused by the misprint in Operations Review Notice No. 8 as published in the **Federal Register.**

DATES: Initial comments must be received on or before August 18, 1980. Reply comments must be received on or before September 17, 1980.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 17897, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked: Docket No. 17897. Comments may be inspected at room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Norman C. Miller, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposal contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. Initial comments must be received on or before the first date specified above. Reply comments which specifically respond to the initial comments received must be received on or before the second date specified above. All communications received on or before the dates specified above, will be considered by the Administrator before taking any action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examinaton by interested persons. A report summarizing each substantive public contact with the FAA personnel concerned with this rule making will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 17897." The postcard will be dated, time stamped, and returned to the commenter.

Availability of Additional Copies of Notice

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, ATTN: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

In Operations Review Notice No. 8 (43 FR 20448; May 11, 1978), the FAA proposed to amend § 121.391 of the FAR by adding a sentence to read:

During taxi, each flight attendant required by this section must remain at the flight attendant's duty location with safety belts and shoulder harnesses fastened except to perform duties related to the safety of the airplane and its occupants.

In printing the text of the proposed sentence, the **Federal Register** inadvertently changed the wording proposed by the FAA which is quoted above and documented in public docket number 17897. As printed in the **Federal Register**, the sentence read (italics show changed language):

During taxi, required, by this section, flight attendant must remain at the flight attendant's duty location with safety belts and shoulder harnesses fastened except to perform duties related to the safety of the airplane and its occupants.

The comments received in response to the notice reflected confusion with the language proposed. Many commenters assumed the proposal applied to *all* flight attendants. Other commenters correctly assumed the proposal applied to *required* flight attendants.

The language the FAA proposed, which is on file in public docket number 17897, was directed to flight attendants who are required under § 121.391. The required complement of flight attendants is used to demonstrate compliance with the emergency evacuation requirements of § 121.291. This complement of flight attendants is assigned specific duties during an emergency evacuation.

Concurrently with this notice, the FAA is adopting Operations Review Amendment No. 8. The preamble to the rule explains the rationale for applying the rule to required flight attendants as follows:

Section 121.391(d) as already noted is based upon FAA accident/incident records and NTSB files that incude 18 emergency evacuations during taxi over a 7-year period which resulted in 71 passenger and 4 flight attendant injuries. When conducting the emergency evacuation demonstration required under § 121.291(a) for a particular airplane, a required number of flight attendants is established. Section 121.397 specifies that the required crewmembers, which includes flight attendants, be assigned functions to be performed in an emergency evacuation. Should they be up and injured or unable to reach their assigned station by passengers blocking the aisle, the time required to evacuate the airplane could be increased, the evacuation process itself possibly impeded, and passengers and crewmembers subjected to a higher probability of injury. For this reason, § 121.391(d) applies to required flight attendants who must be seated at their duty station during taxi and be able to perform their safety related duties if necessary. Thus, § 121.391(d) is adopted with the typographical errors corrected.

As stated above, commenters on Operations Review Notice No. 8 were confused by the language published in the **Federal Register.** Several commenters indicated that the rule should apply to all flight attendants to ensure the personal safety of the flight attendants; the availability of flight attendants at their assigned stations during emergencies requiring evacuation; and passenger reaction to observing flight attendants moving freely about the cabin. Several commenters referred to instances where flight attendants were injured during taxi but did not cite specific accident or incident reports. Review of the comments indicates that all flight attendant injuries are not reported to the FAA. In addition to commenting on the proposal generally, the FAA specifically requests that commenters submit explicit, verifiable data, including flight attendant injuries during taxi, and other data demonstrating a need for requiring all flight attendants to remain seated during taxi.

The proposed regulation is not expected to have a major economic impact. However, the FAA requests commenters to provide explicit economic data concerning the cost impact of the proposal.

The FAA is issuing this notice in keeping with the spirit of Executive Order 12044, Improving Government Regulations, and the Department of Transportation Regulatory Policies and Procedures. The notice ensures that all interested persons have an opportunity to be heard on the issues and to provide information, views and arguments on them. This notice is in keeping with the policy favoring full and open public involvement in our rulemaking actions.

The Proposal

This notice proposes to require that all flight attendants remain seated at assigned stations during taxi except to perform duties related to the safety of the airplane and its occupants.

Accordingly, the Federal Aviation Administration proposes to amend Part 121 of the Federal Aviation Regulations (14 CFR Part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

By revising the last sentence of § 121.391(d) to read as follows:

§ 121.391 Flight attendants.

* * * * *

(d) * * * During taxi, all flight attendants must remain at their assigned stations with safety belts and shoulder harnesses fastened (if required by § 121.311(f)) except to perform duties related to the safety of the airplane and its occupants.

(Secs. 313, 314, and 601 through 610 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a proposed regulation which is not considered to be "significant" as defined under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the expected economic impact is such that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 16, 1980.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 80-18582 Filed 6-18-80; 8:45 am]

BILLING CODE 4910-13-M

federal register

Thursday
June 19, 1980

Part IV

Department of Transportation

Federal Highway Administration

National Standards for Traffic Control Devices: Manual on Uniform Traffic Control Devices

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625 and 655

[FHWA Docket No. 80-10]

National Standards for Traffic Control Devices: Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed amendments to the Manual on Uniform Traffic Control Devices.

SUMMARY: The FHWA is inviting comments on requests that it has received for changes to the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD contains the standards for traffic control devices which have been approved by the FHWA for use on all streets and highways open to public travel.

DATES: Comments must be received on or before February 1, 1981.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 80-10, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stampted postcard. The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 ($18.00).

FOR FUTHER INFORMATION CONTACT: Mr. James C. Partlow, Office of Traffic Operations, (202) 426-0411, or Mr. Lee J. Burstyn, Office of the Chief Counsel, (202) 426-075, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET. Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA prepares and issues the national standards for traffice control devices used on all streets and highways open to public travel. These standards are published in the MUTCD which has been incorporated by reference into Title 23, Code of Federal Reguations (CFR), Parts 625 and 655. The FHWA both receives requests and initiates recommendations for changes (i.e., amendments) to the MUTCD.

This advance notice contains requests for changes to the MUTCD which were received or originated by the FHWA. Some of these requests were referred to a technical subcommittee of the National Advisory Committee on Uniform Traffic Control Devices (NACUTCD). Suggestions and advice by the respective technical subcommittees is included where available. The FHWA terminated its sponsorship of the NACUTCD on June 12, 1979, and will now process all revisions to the MUTCD in accordance with the informal rulemaking of the Administrative Procedure Act (5 U.S.C. 553) and the Department of Transportation procedures issued pursuant to Executive Order 12044.

Each request has been assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

This advance notice is being issued to provide the public with an opportunity to participate in the processing of requests for amendments to the MUTCD. Based upon comments received and its own review, the FHWA will prepare a notice of proposed amendments providing recommendations for the disposition of the suggested amendments to the MUTCD. Any final amendments which result from that action will be published in the **Federal Register** and incorporated by reference in the CFR.

Index of Requests

1. SIGNS (PART II)

(a) Request II-7 (Chng.) Signing Public Median Crossovers

Many divided highways have crossovers (openings) in the median for public use. These crossovers enable motorists to reverse their direction of travel via a U-turn without traveling an undue distance to the next interchange or intersection. The MUTCD does not provide guidance on standard signs for public crossovers.

The FHWA originated this request and suggested that highway safety could be improved by providing advance signing for those public median crossovers that are inconspicuous to the motorist. The FHWA is considering development of guidelines for uniform signing and, if necessary, a new standard sign for this purpose.

(b) Request II-10 (Chng.) Signing at Signalized Intersections

The MUTCD contains specific guidance and general recommendations regarding the location for ONE WAY signs and Turn Prohibition signs at intersections. The city of Tampa, Florida, indicated that the guidance provided for the use of ONE WAY signs is not clear and requested an interpretation concerning the correct placement of an overhead ONE WAY SIGN. The Bureau of Traffic Engineering, Monroe County, New York, requested that the MUTCD be changed to recommend rather than require that No Right Turn signs be placed at the near right-hand corner of the intersection and to allow Turn Prohibition signs to be placed near the appropriate signal face where traffic signals are suspended overhead.

A private individual requested the same clarification for the use and pacement of Turn Prohibition signs at signalized intersections and also requested that the MUTCD be changed

to indicate the difference in the use and placement of the Turn Prohibition signs at signalized and nonsignalized intersections. A change was also requested to provide that on one-way streets and roads, including those that are part of divided highways, NO LEFT TURN signs should be placed on the near and far corners to the motorist's immediate left.

Since these requests are interrelated and primarily concern changes in the MUTCD, they have been combined into one request.

(c) Request II–31 (Chng.) Mandatory Use of LEFT TURN PROTECTED ON ARROW ONLY Sign

The city of Baton Rouge, Louisiana, has requested a revision of the MUTCD that would require the installation of signs with the legend LEFT TURN PROTECTED ON ARROW ONLY at those intersections that have both protected and permitted left turns.

The use of a circular green signal indication requires that vehicles yield the right-of-way to others lawfully within the intersection at the time such signal indication is displayed. The use of a steady green arrow indication is permitted only to allow vehicular movements which are completely protected from conflict with other vehicles.

Left turn movements at intersections are sometimes controlled by both a green arrow and a circular green indication. This commonly occurs when a portion of the left turn movement is protected with the green arrow and the remaining portion of the movement is permitted by a circular green indication.

A motorist might misinterpret a circular green indication controlling an exclusive left turn lane as a protected turn, especially if there is a Left Turn Signal sign in place. That is, one might believe that the movement is protected when only a permitted turn is being indicated.

(d) Request II–44 (Chng.) Addition of Language for Handicapped Parking Sign

This request was submitted by the Montgomery County, Maryland, Department of Transportation. The standard Handicapped Parking sign displays the legend RESERVED PARKING and the international symbol of access for handicapped persons. Some government jurisdictions, including Montgomery County, permit the use of parking spaces identified with this sign only by vehicles with special vehicle license tags which include the symbol of access for handicapped persons. The County contends that the standard sign presents an enforcement problem since it does not indicate that the special vehicle license tags are required for legal parking. The County requests consideration of the adoption of a supplementary plate with the legend BY TAG, PERMIT ONLY, or equivalent, for use with the standard sign, or the adoption of an alternate Handicapped Parking sign with the legend proposed for the supplementary plate.

(e) Request II–45 (Chng.) School Trip Safety

The FHWA contracted a research study entitled "School Trip Safety and Urban Play Areas" to develop guidelines for the protection of young pedestrians (5–14 years of age) walking to and from school, entering and leaving school buses, and at neighborhood play areas. Many of the recommendations made in the research study report [1] are already covered to some extent in the MUTCD. However, based on the research, the FHWA believes that additional emphasis is necessary for some items and had submitted four proposals to the NACUTCD for consideration as additions to the MUTCD. The NACUTCD and the Subcommittee on Signs recommended denial of these four proposals. Each proposal is discussed separately in the following paragraphs:

1. The first proposal was to add text to the MUTCD advising that students in kindergarten through third grade should be trained in the understanding and use of traffic control devices. The Subcommittee on Sigas recommended denial of this part on the basis that the MUTCD is not the place to incorporate traffic safety messages.

2. The second proposal would have limited the suggested use of Speed Limit sign beacons to locations with limited roadway or roadside vision. The subcommittee did not wish to restrict the use of such an effective traffic control device.

3. The third proposal was to require marking the end of an authorized and posted school speed zone with either an END SCHOOL ZONE sign or a Speed Limit sign for the section of roadway which follows. The subcommittee recommended denial, based on Section 2B–13 which already requires a new Speed Limit sign to be posted.

4. The last proposal was to include in the MUTCD a recommendation that during darkness or twilight, safety guards should wear some reflective clothing and flags should be reflective or illuminated. The subcommittee recommended denial, stating that the MUTCD is not the place to provide information on wearing apparel for crossing guards.

After considering the recommendations of the NACUTCD and its subcommittee, the FHWA concurred with the recommendations for items 1 and 2 only, and has prepared the following proposed changes to the MUTCD concerning items 3 and 4 for comment:

3(a). Section 2B–13: Replace "speed limits" with "permanent speed limit" in paragraph 1, line 1, and paragraph 2, line 1.

3(b). Section 7B–12: Replace the last paragraph of the section with the following paragraph:

The end of an authorized and posted school speed zone shall be marked with an END SCHOOL ZONE sign or a standard Speed Limit sign showing the speed limit for the section of highway which follows.

4(a). Add to Section 7E–5, Uniform of Adult Guards, a new paragraph:

During periods of twilight or darkness, adult guards and student patrols should wear either reflective material or reflective clothing.

4(b). Add to Section 7E–11 after the last sentence:

Flagging devices used during periods of twilight or darkness shall be reflective or illuminated.

(f) Request II–46 (Chng.) Emergency Medical Services Symbol

The MUTCD provides for the legend HOSPITAL or the symbol H for use on general service signs to indicate the availability of medical services. The guidelines in the MUTCD for use of this legend or symbol state that to be eligible for signing a hospital should provide:

"a. Continuous emergency care capability, with a doctor on duty 24 hours a day, 7 days a week. A doctor on duty would include the following criteria and shold be signed in accordance with the priority as follows:

(1) Physican on duty within the emergency department.

(2) Registered nurse on duty within the emergency department, with a physician in the hospital on call.

(3) Registered nurse on duty within the emergency department, with a physician on call from his (sic) office or home."

Generally, in order to use the hospital services, those seeking medical assistance must go to the facility. Some medical facilities which do not meet the criteria for the use of the HOSPITAL service sign have the capability to offer emergency medical services. Examples of such facilities include emergency clinics and trauma centers.

[1] "School Trip Safety and Urban Play Areas," Volumes I through VII, Report No. FHWA–RD–75–104 through 110, November 1975. Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

Available data[2] indicate that a significant number of fatalities due to automobile accidents may have been prevented with prompt or proper emergency medical attention. Report findings[3] point out that a substantial number of deaths could have been prevented if standardized information and identification aids, indicating the location and methods for obtaining adequate medical care, were available.

The nationwide Emergency Medical Service (EMS) system was established to provide emergency medical aid to accident victims. The system is comprised of pre-hospital, hospital (or clinic) and recuperative elements that provide the capability to intervene in life-threatening medical emergencies. An essential part of the EMS system is the emergency response network provided by fire, police and other elements that assist in the delivery of medical and other aid in emergency situations. A specific need of this system is a method for providing motorists with information on how to get access to the medical response network in an emergency.

Although many of the States have developed and are utilizing various highway signs to advise motorists of access points to the emergency medical response network, these signs are inconsistent, and no design criteria have been established. An access point to the EMS system may include a nearby mobile emergency medical unit or hospital, a public telephone with the numbers for emergency services posted, or a Citizens Band radio channel that is monitored by local emergency units.

In recognition of this problem, the National Highway Traffic Safety Administration (NHTSA) has developed a "Star of Life" design and has requested an amendment to the MUTCD to designate this design as the standard symbol for signs providing information for access to the EMS system. The symbol consists of a stylized, six-pointed star with the snake symbol associated with the medical profession.

The Subcommittee on Signs of the former NACUTCD previously reviewed this request and recommended that experimentation be performed with the symbol before final action was taken. An experimental project was recently conducted by Pabon, Sims, Smith and Associates, Inc.

The final report on the experiment, entitled "Emergency Medical Services Highway Sign Evaluation" (1980) recommended adoption of the symbol proposed by the NHTSA for providing notice of access to the EMS system.

(g) Request II–48 (Chng.) Application of Warrants for STOP Signs

Unwarranted STOP signs inconvenience motorists and contribute to the waste of fuels. A research report entitled "Energy, Air Pollution, Delay and Safety Evaluation of Nonsignalized Control at Low Volume Intersections," Purdue University, 1977,[4] has shown that substantial amounts of fuel can be saved as a result of less restrictive State, county and municipal STOP sign policies. The MUTCD provides general warrants (conditions) for the use of STOP signs. However, the FHWA believes that application of these warrants and public pressures have resulted in a proliferation of unnecessary STOP signs, and is considering revising Section 2B–5 of the MUTCD by adding the following to the end of paragraph 1:

"Prior to the application of these warrants consideration should be given to less restrictive measures, such as the YIELD sign (2B–7) where a full stop is not necessary at all times. Similarly, existing installations should be reviewed periodically to determine whether, because of changed conditions, the use of a less restrictive control could accommodate traffic demands safely and more efficiently."

(h) Request II–50 (Chng.) Mandatory Use of No Passing Zone Pennant Sign (W14–3)

This request from a private individual proposes that the No Passing Zone pennant sign be required for use on all appropriate highways in the United States.

Presently, the MUTCD only recommends the use of the No Passing Zone sign on two-lane roads to warn of the beginning of a no passing zone identified by either conventional pavement markings (solid yellow line) or DO NOT PASS signs or both. The No Passing Zone sign is placed on the left side of the roadway at the beginning of the no passing zones because a sign so placed is in the best position to be seen by drivers about to pass. The No Passing Zone sign provides additional advance notification of the beginning of the no passing zone beyond that which can be provided by standard pavement markings and DO NOT PASS signs. This is especially true during periods of wet pavement, snow or nighttime conditions.

Presently, 16 States have officially adopted the No Passing Zone pennant sign for use on a statewide basis and 18 other States use it at selected locations. This random use can create uncertainty on the part of motorists traveling among several States.

In a somewhat related matter, testing is being conducted in three States on a pavement marking system in advance of no passing zones. These markings are designed to assist the motorist in identifying the approach to, and the beginning of, the no passing zone. In addition to testing the pavement marking system, data are being collected on the use of the pennant sign alone and on a combination of the pennant sign and pavement marking system.

(i) Request II–51 (Chng.) Additional Warrant for Multiway STOP Signs

Sections 2B–6 of the MUTCD specifies three warrants or conditions where the installation of multiway STOP signs may be useful as a traffic safety measure. The Pennsylvania Department of Transportation has requested the addition of a fourth warrant based on a combination of traffic volume and minimum sight distances at an intersection.

This warrant would permit the installation of multiway stops when the traffic volume on either of the roadways is over 400 vehicles per day and the minor roadway driver has a sight distance less than 10 times the speed limit of the major roadway.

2. MARKINGS (PART III)

(a) Request III–10 (Chng.) Lane Drop Marking

"Lane drop" describes a situation on a freeway or expressway along the approach to an interchange where the lane does not continue through the interchange, but becomes part of the exit ramp system. Vehicles staying in a dropped lane will automatically exit at the interchange. The California Department of Transportation (CALTRANS) found that lane drops may present a traffic operational problem and developed a special pavement marking pattern to help motorists to identify these locations. The pattern consists of 8-inch wide by 3-foot long white stripes separated by 12-foot gaps. In addition, an 8-inch wide solid white stripe is used for approximately 300 feet in advance of the exit to discourage last minute lane changes. The CALTRANS requested a change in the MUTCD to adopt this pattern as a national standard. The MUTCD provides that pavement marking stripes shall be from

[2] & [3] Emergency Medical Services Highway Sign Evaluation, 1980; Pabon, Sims, Smith and Associates, Inc. Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street, SW, Washington, D.C. 20590.

[4] Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

4 to 6 inches wide for a normal width line or from 8 to 12 inches wide for a double width line. It also recommends that broken line stripes should be formed with segments of stripes and gaps in the ratio of 3 to 1, with 10 feet recommended as the normal segment length. However, the MUTCD provides that other dimensions in this ratio may be used as best suits traffic speeds and need for delineation. Dotted lines with segments normally 2 feet long and gaps normally 4 feet long or longer are also provided for in the MUTCD.

The Subcommittee on Markings of the NACUTCD reviewed this request together with the results of a survey of current practices for lane drop markings [5] provided by the FHWA. The survey showed a consistent application of lane drop markings among the States.

The subcommittee advised that a change in the MUTCD is not needed to accommodate the California marking system and that the request should be approved as an interpretation to permit the use of the CALTRANS practice.

(b) Request III–20 (Chng.) Pavement Markings for a Standardized System of Highway Speed Control

Standard highway pavement markings are used to delineate travel lanes, the edges of the roadway, obstructions, crosswalks, stop lines and various other traffic needs. The MUTCD has no provisions for indicating speed limits with pavement markings. This request from a private individual suggests that line continuity (broken or solid lines) and color (white or yellow) should be used to indicate legal speed limits, in addition to their present functions. For example, a broken yellow line could indicate a speed limit of 15 to 25 miles per hour while a solid white line could represent a 45 to 55 mile per hour speed limit. Under the present system, line continuity is used to indicate permissive or restrictive conditions for such maneuvers as lane changing and passing. Line color is used to indicate the direction of the flow of traffic, that is, vehicles on opposite sides of yellow lines are traveling in opposite directions. Vehicles on opposite sides of white lines are traveling in the same direction.

(c) Request III–21 (Chng.) Lateral Placement of Delineators

Delineators are small reflectorized devices mounted in a series at the side of the roadway. They provide advance guidance to motorists at night by indicating the alignment of the road. The MUTCD requires that delineators be placed not less than 2 feet or more than 6 feet outside the outer edge of the shoulder. The State of Idaho Transportation Department (ITD) reports that there is extensive damage to delineators on its narrower highways by farm equipment, vehicles with wide loads, and by winter maintenance activities. The ITD also notes that a small increase in the lateral offset of delineators will substantially reduce the damage to delineators without materially reducing their effectiveness. The ITD requested that the lateral placement requirement of the MUTCD either be: (1) changed from a requirement to a recommendation or (2) be changed to require placement from 2 feet to 8 feet outside the outer edge of the shoulder.

3. SIGNALS (PART IV)

Request IV–21 (Chng.) Required Location of Traffic Signals

This request from the Montgomery County, Maryland, Department of Transportation is for a change in the requirement that a supplemental near-side traffic signal indication shall be provided when the nearest signal face is more than 120 feet beyond the stop line. Specifically, the proposal would revise the following sections in the MUTCD:

(1) Section 4B–8—to provide for the use of a 12-inch lens for signals located more than 120 feet from the stop line.

(2) Section 4B–12—to eliminate the mandatory provision requiring a near-side signal indication when the nearest signal face is more than 120 feet beyond the stop line and to permit engineering judgment to prevail in such cases.

4. TRAFFIC CONTROLS FOR STREET AND HIGHWAY CONSTRUCTION AND MAINTENANCE OPERATIONS (PART VI)

(a) Request VI–2 (Chng.) Minimum Reflectivity Requirements

The MUTCD requires the reflectorization of vertical panels, drums and barricades and the illumination or reflectorization of all signs and cones used at night in work zones. Reflectivity intensity values for these devices are not specified in the MUTCD. This request, originated within the FHWA, is for an amendment to the MUTCD to specify minimum standards for the level of reflectivity. The request suggests that numerical standards, such as those provided for reflective sheeting in "FP–79 Standard Specifications for the Construction of Roads and Bridges on Federal Highway Projects" [6] should be considered for use.

This request was previosuly reviewed by the Subcommittee on Construction and Maintenance of the NACUTCD which found that most States use Type II or better reflective sheeting. Since there was insufficient supporting data for the request, it was tabled with the recommendation that the existing wording in Part VI–C be retained.

The FHWA is interested in receiving comments on this subject. Specifically, comments are requested on the FHWA's suggestion that the initial minimum reflectivity intensity values for reflective sheeting materials used in construction and maintenance work zones be those specified for Type III sheeting as found in the FP–79. See following table.

[5] Use of Raised Pavement Markers/Lane Drop Signs and Markings, 1978, FHWA. Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street, SW., Washington, D.C. 20590.

[6] Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

Minimum Specific Intensity Per Unit Area (SIA) (Candelas Per Footcandle Per Square foot) Type III Sheeting

Observation angle (degrees)	Entrance angle (degrees)	White	Red	Orange	Yellow	Green	Blue
A—Glass Bead Retro-Reflective Element Material							
0.2	−4	250	45	100	170	45	20.0
.2	+30	150	25	60	100	25	11.0
.5	−4	95	15	30	62	15	7.5
.5	+30	65	10	25	45	10	5.0
B—Prismatic Retro-Reflective Element Material							
0.2	−4	250	45.0	100	170	45.0	20.0
.2	+30	95	13.3	26	64	11.4	7.6
.5	−4	200	28.0	56	136	24.0	18.0
.5	+30	65	10.0	25	45	10.0	5.0

NOTE.—Type III sheeting is of a higher intensity than the reflective sheeting commonly referred to as "engineering grade."

(b) Request VI–6 (Chng.) Detour Design Criteria

This request, which originated within the FHWA, is for an amendment to the MUTCD to include the following design criteria for detours:

(1) If possible, detours should be constructed to be compatible with the posted speed limit of the roadway entering the work zone. Detour design speeds should not be more than 10 m.p.h. below the speed limit of the entering road.

(2) Where a reduction in speed greater than 10 m.p.h. is unavoidable, the transition to the lower speed shall be made in appropriately timed steps of not more than 10 m.p.h. per step.

(3) Where severe speed reductions are necessary: (a) police or flaggers shall be used in addition to advance signing, and (b) the conditions requiring the severe speed reduction shall be alleviated as soon as possible.

A research project entitled "FHWA–RD–77–80 Accident and Speed Studies in Construction Zones," June 1977,[7] shows that adherence to proper standards and practices can prevent higher traffic accident rates during construction and that reduced speed zones experience more traffic conflicts, higher increases in accident rates and, in rural areas, do not significantly reduce actual vehicle speeds.

The Subcommittee on Construction and Maintenance of the NACUTCD reviewed a modified version of this request which did not include any mandatory provisions. The subcommittee voted to deny the request and recommended that the design criteria be included as recommended practice in "Work Zone Traffic Control, Standards and Guidelines"[8] published by the FHWA.

(c) Request VI–7 (Chng.) Maintained Visibility Level for Channelizing Devices

This request, which originated within the FHWA, is for an amendment to the MUTCD to require that barricades, vertical panels, drums, and cones be installed and maintained so as to be visible at night under normal atmospheric conditions from a minimum distance of 900 feet when illuminated by the low beams of standard automobile headlights. Specific wording regarding reflectorization or illumination, as appropriate, would be added to Sections 6C–3, 5, 6, and 8 of the MUTCD. The MUTCD presently requires illumination or reflectorization with a material having a smooth, sealed outer surface, but has no requirement for the level of reflectorization.

Research Report No. FHWA 78–143, "Visibility Requirements of Work Zone Traffic Control Devices" (1978)[9] recommended that the requested change be incorporated into the MUTCD.

The Subcommittee for Construction and Maintenance of the NACUTCD reviewed this request and recommended against adoption because other research currently underway may provide additional information on the subject. The subcommittee noted the potential difficulty in verifying the proposed visibility requirements at work sites and, recognizing the interrelationship of this request with Request VI–2 (Chng.) Minimum Reflectivity Requirements, recommended further study.

Until such time as further research is completed, analyzed and formulated into specific reflective values for inclusion in the MUTCD, the FHWA is requesting comments on the use of the foregoing visibility level as an interim requirement for work zone traffic control devices.

(d) Request VI–17 (Chng.) Simulated Drums

The MUTCD permits the use of cylindrical drums of certain specified sizes as channeling devices in work zones. At least two State highway agencies have developed and are using flat, rectangular, reflectorized panels meeting the height and width requirements for drums and having horizontal, alternating orange and white stripes, which meet the width requirements for stripes on drums. These panels are, in effect, simulated drums. This request, which originated within the FHWA, is for an amendment to the MUTCD permitting the use of these simulated drums as an alternative to standard channelizing devices.

(e) Request VI–18 (Chng.) Standards for Flashing and Steady Burn Warning Lights

The Institute of Transportation Engineers (ITE) and American Traffic Services Association (ATSA) have jointly proposed changes to Part IV of the MUTCD.

The ITE Standard for flashing and Steady Burn Warning Lights is included in Section 6E–5 of the MUTCD. Since February 1978, when ITE published a Tentative Revised Standard on Barricade Warning Lights, there has been considerable concern whether the standard in the MUTCD is intended to be a purchase specification or a field performance standard. Other concerns were based on the testing for conformance with the standards and potential liability problems. Based on these concerns, both ITE and ATSA agreed there was a need for both purchase specifications and performance specifications. A purchase specification guarantees the buyer a minimum level of quality for a product. A performance specification provides a means of ensuring that the device in the field meets the motorists' needs.

These organizations are proposing that the current ITE standard be converted to purchase specification. Specifically, Section 6E–5 would be modified to reference the ITE Purchase Specification for Flashing and Steady Burn Warning Lights and Table VI–2 would be deleted. The ITE/ATSA are also proposing additional changes to include minimum field performance requirements for warning lights in the MUTCD. Conformance to these minimum field performance requirements can be determined in the field without the aid of sophisticated instrumentation. Specifically, it is proposed that the standards for Type A and Type C lights be revised to include the following performance specification: "They shall be maintained so as to be capable of being visible on a clear night from a distance of 3000 feet." For Type B lights the following revision is proposed: "They shall be maintained so as to be capable of being visible on a sunny day from a distance of 1000 feet."

5. TRAFFIC CONTROL SYSTEMS FOR RAILROAD-HIGHWAY GRADE CROSSINGS (PART VIII)

(a) Request VIII–6 (Chng.) Details on Railroad Bells

The MUTCD permits the use of bells at railroad-highway grade crossings. The standards currently used for railroad bells are those developed and endorsed by the Association of American Railroads. This request, from a private individual, is for the addition to the MUTCD of specifications for the use of bells, such as their starting and stopping time, and loudness.

(b) Request VIII–7 (Chng.) Required Use of Crossbucks on Bikeways

The MUTCD requires as a minimum one crossbuck sign on each roadway approach to a grade crossing but not on

[7] Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

[8] Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

[9] Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

bikeway approaches. This request, which originated within the FHWA, is for an amendment to the MUTCD to require at least one crossbuck sign on each bikeway approach to a grade crossing.

The Railroad Grade Crossing Subcommittee of the NACUTCD reviewed this request and recommended only to revise Figure 9–6 of the MUTCD to show the crossbuck sign and to remove the advance warning sign and some pavement markings from the figure. If adopted, this recommendation could require the addition of explanatory text to the MUTCD.

(c) Request VIII–8 (Chng.) Modification of the Railroad Crossing Pavement Marking Symbol

The standard pavement marking symbol for use at railroad-highway grade crossings consists of a large X between the letters RR which are of a smaller size and placed to the left and right of the cross point. This request, which originated within the FHWA, is for an amendment to the MUTCD to eliminate the use of the letters RR from the symbol.

The FHWA believes that the apparent need for the letters RR has diminished and that it could be easier and less costly to maintain these markings if the letters were eliminated. The proposed revised symbol is presently in use in Canada.

This advance notice of proposed amendments to the MUTCD is issued under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

Note.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. Due to the preliminary nature of this inquiry, a regulatory evaluation has not been prepared at this time.

Issued on June 16, 1980.

L. P. Lamm,

Executive Director.

[FR Doc. 80–18557 Filed 6–18–80; 8:45 am]

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Thursday
June 19, 1980

Part V

Department of Energy

Federal Energy Regulatory Commission

Regulations Governing Safety of Water Power Projects and Project Works

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3 and 12

[Docket No. RM80-31]

Regulations Governing Safety of Water Power Projects and Project Works

June 16, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission gives notice that it proposes to adopt regulations governing the safety of water power projects and project works licensed under Part I of the Federal Power Act. The proposed regulations consolidate under Part 12 those portions of the Commission's current dam safety program that were initiated by case specific Commission orders, and revises the existing dam safety inspection regulations.

DATE: Written comments by August 1, 1980.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Reference Docket No. RM80-31.

FOR FURTHER INFORMATION CONTACT:
Glenn Berger, Office of the General Counsel, Federal Energy Regulatory Commission, Room 3331-A, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8364.
Howard Jack, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8608-C, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8448.
Ron Corso, Office of the General Counsel, Federal Energy Regulatory Commission, Room 440, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-4868.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations governing the safety of all water power projects and project works licensed or required to be licensed under Part I of the Federal Power Act (Act).[1] The proposed rulemaking consolidates the Commission's Orders, regulations and practices relating to dam safety under Part 12 of the Commission's regulations.

[1] The terms "project" and "project works" have the same meaning as defined in §§ 3(11) and 3(12) of the Federal Power Act.

Background

The Federal Energy Regulatory Commission licenses water power projects that are developed by non-Federal entities including individuals, private entities, states, municipalities, electric cooperatives, and others. A license is required if a project is located on navigable waters or lands of the United States; or uses surplus water or water power from a government dam; or has had significant construction after 1935, is located on non-navigable waters over which Congress has jurisdiction under the commerce clause, and affects the interests of interstate or foreign commerce.

At the end of 1979, the Commission had under its jurisdiction 1,181 dams of all sizes and hazard classifications, including those for which applications for license were pending.

Under section 10(c) of the Act, the licensee of any water power project within the jurisdiction of the Commission must conform to any regulations that the Commission "may from time to time prescribe for the protection of life, health, and property."[2] In addressing its responsibility under section 10(c) of the Act the Commission has developed procedures to ensure quality in design, construction, operation, and maintenance of water power projects.

The Commission staff reviews designs before the construction of a licensed project. During the construction of a project, the regional offices conduct periodic inspections, usually monthly. Furthermore, the Commission often required, in the terms and conditions of a license for an unconstructed project, that the licensee appoint a board of independent consultants subject to the Commission's approval. The board usually consists of three members with geotechnical, civil engineering, design, and construction expertise. The board acts in an advisory capacity during the construction of the project. Once a water power project becomes operational, members of the Commission staff conduct an annual review of the project's operating history and compliance with licensing conditions, and inspect the project works.

The Commission also requires all licensed projects and any project for which a license is pending to implement, and modify when appropriate, an emergency action plan. The plan must be designed to provide an early warning to upstream and downstream inhabitants, property owners, and recreational users in case of an impending or actual sudden release of water caused by failure of any project structure.

On December 27, 1965, the Commission's predessor agency, the Federal Power Commission (FPC), provided in Order No. 315[3] for complete safety inspections of licensed water power project works by independent consultants at five-year intervals of more frequently, if necessary. The existing Part 12 regulations under FPC Order No. 315 are applicable only to these licensed projects that have a dam exceeding 35 feet in height above the streambed or a gross storage capacity of more than 2,000 acre-feet. The inspection provisions established by Order No. 315 were designed to supplement the staff's inspection of all project works with detailed periodic safety inspections supervised by an independent consultant.

Dam failures in the 1970's, notably the failure of Teton Dam (U.S. Department of Interior, Water and Power Resources Service), and the Taccoa Falls Dam in Georgia, demonstrated a need to review Federal and non-Federal dam safety practices and procedures. Pursuant to President Carter's directive on April 23, 1977, Federal review was initiated by several Federal agencies to ensure the structural integrity of project works and to establish well-conceived plans to protect life and property if an emergency should occur as a result of a dam failure or accident causing a sudden release of water.[4]

[2] 16 U.S.C. §803(c)(1976).

[3] Inspection of project works with respect to safety of structures, 18 C.F.R. Part 12 (1979).

[4] According to the President's directive, the Chairman of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET) was to preside over the preparation of Federal dam safety guidelines. The Director of the Office of Science and Technology Policy (OSTP) would then establish a committee of experts to review the proposed procedures and policies. Three significant documents have been produced through the interagency review of dam safety practices initiated by the President in 1977. In November 1977, FCCSET issued a report entitled *Improving Federal Dam Safety* followed by the *Federal Dam Safety Report of the OSTP Independent Review Panel* in December 1978. FCCSET published its *Federal Guidelines for Dam Safety* on June 25, 1979. Finally, the President requested that each department and agency report to the Director of the Federal Emergency Management Agency (FEMA) concerning the progress made toward implementing the guidelines. The Chairman of the FERC transmitted the Commission staff's report to FEMA on February 1, 1980. The FERC report showed substantial prior compliance with the guidelines.

The government-wide review of dam safety practices has produced new studies and guidelines. The Secretary of the Interior requested the National Research Council to review the dam safety program of the Water and Power Resources Service (formerly the Bureau of Reclamation). The Congress in 1972 enacted the National Dam Inspection Act (33 U.S.C. §§ 467-467e (1976)) authorizing the Secretary

Footnotes continued on next page

The Commission had already begun extensive review of its dam safety policies and procedures at the time of the Walter Bouldin Dam failure on February 10, 1975 (FERC Project No. 2146). Emergency action plans and dam safety inspections were standard parts of the Commission's program at the time. However, during the period of review the Commission determined that it was advisable to consolidate the various regulations, orders, and practices relating to dam safety in the Commission's regulations.

The proposed rule in this docket would consolidate under Part 12 those portions of the current dam safety program that were initiated by case-specific Commission orders and revise the existing dam safety inspection regulations.

The proposed rulemaking continues to require dam inspections every 5 years by an independent consultant. However, the qualifications of an independent consultant are defined to avoid conflicts of interest. Furthermore, the category of dams which are required to have inspections every five years is expanded. Emergency action plans are now included under Part 12. The proposed rule, in order to cooperate with the President's directive and conform to the *Federal Guidelines for Dam Safety*,[5] includes improved inspection requirements, and criteria for review, design, construction, and testing of project works, monitoring quality control and assurance, and solicitation of public cooperation on matters related to the protection of life, health, and property at licensed projects.

The Commission also proposes to amend Part 3 by revising Subpart B to include a description of staff investigatory practices.

Policy

The *Federal Dam Safety Report* of the OSTP Independent Review Panel states that *"perhaps the most fundamental principle of dam safety is recognition that every dam runs some risk of failure.* This principle is so elementary that its significance is easily overlooked." [6] There is "incomplete understanding of or uncertainties associated with natural (earthquakes and floods) and man-made (sabotage) destructive forces, with materials' behavior and response to these forces, and in control of the construction process." [7] The report noted that dam engineering is not an exact science, but rather an art that must deal with the complexities of site selection, design, construction, the aging process of any structure, and foreseeable and unforeseeable natural phenomena. The Commission believes that, given these complexities, the builders and the operators of both Federal and non-Federal water power projects have enjoyed an uncommonly high degree of success. Nevertheless, if a dam fails, whether due to human error or unforeseeable natural events, the magnitude of the destruction of lives and property that follows can be awesome. While the licensee has the basic responsibility for the protection of life and property, it is the policy and the responsibility of this Commission to ensure that licensees carry out those responsibilities to avert such tragedies and assure a continued awareness of acceptable dam safety practices.

There are two overriding Federal interests in the regulation of water power projects. First, the development and maintenance of a reliable source of power that is based on a renewable resource is a matter of national priority. Secondly, the development of facilities to generate that power must be accompanied by a concern for the protection of life, health, and property. These interests are superior to any competing interests held by any licensee.

Therefore, the Commission under section 10(c) of the Act, to help ensure effective and timely discharge of the licensee's responsibility, proposes these regulations.

Summary of the Proposed Regulation

Subpart A—General Provisions

The proposed rule revokes the existing dam inspection procedures in Part 12 of the Commission's regulations and replaces them with new practices and procedures that encompass dam inspections by independent consultants and other aspects of the Commission's dam safety program not previously included in Part 12.

Subpart A provides that this part applies to water power projects licensed under Part I of the Federal Power Act (Act). The proposed rule would not absolve any licensee from compliance with any term or condition of its license. The Commission or its designated representative may require that the licensee comply with the stricter of two similar provisions located in a license and this part.

The new Part 12 rules would also apply to an applicant for a license for a constructed project. Section 12.3 defines "applicant" as the owner or operator of an unlicensed constructed project who must, in the Commission's judgment, apply for a license, as well as those persons who have actually submitted a license application.

Section 12.3 also defines "authorized Commission representative" as the Directors of the Office of Electric Power Regulation and the Division of Hydropower Licensing, acting directors of these offices, any regional engineer, or any other specifically designated persons.

The definition of a "condition affecting the safety and adequacy of a project or project works" is important for the monitoring and reporting requirements of the rule. This phrase means any condition that may adversely affect the safety, stability, or integrity of any project works or the ability of any project works to protect life, health, or property, or the power and nonpower uses of the affected water resources. The definition provides several examples of conditions that might affect the safety and adequacy of a water power project or the project works.

Other terms defined in § 12.3 include "constructed project," "dam," "project emergency," "regional engineer" and "development." Furthermore, any terms defined in section 3 of the Federal Power Act have the same meaning as they have under the Act for purposes of this part, unless further defined in this part.

Section 12.4 sets forth with specificity the authority of the regional engineer or other authorized Commission representative to inspect and supervise the construction, operation, maintenance, use, or modification of any project works. The regional engineer or other Commission representative is authorized to test or inspect any project works or to require the licensee to do so; to require a licensee to submit certain reports or information; to require a licensee to modify emergency action plans or any plan for corrective measures; to take any preventative or corrective measures; and to prescribe a time for performing these actions. However, an order or directive of the regional engineer may be delayed or stayed under § 12.4(c) by the regional engineer or other authorized Commission representative or by the Commission itself.

Section 12.5 sets forth the general standard that a licensee or applicant

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Footnotes continued from last page
of the Army to inspect certain non-Federal dams except those licensed by FERC.

[5] Federal Guidelines for Dam Safety, Federal Coordinating Council for Science, Engineering & Technology, June 25, 1979.

[6] Executive Office of the President, Office of Science and Technology Policy, December 6, 1978, at 8.

[7] *Federal Guidelines for Dam Safety*, Federal Coordinating Council for Science, Engineering & Technology, June 25, 1979, at 7.

must use sound and prudent engineering practices in designing, constructing, operating, maintaining, using, or modifying a water power project or the project works. As noted above, it is primarily the licensee's responsibility to protect life, health and property.

Subpart B—Reports and Records

Section 12.10 requires an applicant or licensee to report to the Commission orally and in writing any condition affecting the safety or adequacy of the water power project or the project works. It specifies the information that the regional engineer may require. The applicant or licensee is also required to report any deaths or serious injuries that occur at, or are attributable to, the water power project.

Section 12.11 provides for reporting of project modifications to the regional engineer.

Section 12.12 specifies the kinds of records that must be maintained by the applicant or licensee and the appropriate locations at which to maintain permanent original project records and copies of such records. A provision is included to provide for the transfer of permanent project records to a successor licensee or the government, if ownership of the project changes.

Subpart C—Emergency Action Plans

This subpart constitutes a major element of the Commission's dam safety procedures. It requires an applicant or licensee to make provision for measures to be taken during a project emergency, including failure of the dam. Emergency action plans must be developed by an applicant or licensee in coordination with Federal, state, and local agencies. The plans must be filed with the regional engineer. The Commission will provide guidelines for preparing such plans.

This requirement will apply to all projects licensed under Part I of the Act unless exempted by the Commission under § 12.21. An exemption from the requirement of this subpart is not perpetual, and the applicant or licensee is charged with the responsibility of reviewing conditions upstream and downstream from the project to ascertain whether an emergency action plan would be advisable. An exemption may be revoked by the Commission if conditions change significantly.

Section 12.22 prescribes the contents of an emergency action plan. This section requires that the plan include measures for training project staff and for controlling flows of water in unusual circumstances. The plan must take into account time of day, in particular the occurrence of a project emergency during hours of darkness.

Section 12.22(c), requires the applicant or licensee of any project works that are located within ten miles of a nuclear power plant to file a radiological response plan. The plan must provide for emergency procedures in the event of an accident or incident at the nuclear power plant that results in the release of radioactivity into the air or water. The objective of the plan is to provide for the possibility of short-term abandonment of the project works, and continued generation of electric power and effective control of stream flows. A project which is exempted from the requirement to file an emergency action plan must still file a radiological response plan if there is a licensed nuclear power plant within ten miles. Normally, radiological response plans will be filed as supplements to emergency action plans.

Section 12.23 prescribes the deadlines for filing the emergency action plans.

Under § 12.24 emergency action plans must be comprehensively reviewed by the applicant or licensee at least once a year and updated to ensure adequate protection for life, health, or property affected by the project.

Under § 12.25 a licensee or applicant is required to post the most current emergency action plan. The posting must be in a prominent location so that it may be available to operating personnel. The licensee or applicant is also required to test the readiness of personnel for an emergency situation.

Subpart D—Inspection by Independent Consultants

This subpart is a revision of the Part 12 requirements in the existing regulations. While it continues to prescribe initial inspections and subsequent five-year inspections by independent consultants, it will require inspection of a larger number of project developments. Formerly, inspections by consultants were performed only on those dams more than thirty-five feet in height or impounding more than 2,000 acre-feet of water. The revised inspection requirements add to this category of dams any dam with a high hazard potential that the regional engineer determines requires an inspection. This recognizes that the need for stringent measures to protect life, health, or property may depend on the location and other characteristics of a project development relative to certain geographic, demographic, and economic features of the vicinity. In addition, the height and impoundment criteria have been revised for adaptation to the mertric system.

Section 12.30 supplies additional definitions for this subpart. "Independent consultant" means a person that is not, and has not been within two years of being retained to perform an inspection under this subpart, an employee, agent, contractor, or consultant of the licensee or its affiliates. An independent consultant cannot have had substantial responsibility for the design, construction, or maintenance of the project under inspection during the previous 10 years. It is not intended to prohibit a person who performs an independent inspection from performing subsequent inspections under this rule.

"Height above streambed" and "gross storage capacity" are also defined in this section for purposes of this subpart.

Section 12.31 provides the general requirement that the project works of each development within the scope of this subpart must be inspected by a qualified independent consultant in order to identify any actual or potential deficiencies in the project works. Section 12.32 provides for exemption from the requirements of this subpart.

Section 12.33 prescribes the scope of the periodic inspections by an independent consultant. The inspection must include the review of all relevant reports, a physical field inspection, and an evaluation of certain project features.

Section 12.34 requires that, if the independent consultant discovers any condition that may necessitate emergency corrective measures, the consultant must notify the licensee. The licensee must report the need for the measure to the regional engineer.

Section 12.35 explains what information should be included in the report that an independent consultant must prepare and file pursuant to an inspection under this subpart. This section permits incorporation by reference of materials found in other inspection reports. The section sets forth the kinds of data and information that must be provided, the general nature of the analyses to be performed, and an outline of the nature of the recommendations a consultant must make. If any consultant involved in the dam inspection dissents from the major recommendations of the report, such dissenting views must be included in the report. Furthermore, any changes in information required under this section occurring after it has been initially reported shall be included in subsequent reports.

Section 12.36 provides for the timing of the periodic inspection by an independent consultant. The project works of any development must undergo

inspections at five-year intervals dating from the initial inspection.

Section 12.36(b) specifies when a project development must be initially inspected. The timing of the initial inspection depends on the type of project. The first category of projects includes any development that has a dam that is more than 33 feet, or 10 meters in height above streambed, or that impounds a reservoir with a gross storage capacity of more than 2,000 acre feet, or 2.5 million cubic meters. The facility must be inspected not later than two years after the date of issuance of an order licensing the development, if it was constructed before the date of issuance of the order. For any development that was constructed after the date of issuance of the order licensing or amending a license to include the development, the initial inspection under this subpart must be completed and the report on it filed not later than five years from the date of the first commercial operation or the date on which the reservoir first reaches its normal maximum surface elevation, whichever occurs first.

For any other development, the initial inspection must be completed and the report on it filed by a date specified by the regional engineer. The initial inspection must be made within two years following the date that the regional engineer notifies the licensee that an inspection and report is required.

Paragraph (b)(3) provide that any Part 12 inspection made before the effective date of this regulation may be considered an initial inspection. However, the first report filed under this rule for a development must contain the information and analysis required by § 12.35(b).

Section 12.37 explains what corrective measures the applicant or licensee must take under the supervision of the regional engineer.

Subpart E—Other Responsibilities of Applicant or Licensee

This subpart explains several responsibilities that every applicant or licensee has regarding the operation and maintenance of a project development. Section 12.40 requires that a quality control program be maintained during any construction, repair, or modification of the project works or while taking any corrective measures. Section 12.41 requires that an applicant or licensee make provisions for instruments to monitor the performance of the project works whenever conditions are found during design, construction, or operation of the project that might affect the safety or adequacy of the project or the project works.

Under § 12.42 warning and safety devices must be installed as necessary or desirable to protect the public. Under § 12.43 the Commission requires a licensee to keep power and communication lines and gas pipelines from obstructing navigation or otherwise endangering the public. Section 12.44 requires at least annual operation of spillway gates and load-testing of the standby emergency power for spillway gate operation at regular intervals. Finally, under § 12.45 an applicant or licensee must post notices at appropriate locations requesting any member of the public to report to the licensee any unusual ground or water condition that might adversely affect the project or its works.

Comment Procedure

Interested persons are invited to submit written views, comments, or suggestions in writing concerning all or part of the regulations proposed in this notice. An original and 14 copies of any comment should be filed with the Secretary of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Comments must be received by August 1, 1980, and should reference Docket No. RM80–31. Written submissions will be available for public inspection at the Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426, during regular business hours. The Commission will consider all written submittals which are timely filed before acting on the proposed regulations.

(Federal Power Act, as amended, 16 U.S.C. 792–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; Executive Order No. 12009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission proposes to revise Part 12, and to amend Part 3, Subchapter B, of Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

1. Part 12 is revised in the title and Table of Contents to read as follows:

PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS

Subpart A—General Provisions

Authority: Federal Power Act, as amended, 16 U.S.C. 792–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; Executive Order No. 12009, 3 CFR 142 (1978).

1. Part 12 is revised to read as follows:

Subpart A—General Provisions

§ 12.1 Applicability.

Except as otherwise provided in this part or ordered by the Commission or its authorized representative, the provisions of this part apply to:

(a) Any project licensed under Part I of the Federal Power Act; and

(b) Any unlicensed constructed project for which the Commission has determined that an application for license must be filed under Part I of the Act.

§ 12.2 Rules of Construction.

(a) If any term, condition, article, or other provision in a project license is similar to any provision of this part, the licensee must comply with the provision which is, in the judgment of the Commission or its authorized representative, the stricter or more stringent provision.

(b) A licensee may request from the Director of the Office of Electric Power Regulation a ruling on the applicability

to its actions of any provision of this part that is similar to a provision of its license. A ruling by the Director may be appealed under § 1.7 of this chapter. Only those persons named in the request and who are named in a license may rely upon it.

§ 12.3 Definitions.

(a) *General rule.* Terms defined in section 3 of the Federal Power Act shall have the same meaning as they have under the Act, for purposes of this part, unless further defined in this part.

(b) *Definitions.* The following definitions apply for purposes of this part.

(1) "Applicant" means any person who has applied for a license for an unlicensed, constructed project and any owner or operator of an unlicensed, constructed project for which the Commission has determined that an application for license must be filed.

(2) "Authorized Commission representative" means the Director of the Office of Electric Power Regulation, the Director of the Division of Hydropower Licensing, the regional engineer, any person specifically authorized by one of those officials to act in his or her stead, or any other member of the Commission staff whom the Commission may designate.

(3) "Condition affecting the safety or adequacy of a project or project works" means any condition, event, or action at the project which might compromise the safety, stability, or integrity of any project work with respect to its continuing ability to protect life, health, or property or to protect the water resources of the region for navigation, water power development, or other beneficial public uses, including recreation, or otherwise adversely affect life, health, or property, including but not limited to:

(i) Unscheduled rapid draw-down of impounded water;

(ii) Failure of any water control facility, such as a gate or a valve;

(iii) Failure or unusual movement, subsidence, or settlement of any part of a project work;

(iv) Unusual concrete deterioration or cracking, including development of new cracks or the lengthening or widening of existing cracks;

(v) Piping, slides, or settlements of material in any dam, abutment, or embankment or areas adjacent to reservoirs;

(vi) Significant damage to slope protection;

(vii) Unusual instrumentation readings;

(viii) New seepage or leakage or significant gradual increase in pre-existing seepage or leakage;

(ix) Sinkholes;

(x) Significant instances of vandalism or sabotage;

(xi) Natural disasters, such as floods or earthquakes; or

(xii) Any other signs of instability of any project work.

(4) "Constructed project" means any project with an existing dam.

(5) "Dam" means any structure for impounding or diverting water.

(6) "Development" means that part of a project comprising an impoundment and its associated dams, forebays, water conveyance facilities, power plant, and other appurtenant facilities. A project may comprise of one or more developments.

(7) "Project emergency" means an impending or actual sudden release of water at the project caused by natural disaster, accident, or failure of project works.

(8) "Regional engineer" means the person in charge of the Commission's regional office for the region (Atlanta, Chicago, Fort Worth, New York, or San Francisco) where a particular project is located or any staff member specifically designated by that person to act in his or her stead.

(9) "Act" means the Federal Power Act.

§ 12.4 Staff administrative responsibility and supervisory authority.

(a) *Administrative responsibility.* The Director, Office of Electric Power Regulation, is responsible for administering the Commission's dam safety program and reports directly to the Chairman of the Federal Energy Regulatory Commission.

(b) *Supervisory authority of the regional engineer or other authorized representative.* (1) Any water power project and the construction, operation, maintenance, use, or modification of any project works are subject to the inspection and the supervision of the regional engineer or any other authorized Commission representative.

(2) A regional engineer or other authorized Commission representative may:

(i) Test or inspect any water power project or project works or require that the applicant or licensee perform such tests or inspections or install monitoring instruments.

(ii) Require an applicant or a licensee to submit reports or information, regarding:

(A) The design, construction, operation, maintenance, use, repair, or modification of a water power project or project works;

(B) Any condition affecting the safety or adequacy of a project or project works or any death or injury that occurs at, or might be attributable to, the water power project;

(iii) Require an applicant or a licensee to modify:

(A) Any emergency action plan filed under Subpart B of this part;

(B) Any plan of corrective measures, including related schedules, submitted after the report of an independent consultant pursuant to § 12.36, or any other inspection report;

(iv) Require an applicant or licensee to take any other action with respect to the design, construction, operation, maintenance, repair, use, or modification of the project or its works that is, in the judgment of the regional engineer or other authorized representative, necessary or desirable to maintain the safety and adequacy of the project or its works for the protection of life, health, or property or for the protection of the water resources of the region for navigation, water power development, or other beneficial public uses;

(v) Establish the time for an applicant or licensee to perform any actions specified in this paragraph.

(c) *Stay of order or directive.*

(1) Any order or directive issued under this section by a regional engineer or other authorized Commission representative is immediately effective and remains in effect until:

(i) The regional engineer or other authorized representative who issued the order or directive stays its effect for a particular period;

(ii) The Commission stays the effect of the order or directive, or modifies or reverses the order or directive on appeal.

(2) A motion for stay of any order or directive issued under this section must contain a full explanation of why a stay of the order or directive for the period requested will not endanger life, health, or property.

§ 12.5 Responsibilities of licensee or applicant.

A licensee or applicant must use sound and prudent engineering practices in any action relating to the design, construction, operation, maintenance, use, repair, or modification of a water power project or project works.

Subpart B—Reports and Records

§ 12.10 Reporting safety-related incidents.

(a) *Conditions affecting the safety or adequacy of a project or its works.*—(1)

Oral reports. An applicant or licensee must report by telephone to the regional engineer any condition affecting the safety or adequacy of a project or projects works, as defined in § 12.3(b)(3). The oral report must be made as soon as practicable after that condition is discovered, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency action procedure.

(2) *Written reports.* Following the oral report required in paragraph (a)(1) of this section, the applicant or licensee must submit to the regional engineer a written report on the condition affecting the safety or adequacy of the project or project works, subcribed and verified in accordance with § 1.16 of this chapter. The written report must be submitted within the time specified by the regional engineer and must contain any information the regional engineer directs, including:

(i) The causes of the condition;

(ii) Description of any unusual occurrences or operating circumstances preceding the condition;

(iii) An account of any measure taken to prevent worsening of the condition;

(iv) A detailed description of any damage to project works and the status of any repair;

(v) A detailed description of any personal injuries;

(vi) A detailed description of the nature and extent of any private property damage; and

(vii) Any other information the regional engineer considers relevant.

(3) The level of detail required in any written report must be commensurate with the severity and complexity of the condition.

(b) *Deaths or serious injuries.* The applicant or licensee must promptly report to the regional engineer in writing, subscribed and verified in accordance with § 1.16 of this chapter, any drowning or other accident resulting in death or serious injury that occurs at the project, including a description of the cause and location of the accident. The written report of any death or serious injury considered or alleged to be project-related must also describe any remedial actions taken or proposed to avoid or reduce the chance of similar occurrences in the future. For the purpose of this paragraph, "project-related" includes any deaths or serious injuries involving a dam, spillway, or intake or which take place at or immediately above or below a dam.

§ 12.11 Reporting modifications of project works.

(a) *Reporting requirements.* Regardless of whether a particular modification is permitted without specific prior Commission approval, an applicant or licensee must report any modification of project works to the regional engineer in writing, subscribed and verified in accordance with § 1.16 of this chapter, at the time specified in paragraph (b) of this section.

(b) *Time of reporting.* (1) Any modification that is an emergency measure taken in response to a condition affecting the safety or adequacy of the project or project works must be submitted with the report of that condition required by § 12.10(a)(2);

(2) In all other instances, the modification must be reported at least 15 days before work on the modification begins.

§ 12.12 Maintenance of records.

(a) *Kinds of records.* The applicant or licensee must maintain the following information as permanent project records:

(1) *Engineering data.* Engineering data relating to design, construction, maintenance, repair, or modification of the project, including design memoranda and drawings, laboratory and other testing reports, foundation treatment and excavation, plans and specifications, inspection and quality control reports, "as built" construction drawings, designers' operating criteria, and any other data necessary to demonstrate that construction, maintenance, repair, or modification of the project has been performed in accordance with plans and specifications;

(2) *Instrumentation.* Instrumentation observations and data collected during construction, operation, or maintenance of the project, including continuously maintained tabular records and graphs illustrating the data collected pursuant to § 12.41;

(3) *Operational and maintenance history* of the project, including:

(i) The dates, times, nature, and causes of any complete or partial unscheduled shut-down, suspension of project operations, or reservoir filling restrictions related to the safety or adequacy of project works;

(ii) Any reports of project modifications, conditions affecting the safety or adequacy of the project or its works, or deaths or serious injuries at the project.

(b) *Location of records.* (1) *Original records.* The applicant or licensee must maintain the originals of all permanent project records at a central location secure from damage from any conceivable failure of the project works and convenient for inspection, such as the main business office of the applicant or licensee. The applicant or licensee must keep the regional engineer advised of the location of the permanent project records.

(2) *Record copies.* If the originals of the permanent project records are maintained at a central location other than the project site, the applicant or licensee must maintain copies of all permanent project records at the project site.

(c) *Transfer of records.* If the project is taken over by the Federal government at the end of a license term or the Commission issues a new license to a different licensee, the prior licensee must transfer the originals of all permanent project records to the custody of the administering Federal agency or department or to the new licensee.

Subpart C—Emergency Action Plans

§ 12.20 General requirements.

(a) Unless provided with a written exemption pursuant to § 12.21, every applicant or licensee must develop and file with the regional engineer three copies of an emergency action plan subscribed and verified in accordance with § 1.16 of this chapter.

(b) The emergency action plan must be:

(1) Developed after consultation and cooperation with appropriate Federal, state, and local agencies responsible for public health and safety; and

(2) Designed to provide early warning to upstream and downstream inhabitants, property owners, operators of water-related facilities, recreational users, and other persons in the vicinity who might be affected by a project emergency, as defined in § 12.3(b)(7).

§ 12.21 Exemptions.

(a) *Grant of exemption.* If an applicant or licensee satisfactorily demonstrates that no project emergency would endanger life, health, or property, the Director of the Office of Electric Power Regulation or the regional engineer may exempt the applicant or licensee from filing an emergency action plan.

(b) *No exemption.* A licensee or applicant for a license for a project with a dam or powerhouse located within ten miles of a nuclear power plant may not be exempted from the requirements of § 12.22(c) for a radiological response plan.

(c) *Conditions of exemptions.* (1)(i) An applicant or licensee who receives an exemption from filing an emergency action plan has continuing responsibility to review circumstances upstream and downstream from the project to determine if, as a result of change

circumstances, a project emergency might endanger life, health, or property.

(ii) Comprehensive review of the need for an emergency action plan must be conducted at least once each year.

(2) Promptly after the applicant or licensee learns that, as a result of any change in circumstances, a project emergency might endanger life, health, or property, the applicant or licensee must inform the regional engineer of that changed condition.

(d) *Revocation.* (1) The Director of the Office of Electric Power Regulation or the regional engineer may revoke an exemption granted under this section if he or she determines that, as a result of any change in circumstances, a project emergency might endanger life, health, or property.

(2) If an exemption is revoked, the applicant or licensee must file an emergency action plan within the time specified by the Director of the Office of Electric Power Regulation or the regonal engineer in revoking the exemption.

§ 12.22 Contents of emergency action plan.

(a) *General requirement.* An emergency action plan must conform with the guidelines established by the Director of the Office of Electric Power Regulation (available from the Division of Hydropower Licensing or the regional engineer) and must include:

(1) Plans for training project operators, attendants, and other responsible personnel to respond properly during a project emergency, including the instructions on the procedures to be followed thoughout a project emergency and the manner in which the licensee will periodically review the knowledge and understanding that these personnel have of those procedures;

(2) Detailed plans for notifying potentially affected persons, appropriate Federal, state, and local agencies, including public safety and law enforcement bodies, and medical units;

(3) Procedures for controlling the flow of water, including actions to reduce inflows to reservoirs, such as limiting outflows from upstream dams or control structures, and actions to reduce downstream flows, such as limiting outflows from downstream dams or control structures, on the waterway on which the project is located or its tributaries;

(4) A summary of the study used for determining the upstream and downstream areas that may be affected by sudden release of water, including a summary of all criteria and assumptions used in the study and, if required by the regional engineer, inundation maps.

(b) *Special factors.* The applicant or licensee must take into account in its emergency action plan the time of day, particularly hours of darkness, in establishing the proper actions and procedures for use during a project emergency.

(c) *Additional requirements for projects near nuclear power plants.*—(1) *Radiological response plan.* A licensee or an applicant for a project with a dam or powerhouse located within ten miles of a nuclear power plant must file, separately or as a supplement to any emergency action plan, a radiological response plan which provides for emergency procedures to be taken if an accident or other incident results in the release of radioactive materials from the nuclear power plant.

(2) A radiological response plan must include sufficient procedural safeguards to ensure that, to the maximum extent possible, during the accident or other incident at the nearby nuclear power plant:

(i) the project may be safely operated and, if evacuation is necessary, the project may be left unattended without danger to the project equipment or works or to life, health, or safety upstream or downstream from the project; and

(ii) electric power may be generated at and transmitted from the project without interruption.

(3) *Time of filing.*—

(i) *Constructed project with an acceptable emergency action plan.* For a constructed project with an otherwise acceptable emergency action plan on file, any radiological response plan required must be filed:

(A) If an operating license for the nuclear power plant has been issued on or before [the effective date of these regulations], not later than three months from [the effective date of these regulations];

(B) In all other instances, not later than three months after the date an operating license for the nuclear power plant is issued.

(ii) *All other projects.* For any project not described in § 12.22(3)(i), any radiological response plan required must be filed contemporaneously with the emergency action plan or, if the project has been exempted from filing an emergency action plan, at the time the emergency action plan would otherwise have been required to be filed pursuant to § 12.23.

§ 12.23 Time for filing emergency action plan.

(a) *Unconstructed project.* The emergency action plan for any unconstructed project must be filed no later than 30 days before the initial filling of the project reservoir begins.

(b) *Unlicensed constructed project.* (1) If the Commission has determined on or before [the effective date of these regulations] that a license is required for an unlicensed constructed project, the emergency action plan for that project must be filed not later than:

(i) Six months after [the effective date of these regulations]; or

(ii) Any earlier date specified by the Commission or its authorized representative.

(2) Except as set forth in paragraph (b)(1) of this section, the emergency action plan for an unlicensed constructed project must be filed not later than the earliest of:

(i) Six months after the date that a license application is filed;

(ii) Six months after the date that the Commission issues an order determining that licensing is required; or

(iii) A date specified by the Commission or its authorized representative.

(c) *Licensed constructed project.* If a licensed constructed project does not have an acceptable emergency action plan on file on [the effective date of these regulations] the emergency action plan must be filed no later than:

(1) Six months after [the effective date of these regulations]; or

(2) Any earlier date specified by the Commission or its authorized representative.

§ 12.24 Review and updating of plans.

(a)(1) An applicant or licensee has continuing responsibility to review the adequacy of the emergency action plan in light of any changes in upstream or downstream circumstances which might affect water flows or the location or extent of the areas, persons, or property that might be harmed in a project emergency.

(2) Promptly after an applicant or licensee learns of any change in circumstances described in paragraph (a)(1) of this section, the applicant or licensee must:

(i) Inform the regional engineer of that change in circumstances;

(ii) Consult and cooperate with appropriate Federal, state, and local agencies responsible for public health and safety to determine any advisable revisions to the emergency action plan; and

(iii) File with the regional engineer three copies of any revisions to the studies, maps, plans, procedures, or other information contained in the emergency action plan which result from that consultation.

(b) An applicant or licensee must conduct a comprehensive review of the adequacy of the emergency action plan at least once each year.

§ 12.25 Posting and readiness.

(a) A copy of the most recent emergency action plan must be posted in a prominent location readily accessible to the licensee's or applicant's operating personnel.

(b) Each licensee or applicant must annually test the state of training and readiness of key personnel responsible for responding properly during a project emergency, to ensure that they know and understand the procedures to be followed throughout a project emergency.

Subpart D—Inspection by Independent Consultants

§ 12.30 Applicability and definitions.

(a) This subpart applies to any licensed project development that has a dam:

(1) That is more than 33 feet (10 meters) in height above streambed, as defined in paragraph (b)(3) of this section;

(2) That impounds a reservoir with a gross storage capacity of more than 2,000 acre-feet (2.5 million cubic meters); or

(3) That has a high hazard potential, as defined in paragraph (b)(2) of this section, and is determined by the regional engineer or other authorized Commission representative to require a Part 12 inspection.

(b) *Definitions.* For purposes of this subpart:

(1) "Independent consultant" means any person that:

(i) Is not, and has not been within two years before being retained to perform an inspection under this subpart, an employee, agent, contractor, or consultant of the licensee or its affiliates; and

(ii) Has not had substantial responsibility for the design, construction, or maintenance of the project under inspection for 10 years, except as an independent consultant.

(iii) This paragraph is not intended to prohibit a person from performing an inspection under this subpart solely on the ground that the person performed a prior inspection under this subpart or the provisions of Part 12 of this chapter.

(2) "Dam that has high hazard potential" means any dam whose failure, in the judgment of the Commission or its authorized representative, might present a significant risk of endangering human life or of causing significant property damage or which meets the criteria for high hazard potential as defined by the Corps of Engineers (33 CFR Part 222, Table 2).

(3) "Height above streambed" means:

(i) For a dam with a spillway, the vertical distance from the lowest elevation of the natural streambed at the downstream toe of the dam to the maximum water storage elevation possible without any discharge from the spillway. The maximum water storage elevation is:

(A) For gated spillways, the elevation of the tops of the gates;

(B) For ungrated spillways, the elevation of the spillway crest or the top of any flashboards.

(ii) For a dam without a spillway, the vertical distance from the lowest elevation of the natural streambed at the downstream toe of the dam to the lowest point on the crest of the dam.

(4) "Gross storage capacity" means the maximum possible volume of water impounded by a dam with zero spill, that is, without the discharge of water over the dam or a spillway.

§ 12.31 General requirement.

In accordance with the procedures in § 12.33, the project works of each development to which this subpart applies, excluding transmission and transformation facilities and generating equipment, must be periodically inspected by or under the responsibility and direction of at least one independent consultant experienced in the design, construction, operation, and maintenance of dams, in order to identify any actual or potential deficiencies, whether in the condition of those project works or in the quality or adequacy of project maintenance, surveillance, or methods of operation, that might endanger public safety.

§ 12.32 Exemption.

Upon written request from the licensee, the Director of the Office of Electric Power Regulation may grant an exemption from the requirements of this subpart in extraordinary circumstances that clearly establish good cause for exemption. The Director may prescribe suitable conditions for an exemption.

§ 12.33 Specific inspection requirements.

(a) *Scope of inspection.* The inspection by the independent consultant must:

(1) Duly consider all relevant reports on the safety of the development made by or written under the direction of Federal or state agencies, submitted under Commission regulations, or made by other consultants;

(2) Include physical field inspection of the project works and review and assessment of all relevant data concerning:

(i) Settlement;

(ii) Movement;

(iii) Erosion;

(iv) Seepage;

(v) Leakage;

(vi) Cracking;

(vii) Deterioration;

(viii) Seismicity;

(ix) Internal stress and hydrostatic pressures in project structures or their foundations or abutments;

(x) Functioning of foundation drains and relief wells;

(xi) The stability of critical slopes adjacent to a reservoir or project works; and

(xii) Regional and site geological conditions.

(3) Include specific evaluation of:

(i) The adequacy of spillways;

(ii) The effects of overtopping of nonoverflow structures;

(iii) The structural adequacy and stability of structures under all credible loading conditions;

(iv) The relevant hydrological data accumulated since the project was constructed or last inspected under this subpart;

(v) The history of the performance of the project works through analysis of data from monitoring instruments, and

(vi) The quality and adequacy of maintenance, surveillance, and methods of project operations for the protection of public safety.

(b) *Evaluation of spillway adequacy.* The adequacy of any spillway must be evaluated by considering the upstream and downstream hazard potential which would result from failure of the project works during flood flows.

(1) If structural failure would present a hazard to human life or cause significant property damage, the independent consultant must evaluate the ability of project works to withstand the loading or overtopping which may occur in a flood up to the probable maximum flood or the capacity of spillways to prevent the reservoir from rising to an elevation that would endanger the project works.

(2) If structural failure would not present a hazard to human life or cause significant property damage, spillway adequacy may be evaluated by means of a design flood of lesser magnitude than the probable maximum flood, if the report of the independent consultant pursuant to § 12.35 provides a detailed explanation of the bases for the finding that structural failure would not present a hazard to human life or cause significant property damage.

(c) During the inspection under this section, the independent consultant must use any special equipment and instrumentation and any specialized technical personnel that may prudently be necessary.

§ 12.34 Emergency corrective measures.

If, in the course of an inspection, an independent consultant discovers any condition for which emergency corrective measures are advisable, the independent consultant must immediately notify the licensee and the licensee must report that condition to the regional engineer pursuant to § 12.10(a).

§ 12.35 Report of the independent consultant.

(a) *General requirement.* Following inspection of a project development as required under this subpart, the independent consultant must prepare a report and the licensee must file three copies of the report with the regional engineer. The report must conform to the provisions of this section and be statisfactory to the authorized Commission representative.

(b) *General information in the initial report.* (1) The initial report filed under this subpart for any project development must contain:

(i) A description of the project development;

(ii) A map of the region indicating the location of the project development;

(iii) Plans, elevations, profiles, and sections of the principal project works; and

(iv) A summary of the design assumptions, design analyses, spillway design flood, and the factors of safety used to evaluate the stability of the project works.

(2) To the extent that the information and analysis required in paragraph (b)(1) of this section are contained in a report of an independent consultant prepared and filed in compliance with Commission regulations in effect before [the effective date of these regulations], that information and analysis may be incorporated by specific reference into the first report prepared and filed under this subpart.

(c) *Information required for all reports.* Any report of an independent consultant filed under this subpart must contain the information specified in this paragraph.

(1) *Monitoring information.* (i) The report must contain monitoring information that includes time-versus-reading graphs depicting data from critical and repesentative monitoring instruments that measure the behavior, movement, deflection, or loading of project works or from which the stability, performance, or functioning of the structures may be determined.

(ii) Any monitoring data plotted on graphs must be presented in a manner that will facilitate identification and analysis of trends. The data may be summarized to facilitate graphical representation.

(iii) Plan or sectional drawings of project structures sufficient to show the location of all critical and representative monitoring instruments must be included.

(2) *Analyses.* The report must:

(i) Analyze the safety and adequacy of the project works and the maintenance and methods of operation of the development fully in light of the independent consultant's reviews, field inspections, assessments, and evaluations described in § 12.33;

(ii) Identify any changes in the information and analysis required by paragraph (b) of this section that have occurred since the last report by an independent consultant under this subpart and analyze the implications of those changes; and

(iii) Evaluate the adequacy of existing monitoring instruments, periodic observation programs, and other methods of monitoring project works and conditions affecting the safety or adequacy of the project or project works with respect to the development.

(3) *Recommendations.* Based on the independent consultant's field observations and analyses of the project works and the maintenance, surveillance, and methods of operation of the development, the report must contain the independent consultant's recommendations on:

(i) Any corrective measures necessary for the structures or for the maintenance or surveillance procedures or methods of operation of the project works;

(ii) A reasonable time to carry out each corrective measure; and

(iii) Any new or additional monitoring instruments, periodic observations, or other methods of monitoring project works or conditions that may be required.

(4) If the inspection and report were conducted and prepared by more than one independent consultant, the report must clearly indicate any dissenting views about the analyses of recommendations of the report that might be held by any individual consultant.

(5) *List of participants.* The report must identify all persons who participated in the inspection of the project or in preparation of the report and the persons who directed those activites.

(6) *Statement of independence.* The independent consultant must declare that all conclusions and recommendations in the report are made independently of the licensee, its employees, and its representatives.

(7) *Signature and verification.* The report must be signed by each independent consultant responsible for the report. The report must be verified in accordance with § 1.16 of this chapter.

§ 12.36 Time for inspections and reports.

(a) *General Rule.* After the initial inspection and report under this subpart for a project development, a new inspection under this subpart must be completed and the report on it filed not later than five years from the date the last report on an inspection was filed under this subpart.

(b) *Initial Inspection and Report.*

(1) For any development that has a dam which is more than 33 feet (or 10 meters) in height above streambed, or which impounds a reservoir with gross storage capacity of more than 2,000 acre-feet (or 2.5 million cubic meters), which development was constructed before the date of issuance of the order licensing or amending a license to include the development, the initial inspection under this subpart must be completed and the report on it filed not later than two years after the date of issuance of the order licensing it or amending a license to include it.

(2) For any development that was constructed after the date of issuance of the order licensing or amending a license to include the development, the initial inspection under this subpart must be completed and the report on it filed not later than five years from the date of first commercial operation or the date on which the reservoir first reaches its normal maximum surface elevation, whichever occurs first.

(3) For any development not set forth in paragraph (b)(1) or (2) of this section, the initial inspection under this subpart must be completed and the report on it filed by a date specified by the regional engineer, not to exceed two years after the date that the regional engineer notifies the licensee that an inspection and report under this subpart are required.

(4) The last independent consultant's inspection and report made for a development before [the effective date of these regulations] in compliance with the Commission regulations then in effect is deemed to fulfill the requirements for an initial inspection and report under this subpart for that development must contain the

information and analysis required by § 12.35(b).

§ 12.37 Taking corrective measures after the report.

(a) *Corrective plan and schedule.* (1) Not later than 30 days after the report of the independent consultant is filed with the regional engineer, the licensee must submit to the regional engineer a plan and schedule for designing and carrying out any corrective measures that the licensee proposes.

(2) The plan and schedule may include any proposal, including taking no action, that the licensee considers a preferable alternative to any corrective measure recommended in the report of the independent consultant. Any proposed alternative must be accompanied by the licensee's complete justification and detailed analysis and evaluation in support of that alternative.

(b) *Carrying out the plan.* The licensee must complete all corrective measures in accordance with the plan and schedule submitted to, and approved or modified by, the regional engineer.

(c) *Extension of time period.* For good cause shown, the regional engineer may permit additional time to submit the plan and schedule required by this section.

Subpart E—Other Responsibilities of Applicant or Licensee

§ 12.40 Quality control programs.

During any construction, repair, or modification of project works, including any corrective measures taken pursuant to § 12.37, the applicant or licensee must maintain a quality control program that is commensurate with the scope of the work and meets any requirements or standards set by the regional engineer. Quality control inspection must be done by the licensee, the design engineer, or an independent firm directly accountable to the licensee. Quality control inspection must not be done by the construction contractor or a firm accountable to the construction contractor.

§ 12.41 Monitoring instruments.

(a) In designing a project, a licensee must make adequate provision for installing and maintaining appropriate monitoring instrumentation whenever any physical condition that might affect the stability of a project structure has been discovered or is anticipated. The instrumentation must be satisfactory to the regional engineer and may include, for example, instruments to monitor movement of joints, foundation or embankment deformation, seismic effects, hydrostatic pore pressures, structural cracking, or internal stresses on the structure.

(b) If an applicant or licensee discovers any condition affecting the safety or adequacy of the project or project works during the course of construction or operation, the applicant or licensee must install and maintain any instruments that may be required by the regional engineer of other authorized Commission representative to monitor that condition.

§ 12.42 Warning and safety devices.

To the satisfaction of, and within a time specified by, the Regional engineer, an applicant of licensee must install, operate, and maintain any signs, lights, sirens, barriers, or other safety devices that may reasonably be necessary or desirable to warn the public of fluctuations in flow from the project or otherwise to protect the public in its use of project lands and waters.

§ 12.43 Power and communication lines and gas pipelines.

(a) A licensee must take all reasonable precautions, and comply with any specifications that may be provided by the regional engineer, to ensure that any power or communication line or gas pipeline that is located over under or in project waters does not obstruct navigation for recreational or commercial purposes or otherwise endanger public safety.

(b) Clearances between power and communication lines and any vessels using project waters must be at least sufficient to conform to any applicable requirements of the National Electrical Safety Code.

§ 12.44 Testing spillway gates.

(a) *General requirement.* An applicant or licensee must make adequate provision, to the satisfaction of the authorized Commission representative, to ensure that all spillway gates are operable during adverse weather conditions.

(b) *Annual test.* (1) At least once each year, each spillway gate at a project must be operated to spill water, either during regular project operation or on a test basis.

(2) If an applicant or licensee does not operate each spillway gate on a test basis during the periodic inspection by the Commission Staff, the applicant or licensee must submit to the regional engineer at the time of that inspection a written statement, subscribed and verified pursuant to § 1.16 of this chapter, that each spillway gate has been operated at least once during the preceding twelve months.

(c) Load-test of standby power. (1) The applicant or licensee must load-test the standby emergency power for spillway gate operation at regular intervals during each year and submit to the regional engineer at the time of the periodic inspection by the Commission staff a written statement, subscribed and verified pursuant to § 1.16 of this chapter, describing the intervals at which the standby emergency power was load-tested during the preceding year.

(2) The Commission staff may direct that a spillway gate be operated using standby emergency power during the periodic inspection.

§ 12.45 Instructions to the public.

(a) An applicant or licensee must post conspicuously and maintain the sign described in paragraph (b) of this section at all major points of public access in the vicinity of the project dams or dikes, in order to obtain the assistance of the public in the protection of life, health, and safety.

(b) Instructions to the public must be printed in 50 point type on any durable material suitable for outdoor posted notices and read:

PUBLIC NOTICE

If you see any unusual condition or disturbance in the vicinity of dams or dikes, such as an earth slide, excessive erosion, water seepage, or discoloration of water, please report it as soon as possible to the owner or operator of this power project by calling the number listed below.

Name:_____

Phone:_____

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS

2. Part 3 is amended in § 3.111 to read as follows:

§ 3.111 Investigations.

(a) *Water Power Resources.* Under section 4(a) of the Act, the Commission may investigate water resources development, the water power industry, power sites, and the use of power from government dams. These investigations may be initiated by the Commission on its own motion, request of another federal or state agency, or complaint. The staff work is performed by the Office of Electric Power Regulation and the Office of the General Counsel. These investigations may be conducted in cooperation with other government agencies.

(b) *Electric Power Development.* Under section 4(g) of the Act, the Commission may investigate any occupancy or evidenced intention to occupy, for the purpose of developing

electric power, public lands, reservations, or streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the states. These investigations may be initiated by the Commission on its own motion, request of another federal or state agency, or complaint. The staff work is performed by the Office of Electric Power Regulation and the Office of General Counsel. After such an investigation, the Commission may issue any order found appropriate, expedient, and in the public interest to conserve and utilize the navigation and water power resources of the region, including an order requiring licensing. If an investigation shows that the Act requires that a project be licensed, the Secretary may inform the owner of the project.

3. Part 3 is further amended in the Table of Contents and in the text of the regulations by amending § 3.119 to read as follows:

§ 3.119 Field inspections.

(a) The Office of Electric Power Regulation, principally through the Commission's regional offices, or through designated federal agencies, conducts periodic field inspections to monitor:

(1) Compliance with the terms of preliminary permits;

(2) The continuing safety and adequacy of licensed and unlicensed projects for the protection of life, health, and property and for the protection of the water resources of the region for navigation, water power development, and other beneficial public uses, including recreational purposes; and

(3) Compliance with the terms of orders and licenses and with approved plans, drawings, and specifications in the construction, operation, and maintenance of projects.

(b) The Commission or any of its authorized representatives may direct or conduct additional inspections at any project at any time.

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