services in accord with the procurement standards set forth in Attachment O of Office of Management and Budget (OMB) Circular No. A–110 (nonprofit organizations) or Attachment O of OMB Circular No. A–102 (State and local governments), as appropriate.

(Sec. 701, Pub. L. 89–136, 79 Stat. 570 (42 U.S.C. 3211), Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended))

Dated: January 22, 1981.

H. W. Williams,

Acting Assistant Secretary for Economic Development.

[FR Doc. 81–3155 Filed 1–27–81; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 131

[Docket No. RM81–11; Order No. 123]

Procedures and Corrected Revision to Regulation Governing Preliminary Permits and Licenses

January 21, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission adopts procedural and correctional revisions to the regulations governing preliminary permits and licenses. The revisions are designed to clarify and correct the Commission's regulations in order to eliminate confusion relating to the status of competing applications, the data requirements of an application, and certain perceived inconsistencies in the regulations.

EFFECTIVE DATE: February 27, 1981.

FOR FURTHER INFORMATION CONTACT:

Ronald Corso, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, 202–376–9171.

Phillip Leber, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, 202–357–5514

James Hoecker, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, 202–357–9342

The Federal Energy Regulatory Commission (Commission) establishes certain procedural and correctional revisions to the regulations governing preliminary permits and licenses. The rule amends §§ 4.31, 4.33, 4.51, 4.81, 4.92, 131.3, and 131.4 and is effective 30 days after publication.

I. Background

The Commission has recently completed several revisions of its regulations to simplify and expedite hydropower licensing.[1] In conjunction with these rulemakings, several procedural and correctional changes are necessary to clarify and correct the Commission's regulations governing preliminary permits and licenses.

The revisions in this rulemaking have three primary objectives: (1) To eliminate confusion relating to the status of competing applications for preliminary permit; (2) to clarify the data requirements contained in certain regulations; and (3) to eliminate perceived inconsistencies in the regulations.

II. Section by Section Summary of the Revisions

Section 4.31(b)

The Commission has determined that fourteen copies, rather than the currently required ten copies, of each preliminary permit and license application are necessary to enable adequate and timely review of the proposed project plans by staff.

Section 4.31(d)

There has been a substantial amount of confusion relating to the difference in the treatment accorded "deficient" and "patently deficient" applications. The language of the existing regulations does not clearly explain the intent of the rule as written and presently administered. Some applicants have read this section and assumed incorrectly that, if a rejected application is corrected within 45 days, the corrected application will be deemed accepted for filing on the original filing date, and that the application will be considered pending during the 45-day period. This revision states that the acceptance date of any rejected application will be the date of resubmittal. The substantive requirement upon which these revisions are based may be found in §§ 1.14 and 4.33(d)(2).

Sections 4.33(b)(1) and 4.81(a)(3)

These revisions require the applicant to provide its telephone number in addition to its name and business address.

Section 4.33(d)(2)

Applicants have questioned the nature of the requirement to show how the plans of a competing application are as well adapted or better adapted than is the initial application to develop, conserve, and utilize the water resources of the region. This revision explains that it is appropriate, but not mandatory, to support the statement with a technical analysis. Technical analysis will assist the Commission in making decisions regarding competing applications, and this revision makes it clear that the Commission will accept such information as part of the application.

Sections 4.51(a)(6) and 4.81(a)(6)

These revisions add the requirement that the applicant furnish the name and address of the owner of water power facilities, and if the dam is Federally owned or operated, the applicant must provide the name of the agency involved. This information will facilitate the Commission's giving adequate notice to dam owners of pending preliminary permit or license applications filed by non-owners.

Section 4.51(f)(6)(ii)

The existing regulations erroneously cited the Federal Power Commission Reports as "CFR". This revision corrects the citation to read "F.P.C.".

Section 4.51(g)

The present Exhibit F for all major projects requires a number of voluminous technical reports that are required for staff review of the proposed project only. This section is revised to require that the technical information used as a basis for the design of the project be compiled into one report and submitted at the time the design drawings are submitted to the Commission for review. Only five copies of this report, rather than the standard

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[1] *See* Commission Order No. 11, "Regulations Governing Applications for Short-Form License (Minor)" (Docket No. RM78–9), issued September 5, 1978, 43 FR 40215, September 11, 1978; Order No. 54, "Regulations Prescribing General Provisions for Preliminary Permit and License Applications; and Regulations Governing Applications for Amendments to and Cancellation of Permits" (Docket No. RM79–23), issued October 22, 1979, 44 FR 61328, October 25, 1979; Order No. 59, "Regulations Governing Applications for License for Major Projects—Existing Dams" (Docket No. RM79–36), issued December 16, 1979, 45 FR 75383, December 20, 1979; Order No. 76, "Exemption of Small Conduit Hydroelectric Facilities from Part I of the Federal Power Act" (Docket No. RM79–35), issued April 18, 1980, 45 FR 28085, April 28, 1980; and Order No. 106, "Exemption from All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less" (Docket No. RM80–65), issued November 7, 1980, 45 FR 76115, November 18, 1980.

fourteen copies, must be included as part of the application.

Section 4.81(b)(4)

The current Exhibit 1 requires that the applicant provide an estimate of the energy output and installed capacity of the proposed project. Many applicants do not state these data with specificity. This revision clarifies the requirements of Exhibit 1 by specifying that information must be provided detailing the average annual energy production, installed capacity, hydraulic head, and data concerning any turbines and generators proposed by the applicant.

Section 4.81(d)(3)

This subparagraph clarifies the existing requirement for general information on the proposed market for the project's output. Either the identity of the proposed purchaser(s) and the anticipated revenues must be provided, or, if the applicant proposes to use the power, the size of the system, peak demand and annual energy requirements, and the number of customers served by the applicant's proposed project must be supplied.

Section 4.81(e)(3)(i)

Many applications for preliminary permit are deficient because the project map does not show all project features within the proposed project boundary. Furthermore, in those cases where a Federal dam is involved, many applicants are unclear about the need to show the Federal project in relation to other non-Federal project features. This revision clarifies the requirements by specifying certain elements that must be included within the project boundary, and by indicating that only the power plant is required to be shown within the project boundary when the project is at an existing Federal dam.

Section 4.92(c)(5)(iv)

This change clarifies the applicant's responsibilities in the pre-application consultation process. The applicant is required to consult with appropriate resource agencies and submit documentation or a summary of the consultation process with its application for exemption. The applicant must allow at least 30 days for each agency consulted to respond.

Section 131.3

Section 131.3, which prescribes the form for certification of organization, is revoked. Through numerous previous rulemakings, all references to this section have been eliminated.

Section 131.4

Section 131.4, which prescribes the form for certification of exhibits, is revoked. Through numerous previous rulemakings, all references to this section have been eliminated.

III. Notice and Effective Date

The Commission finds that a general notice of proposed rulemaking need not be published in the **Federal Register** because the rule is clarifying and corrective and is basically one of agency procedure and practice.[3]

(Federal Power Act, as amended, (16 U.S.C. 792–828c); Public Utility Regulatory Policies Act of 1978, (16 U.S.C. 2601–2645); and the Department of Energy Organization Act, (42 U.S.C. 7101–7352); E.O. 12009, 3 CFR 142 (1978)).

In consideration of the foregoing, the Commission amends Parts 4 and 131 of Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective on or before Febuary 27, 1981.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 4—LICENSE, PERMITS, EXEMPTION AND DETERMINATION, PROJECT COSTS

1. Section 4.31 is amended by revising the first sentence in paragraph (b) and paragraph (d) to read as follows:

§ 4.31 Acceptance for filing or rejection.

* * * * *

(b) Each applicant for a preliminary permit or license must submit to the Secretary for filing an original and fourteen copies of the application. * * *

* * * * *

(d) If the Commission finds that an application for a preliminary permit or license does not conform to the requirements of paragraphs (a) and (b) of this section, the Commission or its delegate will consider the application either deficient or patently deficient.

(1) *Deficient applications.* (i) An application that, in the judgment of the Director of the Office of Electric Power Regulation, does not conform to the requirements of paragraphs (a) and (b) of this section may be considered deficient. Applicants of deficient applications will be afforded additional time to correct deficiencies, not to exceed 45 days from the date of notification in the case of an application for preliminary permit, or 90 days from the date of notification in the case of an application for license. Notification will be by letter or, in the case of minor deficiencies, by telephone. Any notification will specify the deficiencies to be corrected. Deficiencies must be corrected by submitting an original and fourteen copies of the specified materials or information to the Secretary within the time specified in the notification of deficiency.

(ii) Upon submission of a conforming application, action will be taken in accordance with paragraph (c) of this section.

(iii) If the resubmitted application is found not to conform to the requirements of paragraphs (a) and (b) of this section, it will be rejected. Procedures for rejected applications are specified in subparagraph (2) of this paragraph.

(2) *Patently deficient applications.* (i) An application that, in the judgment of the Director of the Office of Electric Power Regulation, patently fails to meet the substantive requirements of paragraphs (a) and (b) of this section will be rejected as patently deficient, with a specification of deficiencies that render the application patently deficient. Competing applications that do not conform to the requirements of § 4.33(d) will be considered patently deficient.

(ii) Any application that is rejected may be resubmitted if the deficiencies are corrected. The date the rejected application is resubmitted will be considered the new filing date for purposes of determining the disposition of competing applications under § 4.33. The cover page of the resubmitted application must prominently display the FERC project number, the word "REVISED", and the date of the revision.

* * * * *

2. Section 4.33 is amended by revising paragraph (b)(1) to read as follows:

§ 4.33 Filing and disposition of conflicting applications. [Amended]

* * * * *

(b) * * *

(1) The exact name, business address, and telephone number of the prospective applicant; and

* * * * *

3. Section 4.33(d)(2) is revised to read as follows:

* * * * *

(d) Any application must:

(1) * * *

(2) Include a detailed and complete statement of how the plans reflected in the competing application are as well adapted or better adapted than are the plans reflected in the initial application to develop, conserve, and utilize in the public interest the water resources of the region. The statement may be

[3] *See* 5 U.S.C. 553(b)(3)(A) [Administrative Procedures Act].

supported by any technical analysis that the competing applicant deems appropriate to support its proposed plan of development; and

* * * * *

4. Section 4.51 is amended in paragraph (a) by adding a new subparagraph (6), to read as follows:

§ 4.51 Contents of application. [Amended]

* * * * *

(a) * * *

(6) The applicant must provide the name and address of the owner of any existing project facilities. If the dam is federally owned or operated, provide the name of the agency.

* * * * *

5. Section 4.51 is amended in clause (f)(6)(ii) by removing the term "(*see*, eg., 44 CFR Part 1491, *et seq.*)", and by inserting in lieu thereof the term "(*see, e.g.*, 44 F.P.C. 1496, *et seq.*)".

6. Section 4.51 is amended by revising paragraph (g) to read as follows:

§ 4.51 Contents of application.

* * * * *

(g) *Exhibit F* consists of general design drawings of the principal project works described under paragraph (b) of this section (Exhibit A) and supporting information used to demonstrate that existing project structures are safe and adequate to fulfill their stated functions.

(1) The drawings must show all major project structures in sufficient detail to provide a full understanding of the project, including:

(i) Plans (overhead view);

(ii) Elevations (front view); and

(iii) Sections (side view).

(2) *Supporting design report.* The applicant must furnish, at a minimum, the following supporting information to demonstrate that existing structures are safe and adequate to fulfill their stated functions, and must submit such infomation in a separate report at the time the application is filed. The report must include:

(i) A description of the physical condition or state of maintenance and repair of any existing and proposed structures or equipment; and

(ii) Information relating to composition and competency of foundations and other structures, gradation of filter and riprap material, design strength and ultimate strength of concrete and steel, stress and stability analysis, spillway rating curves, water levels, and other appropriate data.

(3) The applicant must submit five copies of the supporting design report as described in subparagraph (2) of this paragraph (rather than the fourteen copies required under § 4.31(b) of the Commission's regulations) at the time general design drawings are submitted to the Commission for review.

* * * * *

7. Section 4.81 is amended in paragraph (a) by revising subparagraph (3) and by adding a new subparagraph (6), to read as follows:

§ 4.81 Contents of application.

(a) * * *

(3) The exact name, business address, and telephone number of the applicant are:

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* * * * *

(6) If there is any existing dam or other project facility, the applicant must provide the name and address of the owner of the dam and facility. If the dam is Federally owned or operated, provide the name of the agency.

* * * * *

8. Section 4.81 is amended by revising paragraphs (b)(4), (d)(3), and (e)(3)(i) to read as follows:

§ 4.81 Contents of application.

* * * * *

(b) * * *

(4) The total estimated average annual energy production and installed capacity (provide only one energy and capacity value), the hydraulic head for estimating capacity and energy output, and the estimated number, rated capacity, and, where applicable, the age and condition, of any turbines and generators, whether existing or proposed, that would be part of the project works;

* * * * *

(d) * * *

(3) A description of the proposed market for the power generated at the project, including:

(i) The indentity of the proposed purchaser(s) of the power, and any information that is available concerning the revenues to be derived from the sale of the power; or

(ii) If the applicant proposes to utilize the power output, the size of the applicant's power system, system peak demand and annual energy requirements, and the number of customers served by the applicant.

(e) * * *

(3) A proposed boundary for the project, enclosing:

(i) All principal project features identified under paragraph (b) of this section, including but not limited to any dam, reservoir, water conveyance facilities, powerplant, transmission lines, and other appurtenances, unless the project is located at a Federal dam, in which case the Federal dam and impoundment must be shown but may not be included within the project boundary;

* * * * *

§ 4.92 [Amended]

9. Section 4.92(c)(5)(iv) is amended by removing the words "timely documentation of the consultation process", and by adding in lieu thereof the words "documentation of the consultation process within a reasonable time, in no case less than 30 days after such documentation is requested".

PART 131—FORMS

§§ 131.3 and 131.4 [Revoked and removed]

10. Section 131.3 is revoked and removed.

11. Section 131.4 is revoked and removed.

[FR Doc. 81-3145 Filed 1-27-81; 8:45 am]
BILLING CODE 6450-85-M

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18 CFR Part 12

[Docket No. RM80-31; Order No. 122]

Water Power Projects and Project Works Safety

Issued: January 21, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) hereby adopts a Final Rule Governing the Safety of Water Power Projects and Project Works. The rule consolidates the Commission's orders, regulations, and practices relating to project safety under Part 12 of the Commission's rules. The rulemaking applies to all water power projects and project works licensed or required to be licensed under Part I of the Federal Power Act. The rule may also be made applicable to some projects exempted from licensing, pursuant to Subparts J or K of the Commission's rules by means of conditions of exemption.

EFFECTIVE DATE: March 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Glenn Berger, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, (202) 357-8033

Ronald A. Corso, Director, Division of Hydropower Licensing, Office Electric

Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, (202) 376–9171
Richard Azzaro, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, (202) 357–8493

Order No. 122—Final Rule

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes. Regulations Governing Safety of Water Power Projects and Project Works.

The Federal Energy Regulatory Commission (Commission) gives notice that it adopts a final rulemaking governing the safety of all water power projects and project works [1] licensed or required to be licensed under Part I of the Federal Power Act (Act). The rules may also be made applicable to some projects exempted from licensing, pursuant to Subparts J or K of the Commission's rules, by means of conditions of exemption. The rulemaking consolidates the Commission's orders, regulations, and practices relating to project safety under Part 12 of the Commission's rules.

I. 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. At the end of 1979, the Commission had under its jurisdiction 1,144 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 rules 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 licensed projects. During the construction of a project, the regional offices conduct periodic inspections, usually monthly. Furthermore, the Commission often requires, 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 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 for all licensed projects, and any project for which a license application is pending or has been found to be required the implementation, and modification when appropriate, of an emergency action plan. The plan must be designed to provide an early warning to upstream and downstream inhabitants, property owners, recreational users and public safety agencies in case of an impending or actual sudden release of water caused by an accident to or failure of any project structure.

On December 27, 1965, the Commission's predecessor 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, or more frequently if necessary. The existing Part 12 regulations under FPC Order No. 315 are applicable only to those 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 the 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]

The Commission had already begun extensive review of its project safety policies and procedures at the time of the Walter Bouldin Dam failure on February 10, 1975 (FERC Project No. 2146). Dam safety inspections were a standard part 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 project safety in the Commission's regulations.

On June 16, 1980, the Commission issued a Notice of Proposed Rulemaking (NOPR) [5] in this docket which consolidated under Part 12 those portions of the current project safety program that were initiated by case-specific Commission orders and revised the existing project safety inspection regulations. The Commission received 75 written comments on the NOPR and has considered all comments in the formulation of the final rule.

II. Section-By-Section Analysis

Subpart A—General Provisions.

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

§ 12.1 Applicability.

Paragraph (a) provides that this part applies to water power projects licensed under Part I of the Federal Power Act (Act), and to any unlicensed constructed project for which the Commission has determined that an application for license must be filed.

Contrary to the positions of some commenters, the Commission has adequate authority under Section 4(g) of

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

[2] 16 U.S.C. 803(c) (1976).

[3] Inspection of project works with respect to safety of structures, 18 CFR Part 12 (1980).

[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 inter-agency 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.

[5] 45 FR 41608 (June 19, 1980).

the Act to make its safety regulations apply to unlicensed constructed projects that it has determined must be licensed.

In light of the Commission's rulemaking allowing certain hydro facilities of 5 megawatts or less capacity to gain exemption from licensing (among other things),[6] the Commission has amended paragraph (a) by adding a new subparagraph (3). Subparagraph (a)(3) includes such facilities within the Applicability section, to the extent that conditions of exemption subject a project to the provisions of these rules.

Furthermore, the Commission has clarified, by adding a new paragraph (b), the applicability of this section to projects located at federal dams. The rule does not apply to federal dams themselves, but does apply to hydroelectric facilities licensed by the Commission that are located at federal dams.

§ 12.2 Rules of construction.

Paragraph (a) indicates that the provisions of this rule normally apply rather than any similar term or condition of a license. In the NOPR the Commission proposed requiring that the licensee comply with the stricter of two similar provisions located in a license and this part.

Several commenters suggested that the Commission delete that provision. Under Section 10(c) of the Act, the Commission clearly has authority to impose conditions in its safety regulations stricter than those required in a license. For greater certainty, some commenters suggested that this provision be revised to require that the licensee always comply with the provisions of a license unless the provisions in this rule would significantly contribute to the safe operation and condition of the project. The Commission has revised the rule to provide more certainty. In the interests of unformity, however, it is preferable that all projects conform to the provisions of these regulations unless terms of a particular project's license would better protect life, health, or property. The Commission has revised paragraph (a) accordingly.

Paragraph (b) provides for advisory rulings by the Director of the Office of Electric Power Regulation with regard to the requirements of paragraph (a) above.

§ 12.3 Definitions.

This section contains definitions applicable to this part of the Commission's rules. Paragraph (a) provides that for purposes of this part terms defined in section 3 of the Federal Power Act have the same meaning as they have under the Act.

Subparagraph (1) defines an "applicant" to mean any person, state, or municipality that has applied for a license for an unlicensed, constructed project and any owner of an unlicensed, constructed project for which the Commission has determined that an application for license must be filed. The Commission has added "state or municipality" to the definition of applicant to clarify the applicability of this rule to such entities.

Several commenters questioned the basis for the Commission's jurisdiction over unlicensed, constructed projects for which the Commission has determined that an application for license must be filed. As noted above, the Commission's jurisdiction in this case is derived from section 4(g) of the Act. Therefore, the Commission has not changed the definition of "applicant," which includes owners of certain unlicensed, constructed projects. A definition of "owner" has been added in subparagraph (2) to provide clarification to the definition of "applicant."

Subparagraph (3) of the proposed rule defined "authorized Commission representative" as 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. In response to comments noting that licensees should be assured that enforcement will be by experienced officials appointed by the Commission, the Commission has amended the definition by deleting the phrase "any person specifically authorized by one of these officials to act in his or her stead."

In the proposed rule, subparagraph (4) defined "condition affecting the safety or adequacy of a project or project works" to mean 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. The definition provided several examples of conditions that might affect the safety of a water power project or the project works.

Several commenters suggested that section 10(c) of the Act does not authorize the Commission to prescribe regulations encompassing non-safety related factors. Section 10(c) of the Act requires a licensee to "conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property." In the final rule, the Commission has deleted all references to the "adequacy" of a project or project works in response to comments about ambiguity of the term in context. In addition, the Commission further revised the definition to clarify that these conditions are safety-related.

A number of commenters also objected to the "might compromise" standard in this definition. The proposed substitution of a "would compromise" standard would leave too much room for argument over potentially critical safety matters. These rules retain the proposed language so that even if the licensee has some doubt, in cases where it is possible that safety is endangered, reporting will be required and other steps may be taken as advisable.

In response to the comments, several modifications have been made to the non-exclusive list of examples of conditions that affect the safety of a project or projects works. Section 12.3(b)(4)(ii) has been clarified and § 12.3(b)(4)(v) has been divided, thus creating a new subsection (vi), for clarification purposes.

Subparagraph (5) defines "constructed project" to mean any project with an existing dam.

Subparagraph (6) defines "dam" to mean any structure for impounding or diverting water.

Subparagraph (7) defines "development" to mean that part of a project comprising an impoundment and its associated dams, forbays, water conveyance facilities, a power plant, and other appurtenant facilities. A project may be comprised of one or more developments.

Several commenters suggested that the term "modification" as used in the proposed rule was ambiguous and should be defined. The Commission has added a new subparagraph (8) which defines "modification" to mean any activity, including repair or reconstruction, that in any way changes the physical state of any project work or any other physical feature of the project from the state reflected in the plans, drawings, or other documents filed with the Commission.

Subparagraph (9) defines "project emergency" to mean an impending or actual sudden release of water at the project caused by natural disaster, accident, or failure of project works.

Subparagraph (10) defines "Regional Engineer" as the person in charge of the Commission's regional office for the

[6] 45 FR 76115 (November 18, 1980).

region (Atlanta, Chicago, Fort Worth, New York, or San Francisco) where a particular project is located.

§ 12.4 Staff administrative responsibility and supervisory authority.

Paragraph (a) explains that the chief administrator of the Commission's project safety program is the Director of the Office of Electric Power Regulation (OEPR). The Director OEPR reports directly to the Chairman of the Federal Energy Regulatory Commission.

Paragraph (b) 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. Commenters questioned the breadth of the supervisory authority under this section. The Commission believes that standard articles placed in new licenses have given the Regional Engineer even broader general supervisory powers over the construction, operation, and maintenance of a project.

In order to clarify the intent of these regulations, however, the Commission has amended paragraph (b) to specify that the supervision and inspection authority granted under this paragraph relates to project safety. The Regional Engineer or any 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.

Commenters questioned the part of the regulations that explains that an order or directive or a Regional Engineer or other authorized representative is immediately effective and remains in effect until stayed. The Commission believes that this part reflects the usual provisions for the effective dates of orders [7] and stays [8] and the fact that the Commission's representative is acting in the Commission's stead.

The time when an order is effective, however, should not be confused with the time when a licensee might be required to take a particular action, which would be specified in the order. Moreover, the importance of the Regional Engineer's orders being immediately effective to carry out the purposes of section 10(c) of the Act is clear. In safety emergencies it would be impracticable to hold action in abeyance while the merits of the situation were presented for Commission deliberation. The Regional Engineer, with much more intimate day-to-day knowledge and experience on a project must be in a position to require prompt remedial action.

In response to the comments received, the Commission has modified the provisions of paragraph (c) to provide additional clarification. The new provisions specifies that either the Regional Engineer or other authorized Commission represetative who issued an order or directive under this section, or the Commission, may rescind or amend that order or directive, in addition to staying its effect for a particular period. The rules also make clear that any orders or directives by the Regional Engineer or other authorized Commission representative pursuant to § 12.4(b) or Subparts B through E of Part 12 are subject to appeal under the provisions of § 1.7(d) of the Commission's rules.

§ 12.5 Responsibilities of licensee or applicant.

Section 12.5 sets forth the general standard that a licensee or applicant must use sound and prudent engineering practices in designing, constructing, operating, maintaining, using, or modifying a water power project or project works. As noted in the NOPR, it is primarily the licensee's responsibility to protect life, health, and property.

Subpart B—Reports and Records

§ 12.10 Reporting safety-related incidents.

Paragraph (a) requires an applicant or licensee to report to the Commission orally and in writing any condition affecting the safety of the water power project or the project works. This paragraph specifies the information that the Regional Engineer may require.

Paragraph (b) requires the applicant or licensee to report any deaths or serious injuries that occur at, or are attributable to, the water power project. This report must be made promptly after the applicant or licensee becomes aware of the incident.

§ 12.11 Reporting modifications of the project or project works.

Paragraph (a) requires the reporting of project modifications to the Regional Engineer. Many commenters suggested that the requirement that "any modification" be reported was vague. The Commission believes that the new definition of "modification" added to § 12.3 will clarify this provision. Furthermore, the time for reporting non-emergency modifications established in paragraph (b) has been increased from 15 to 60 days before the work begins.

§ 12.12 Maintenance of records.

Paragraph (a) specifies the kinds of records that must be maintained by the applicant or licensee and the appropriate locations to maintain both permanent original project records and copies of such records. A provision is included in paragraph (c) to provide for the transfer of permanent project records to a successor licensee or the government if ownership of the project changes.

The Commission has also clarified that where project records are not available and could not reasonably have been acquired when the licensee acquired the project, they need not be reconstructed.

Many commenters suggested that copies of all permanent projects records are not needed at the project site, so long as originals are securely maintained at a central location. The Commission adopts this suggestion and has amended paragraph (b)(2) accordingly so that not all permanent records must be maintained at the project site. If the licensee or applicant maintains permanent project records at a central location other than the project site, they must only maintain at the project site the basic design drawings, instrumentation data, and operational history that are necessary for the safe and efficient operation of the project.

Furthermore, the Commission has added a new subparagraph (3) that allows the licensee or applicant to maintain microfilm or microfiche of records if the appropriate viewing equipment is available subject to the provisions of Part 125 of the reguations.

§ 12.13 Verification form.

Section 12.13 has been added to the final rule as an example of the verification which is required under several sections of the rule.

Subpart C—Emergency Action Plans

§ 12.20 General requirements.

This subpart constitutes a major element of the Commission's project safety procedures. Paragraph (a) requires an applicant or licensee to file three copies of an emergency action plan with the Regional Engineer. The plan must make provision for measures to be taken during a project emergency, including failure of the dam.

Paragraph (b) requires emergency action plans to be developed by an applicant or licensee in coordination

[7] *See* 18 CFR 1.13(c) (1980).

[8] *See* Section 313(a) of the Act.

with Federal, state, and local agencies. The plan must be 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.

§ 12.21 Exemptions.

As proposed, paragraph (a) allowed the Director of the Office of Electric Power Regulation or the Regional Engineer to grant an exemption from the general requirements stated above if the applicant or licensee could demonstrate that "no project emergency would endanger life, health or property." In response to several comments, the Commission has amended paragraph (a). In order to obtain exemption from the requirements of filing an emergency action plan, an applicant or licensee must demonstrate that "no reasonably foreseeable project emergency would endanger life, health, or property." Upon such a showing the Regional Engineer may grant exemption from the filing requirement.

Paragraph (b) prohibits exemptions from the requirements of § 12.22(c) for a radiological response plan.

Paragraph (c) provides that 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. The Commission believes that an annual review is appropriate as a minimum, given the potential for harm involved.

Paragraph (d) provides that an exemption may be revoked if conditions change significantly.

§ 12.22 Contents of an emergency action plan.

Paragraph (a) prescribes the contents of an emergency action plan. The plan must be filed in accordance with the Guidelines For Preparation of Emergency Action Plans established by the Director of OEPR and set forth in the Appendix. The plan must take into account the time of day, in particular the occurrence of a project emergency during hours of darkness.

In response to several comments, the Commission has reorganized the general requirements of the emergency action plan. The Commission believes that the actual plan which is posted or given to operating personnel to instruct them on procedures during an emergency should be as brief and simple as possible. Training plans and the studies and other information supporting a particular plan are important appendices to be filed with the Regional Engineer, but are inappropriate to the body of the plan itself.

Accordingly, in paragraph (a) the Commission requires three ingredients within the body of the plan itself. The body of the plan must include: Emergency action instructions to key project personnel; detailed plans for notifying affected persons and appropriate Federal, state and local agencies, and procedures for controlling the flow of water. Study summaries and training plans are to be included in the emergency action plan appendices submitted to the Regional Engineer.

Paragraph (c) requires the applicant or licensee to file a radiological response plan if an operator of a project powerhouse or water storage and release control facilities would be located within ten miles of a nuclear power plant reactor. The plan must provide for emergency procedures in the event of an accident or incident at the nuclear power plant reactor 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, effective control of stream flows, and contingency arrangements for continuing, curtailing, or ceasing power generation. A project which is otherwise exempted from the requirement to file an emergency action plan must still file a radiological response plan.

§ 12.23 Time for filing emergency action plan.

This section prescribes the deadlines for filing the emergency action plans for all projects. In response to comments regarding paragraph (a), unconstructed projects, the Commission has increased the time for filing an emergency action plan from 30 days to 60 days before the initial filling of the project reservoir. Furthermore, the filing of an emergency action plan is required 60 days prior to commencement of construction where a temporary construction impoundment would be created if an accident or failure of the impounding structure would endanger public health and safety. For example, the construction of a temporary or permanent cofferdam or a large sediment control structure may require the filing of an emergency action plan with regard to these structures prior to their construction. A plan filed with regard to such construction may require modificiation before the initial filling of the project reservoir begins, in order to provide for adequate protection under the changed circumstances.

Paragraph (b) and (c) provide the time of filing emergency action plans for unlicensed constructed projects and licensed constructed projects respectively.

A new subparagraph (d) has been added that allows the Regional Engineer, for good cause shown, to grant an extension of time for filing all or any part of an emergency action plan.

§ 12.24 Review and updating of plans.

In light of several comments, the Commission has modified this section by adding a new paragraph (a) that requires continual updating of the plan to reflect changes in personnel, telephone call numbers, and other similar information in the plan. The intent is to ensure that, in time of an emergency, project personnel are not confronted with stale information regarding who is responsible for what, whom to notify, and how to notify them.

Paragraph (b) requires that 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. Moreover, the applicant or licensee is required to review the adequacy of the plan in light of any significant changes upstream or downstream of an impoundment and to promptly file with the Regional Engineer any modifications of the plan which result from such changes.

§ 12.25 Posting and readiness.

Paragraph (a) requires a licensee or applicant to post the current emergency action plan. The posting must be in a prominent location so that it is readily accessible to the applicant's or licensee's operating personnel who are responsible for taking emergency action.

Paragraph (b) continues to require the licensee or applicant to test the readiness of key licensee or applicant personnel for an emergency situation. The Commission has retained the requirement that the applicant or licensee conduct a test, and not merely a review, of key personnel. The Commission anticipates that such a test would include a drill simulating actual emergency conditions.

Subpart D—Inspection by Independent Consultants

This subpart is a revision of the Part 12 requirements in the existing regulations. While this subpart continues to prescribe initial inspections and subsequent five-year inspections by independent consultants, it will require inspection of a larger number of project developments.

§ 12.30 Applicability

Paragraph (a) indicates that this subpart applies to any licensed project development that has a dam: that is more than 32.8 feet (10 meters) in height above streambed; or that impounds an impoundment with a gross storage capacity of more than 2,000 acre-feet (2.5 million cubic meters); or that has a high hazard potential. Formerly, inspections by independent 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, as defined in § 12.31(b), that the Regional Engineer determines requires an inspection. This requirement 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.

§ 12.31 Definitions

This section supplies additional definitions for this subpart. Many of the commentors objected to the requirement in the proposed rule that an independent consultant not have had substantial responsibility for the design, construction, or maintenance of the project under inspection for 10 years, except as an independent consultant. The Commission has carefully weighed the competing consideration in this matter. The Commission has concluded that the possibility that the proposed rule might unduly restrict the availability of competent independent consultants appears, at this time, to outweigh the potential for conflicts of interest or other difficulties that might flow from removing the restriction.

The definition of "independent consultant" has, therefore, been modified in paragraph (a) and 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 or agent of the licensee or its affiliates. In addition, an independent consultant must be a licensed professional engineer and must have at least 10 years of experience and expertise in dam design and construction, and in the investigation of the safety of existing dams. The Commission notes that the requirement that an independent consultant have 10 years of experience does not preclude other consultants with less experience from working on an inspection under the direction and supervision of an independent consultant. Qualification requirements for an independent consultant are subject to approval by the Director of the Office of Electric Power Regulation prior to the initiation of an inspection under § 12.31. Paragraph (e) establishes that the Director of the Office of Electric Power Regulation also has the authority to waive the 10-year requirement in subparagraph (a)(2) for good cause.

The proposed rule defined "dam that has a high hazard potential" as any dam whose failure, in the judgment of the Regional Engineer, the Commission, or its authorized representative, might present a significant risk of endangering human life or causing significant property damage, or which meets the criteria for high hazard potential as defined by the Corps of Engineers in 33 CFR Part 222, Table 2. The Commission has retained the definition as initially proposed except in the final rule the reference to Table 2 of 33 CFR Part 222 has been deleted. The Corps' criteria for high hazard potential are to be determined by an examination of 33 CFR Part 222 generally and not solely with reference to Table 2.

Paragraph (c) defines "height above streambed" and paragraph (d) defines "gross storage capacity."

§ 12.32 General requirements.

This section 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 or its works. Several commenters were confused as to whether a consulting firm could perform the inspection. In fact the Commission would presume that this would be the case in most instances, and only requires that the inspection be done under the direction and supervision of an independent consultant. Accordingly, the Commission has revised the rules to clarify that an independent consultant who is a member of a consulting firm may perform the inspection.

§ 12.33 Exemption.

Section 12.33 provides for exemption from the requirements of this subpart.

§ 12.34 Approval of consultant.

This provision has been added to provide for review and approval of the independent consultant by the Director of the Office of Electric Power Regulation before the inspection begins.

§ 12.35 Specific inspection requirements.

Section 12.35 prescribes the scope of the periodic inspections by an independent consultant. Paragraph (a) and (b) provide that the inspection must include a review of all relevant reports, a physical field inspection, and an evaluation of certain project features.

As initially proposed, paragraph (c) required the independent consultant to use any special equipment, instrumentation, or personnel as may prudently be necessary. Several commenters indicated that such requirements are not generally employed in a periodic safety inspection. Moreover, it was pointed out that any such requirement that may prudently be necessary will be employed by the independent consultant in the exercise of his professional judgment. The Commission believes that the inclusion of this requirement was either unnecessary or redundant. Accordingly, paragraph (c) has been deleted from the final rule.

§ 12.36 Emergency corrective measures.

Section 12.36 requires that, if the independent consultant discovers any condition that may necessitate emergency corrective measures, the consultant must report such a condition to the licensee. The licensee must then notify the Regional Engineer. The notification to the Regional Engineer is to be made pursuant to the provisions of §12.10(a).

§ 12.37 Report of the independent consultant.

Paragraph (a) contains the general requirement that, following the inspection of a project development by an independent consultant, a report of the inspection must be made to the licensee. The licensee must then file three copies of that report with the Regional Engineer.

Paragraph (b) explains what general information must be included in the initial report that an independent consultant must prepare and file pursuant to an inspection under this subpart. Subparagraph (2) permits incorporation by reference of materials found in certain earlier inspection reports.

Paragraph (c) sets forth the kinds of data and information that must be provided in all reports, 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 project inspection dissents from the

major recommendations of report, the dissenting views must be included in the report. Furthermore, any changes in information required under this section occurring after it has been initially reported must be included in subsequent reports.

As initially proposed, subparagraph (c)(1) required the report to contain monitoring information that includes specified time-versus-reading graphs. In response to several comments, the Commission has modified this provision to make it clear that reports need only include monitoring information from instrumentation which is already in place; it does not require installation of instruments not otherwise installed or required to be installed.

Furthermore, the Commission has added a new subparagraph (c)(3) under which the report may include an appropriate reference to previous reports in lieu of the required evaluation if conditions and assumptions have not changed since the last report. In the appropriate circumstances, this provision will help the independent consultant avoid needless duplication of information and analyses.

In response to comments that the required list of participants was too broad, the Commission has also modified subparagraph (c)(5). In the proposed rule, it was required that the report identify "all persons who participated" in the project inspection or the report preparation. The final rule makes clear that only a list of professional personnel and the independent consultants is required.

§ 12.38 Time for inspections and reports.

Section 12.38 provides the timing of the periodic inspections by an independent consultant. Paragraph (a) requires that the project works of any development must undergo inspections at five-year intervals dating from the initial inspection.

Paragraph (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 32.8 feet (10 meters) in height above streambed, or that impounds a reservoir with a gross storage capacity of more than 2,000 acre feet. 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.

Subparagraph (b)(4) provides that a 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 § 12.37(b).

§ 12.39 Taking corrective measures after the report.

Section 12.39 explains the plan and schedule of corrective measures the applicant or licensee must file and implement under the supervision of the Regional Engineer. After reviewing several comments, the Commission believes that 30 days was not a sufficient time within which to prepare a plan and has increased the time to 60 days.

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.

§ 12.40 Quality control program.

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. The Commission has modified the proposed rule to make clear in the final rule that the applicant or licensee must maintain a quality control program as may be required by the Regional Engineer. The Regional Engineer may decide not to require such a program for relatively minor work. Such a program must meet any requirements or standards set by the Regional Engineer and must be commensurate with the scope of the work being undertaken.

The proposed rule provided that quality control inspections must be conducted by the licensee, the design engineer, or an independent firm accountable to the licensee, and must not be performed by a construction contractor or firm accountable to the construction contractor. Some commenters, including licensees, supported this provision, while construction contractors opposed it. Construction contractors argue that they have interests in quality construction work that lead them to establish their own quality control programs and the proposed provisions would prohibit that. This point is well taken, and the rule has been modified to make clear that a construction contractor is not precluded from performing its own quality control inspections for its own purposes. Experience shows, however, that construction contractors may also have conflicting interests that may lead to neglect of the quality of work. Because of the potential for conflict of interest, it is important to provide for independent quality control inspections to ensure that the work has been performed at least up to the standards in the plans and specifications. Therefore, the final rule preserves such a requirement.

Under the final rule, if the licensee's or applicant's own personnel are performing the work, the licensee or applicant must provide for separation of authority between construction personnel and quality control personnel.

§ 12.41 Monitoring instruments.

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 of the project or the project works.

§ 12.42 Warning and safety devices.

Under § 12.42, warning and safety devices must be installed that, in the judgment of the Regional Engineer, are reasonably necessary to protect the public. This section requires an applicant or licensee to install, operate, and maintain safety and warning devices that "may reasonably be necessary or desirable." Many commenters objected that this standard was too broad. The final rule is unchanged. The Commission's primary concern is with the safety of the project and project works and the protection of public health and safety. The Commission and its authorized representatives do not intend to impose unreasonable burdens upon an applicant or licensee. But when matters of safety are at issue, it is better to err on the side of caution and not be stymied simply because of the difficulty of proving that a particular precaution is "necessary". If there is reasonable doubt

about the need for a safety precaution, but not about its desirability, it should be taken.

§ 12.43 Power and communication lines and gas pipelines.

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. The Commission has added a paragraph (c) that authorizes the Regional Engineer to require a licensee or applicant to provide warning signs, giving the clearances for power or communication lines.

§ 12.44 Testing spillway gates.

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.

§ 12.45 Inspections by the public.

Section 12.45 of the proposed rule required an applicant or a licensee to post a Public Notice 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.

Several commenters suggested omitting that proposed section. The commenters recommended that the Commission require the posting of a public notice on a limited basis to assess the effectiveness of such a program. Rather than impose a uniform requirement at this time, the Commission has omitted § 12.45 and will undertake an informal program of testing public notices at various representative projects, as suggested.

III. EFFECTIVE DATE

These rules are effective on March 1, 1981.

(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 revises Part 12, Subchapter B, of Chapter 1, Title 18, Code of Federal Regulations, as set forth below, effective March 1, 1981.

By the Commission.

Lois D. Cashell,

Acting Secretary.

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

PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS

Subpart A—General Provisions

Sec.

Subpart B—Reports and Records

Subpart C—Emergency Action Plans

Subpart D—Inspection by Independent Consultant

Subpart E—Other Responsibilities of Applicant or Licensee

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).

Subpart A—General Provisions

§ 12.1 Applicability.

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

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

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

(3) Any project exempted from licensing under Part I of the Federal Power Act, pursuant to Subparts J or K of Part 4 of this chapter, to the extent that the Commission has conditioned the exemption on compliance with any particular provisions of this part.

(b) The provisions of this part apply to a project that uses a Government dam only with respect to those project works, lands, and waters specifically licensed by the Commission.

§ 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 relevant provision of this part, unless the Commission or the Director of the Office of Electric Power Regulation determines that compliance with the relevant provision of the license will better protect life, health, or property.

(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 its license that is similar to a provision of this part. A ruling by the Director may be appealed under § 1.7 of this chapter.

§ 12.3 Definitions.

(a) *General rule.* For purposes of this part, terms defined in section 3 of the Federal Power Act, 16 U.S.C. 796, have the same meaning as they have under the Act.

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

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

(2) "Owner" means any person, state, or municipality, or combination thereof, that has a real property interests in a water power project sufficient to operate and maintain the project works.

(3) "Authorized Commission representative" means the Director of the Office of Electric Power Regulation, the Director of the Division of Hydropower Licensing, the Regional Engineer, or any other member of the Commission staff who the Commission may specifically designate.

(4) "Condition affecting the safety 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 or the ability of any project work to function safely for its intended purposes, including navigation, water power development, or other beneficial public uses; or which might otherwise adversely affect life, health, or property. Conditions affecting the safety of a

project or project works include, but are not limited to:

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

(ii) Failure of any facility that controls the release or storage of impounded water, 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 materials in any dam, abutment, dike, or embankment;

(vi) Significant slides or settlements of materials in areas adjacent to reservoirs;

(vii) Significant damage to slope protection;

(viii) Unusual instrumentation readings;

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

(x) Sinkholes;

(xi) Significant instances of vandalism or sabotage;

(xii) Natural disasters, such as floods, earthquakes, or volcanic activity;

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

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

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

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

(8) "Modification" means any activity, including repair or reconstruction, that in any way changes the physical features of the project from the state reflected in the plans or drawings or other documents filed with the Commission.

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

(10) "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.

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

12.4 Staff administrative responsibility and supervisory authority.

(a) *Administrative responsibility.* The Director of the Office of Electric Power Regulation is responsible for administering the Commission's project 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, repair, or modification of any project works are subject to the inspection and the supervision of the Regional Engineer or any other authorized Commission representative for the purpose of:

(i) Achieving or protecting the safety, stability, and integrity of the project works or the ability of any project work to function safely for its intended purposes, including navigation, water power development, or other beneficial public uses; or

(ii) Otherwise protecting life, health, or property.

(2) For the purposes set forth in paragraph (b)(1) of this section, 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; and

(B) Any condition affecting the safety 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 C of this part; or

(B) Any plan of corrective measures, including related schedules, submitted after the report of an independent consultant pursuant to § 12.37 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 Commission representative, necessary or desirable.

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

(c) *Appeal, stay, rescission, or amendment of order or directive.*

(1) Any order or directive issued under this section or under the provisions of subparts B through E of this part by a Regional Engineer or other authorized Commission representative may be appealed to the Commission under § 1.7 of this chapter.

(2) 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 Commission representative who issued the order or directive rescinds or amends that order or directive or stays its effect; or

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

(3) An appeal or motion for rescission, amendment, or stay of any order or directive issued under this section must contain a full explanation of why granting the appeal or the request for rescission or amendment of the order or directive, or for stay 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 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 of a project or projects works, as defined in § 12.3(b)(4). The initial 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 initial oral report required in paragraph (a)(1), the applicant or licensee must submit to the Regional Engineer a written report on the condition affecting the safety of the project or project works verified in accordance with § 12.13. 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) A 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 damages; and

(vii) Any other relevant information requested by the Regional Engineer.

(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.* (1) Promptly after becoming aware of any drowning or other accident resulting in death or serious injury that occurs at the project, the applicant or licensee must report that drowning or other accident to the Regional Engineer in writing, including a description of the cause and location of the accident.

(2) 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 and be verified in accordance with § 12.13.

(3) Accidents that are not project-related may be reported by providing a copy of a clipping from a newspaper article, if available.

(4) For the purposes of this paragraph, "project-related" includes any deaths or serious injuries involving a dam, spillway, intake, or power line, or which take place at or immediately above or below a dam.

§ 12.11 Reporting modifications of the project or project works.

(a) *Reporting requirement.* Regardless of whether a particular modification is permitted without specific prior Commission approval, an applicant or licensee must report any modification of the project or project works to the Regional Engineer in writing, verified in accordance with § 12.13, 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 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 60 days before work on the modification begins.

§ 12.12 Maintenance of records.

(a) *Kinds of records.* (1) *General rule.* Except as provided in paragraph (a)(2) of this section, the applicant or licensee must maintain as permanent project records in addition to those required in Part 125 of this chapter, the following information:

(i) Engineering and geological data relating to design, construction, maintenance, repair, or modification of the project, including design memoranda and drawings, laboratory and other testing reports, geologic data (such as maps, sections, or logs of exploratory borings or trenches, foundation treatment, and excavation), plans and specifications, inspection and quality control reports, "as built" construction drawings, designers' operating criteria, photographs, 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;

(ii) 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; and

(iii) The operational and maintenance history of the project, including:

(A) 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 of the project or project works; and

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

(2) *Exception.* The applicant or licensee is not required to maintain as permanent project records any information specified in paragraph (a)(1) of this section that was or reasonably would have been prepared before the applicant or licensee acquired control of the project and that the applicant or the licensee never acquired or reasonably could have acquired.

(b) *Location of records.* (1) *Original records.* The applicant or licensee must maintain the originals of all permanent project records at a central location, such as the project site or the main business office of the applicant or licensee, secure from damage from any conceivable failure of the project works and convenient for inspection. 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 at the project site copies of at least the project Exhibit G or L (design drawings), instrumentation data, and operational history that are necessary to the safe and efficient operation of the project.

(3) In accordance with the provisions of Part 125 of this chapter, the applicant or licensee may maintain original records, or record copies at the project site, in microform, if appropriate equipment is readily available to view the records.

(c) *Transfer of records.* If the project is taken over by the United States 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.

§ 12.13 Verification form.

If a document submitted in accordance with the provisions of this part must be verified, the form of verification attached to the document must be the following:

State of [ ],
County of [ ], ss:

The undersigned, being first duly sworn, states that [he, she] has read the above document and knows the contents of it, and that all of the statements contained in that document are true and correct, to the best of [his, her] knowledge and belief.

[Name of person signing]

Sworn to and subscribed before me this [day] of [month], [year].

[Seal]

[Signature of notary public or other state or local official authorized by law to notarize documents.]

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 and appendices, verified in accordance with § 12.13.

(b) The emergency action plan must be:

(1) Developed in 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)(9).

§ 12.21 Exemptions.

(a) *Grant of exemption.* Except as provided in paragraph (b), if an applicant or licensee satisfactorily demonstrates that no reasonably foreseeable project emergency would endanger life, health, or property, the Regional Engineer may exempt the applicant or licensee from filing an emergency action plan.

(b) *No exemption.* A licensee or applicant may not be exempted from the requirements of § 12.22(c) for a radiological response plan.

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

(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 without unduly delaying the preparation and implementation of the emergency action plan.

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

(d) *Revocation of exemption.* (1) The Regional Engineer may revoke an exemption granted under this section if it is determined 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 Regional Engineer.

§ 12.22 Contents of emergency action plan.

(a) *Contents.* (1) *The plan itself.* An emergency action plan must conform with the guidelines established, and from time to time revised, by the Director of the Office of Electric Power Regulation, (available from the Division of Hydropower Licensing or the Regional Engineer), to provide:

(i) Instructions to project operators and attendants and other responsible personnel about the actions they are to take during a project emergency;

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

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

(2) *Appendix to the plan.* Each copy of the emergency action plan submitted to the Regional Engineer must be accompanied by an appendix conforming with the guidelines established by the Director of the Office of Electric Power Regulation that contains:

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

(ii) 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; and

(iii) Documentation of consultations with Federal, state, and local agencies, including public safety and law enforcement bodies, and medical units.

(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.* If the personnel operating any powerhouse or any spillway control facilities, such as gates or valves, of a project would be located within ten miles of a nuclear power plant reactor, the applicant or licensee must file, separately or as a supplement to any required emergency action plan, a radiological response plan that 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 reactor.

(2) A radiological response plan must:

(i) To the maximum extent practicable, include sufficient procedural safeguards to ensure that, during or following an accident or other incident involving the nearby nuclear power plant reactor, the project may be safely operated and, if evacuation is necessary, the project may be left unattended without danger to the safety of any project dam or to life, health, or safety upstream or downstream from the project; and

(ii) Explain the provisions, developed after consultation with the direct purchasers of project power, for cessation, curtailment, or continuation of generation of electric power at the project during or following an accident or other incident involving the nearby nuclear power plant reactor.

(3) *Time of filing radiological response plan.*

(i) 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 March 1, 1981, not later than three months from March 1, 1981; or

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

(ii) For any project not described in § 12.22(c)(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.* (1) Except as set forth in paragraph (a)(2), the emergency action plan for an unconstructed project must be filed no later than 60 days before the initial filling of the project reservoir begins.

(2) *Temporary impoundment during construction.* (i) For any unconstructed project, if a temporary impoundment would be created during construction, such as through construction of temporary or permanent cofferdams or large sediment control structures, and an accident to or failure of the impounding structures might endanger construction workers or otherwise

endanger public health or safety, a temporary construction emergency action plan must be filed no later than 60 days before construction begins.

(ii) No later than 60 days before the initial filling of a project reservoir begins at a project for which a temporary emergency action plan has been filed the applicant or licensee must file modifications to that plan or a new plan, taking into account the differences in circumstances between the construction and post-construction periods.

(b) *Unlicensed constructed project.* (1) If the Commission has determined on or before March 1, 1981 that a license is required for an unlicensed constructed project, the emergency action plan for that project must be filed no later than:

(i) Six months after March 1, 1981; or

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

(2) Except as set forth in paragraph (b)(1), the emergency action plan for an unlicensed constructed project must be filed no 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 March 1, 1981 the emergency action plan must be filed no later than:

(1) Six months after March 1, 1981; or

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

(d) For good cause shown, the Regional Engineer may grant an extension of time for filing all or any part of an emergency action plan.

§ 12.24 Review and updating of plans.

(a) The emergency action plan must be continually updated to reflect any changes in the names or titles of project operators and attendants and other personnel with specified responsibilities for actions in an emergency and any changes in names of persons to call, telephone numbers, radio call signals, or other information critical to providing notification to affected persons, Federal, state, and local agencies, and medical units.

(b) An applicant or licensee has continuing responsibility to review the adequacy of the emergency action plan in light of any significant 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.

(c) Promptly after an applicant or licensee learns of any change in circumstances described in paragraph (b), the applicant or licensee must:

(1) Inform the Regional Engineer of that change in circumstances;

(2) 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

(3) File with the Regional Engineer three copies of any revisions to the appropriate studies, maps, plans, procedures, or other information in the emergency action plan itself or its appendices that have changed as a result of that consultation.

(d) 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 current emergency action plan itself must be posted in a prominent location readily accessible to the licensee's or applicant's operating personnel who are responsible for controlling water flows and for notifying public health and safety agencies and affected persons.

(b) Each licensee or applicant must annually test the state of training and readiness of key licensee or applicant 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 Consultant

§ 12.30 Applicability.

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

(a) That is more than 32.8 feet (10 meters) in height above streambed, as defined in § 12.31(c);

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

(c) That has a high hazard potential and is determined by the Regional Engineer or other authorized Commission representative to require inspection by an independent consultant under this subpart.

§ 12.31 Definitions.

For purposes of this subpart:

(a) "Independent consultant" means any person who:

(1) Is a licensed professional engineer;

(2) Has at least 10 years experience and expertise in dam design and construction and in the investigation of the safety of existing dams; and

(3) Is not, and has not been within two years before being retained to perform an inspection under this subpart, an employee of the licensee or its affiliates or an agent acting on behalf of the licensee or its affiliates.

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

(c) "Height above streambed" means:

(1) 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:

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

(ii) For ungated spillways, the elevation of the spillway crest or the top of any flashboards, whichever is higher;

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

(d) "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.

(e) The Director of the Office of Electric Power Regulation may, for good cause shown, grant a waiver of the 10 year requirement in paragraph (a)(2) of this section. Any petition for waiver under this paragraph must be filed in accordance with § 1.7(b) of this chapter.

§ 12.32 General inspection requirement.

In accordance with the procedures in § 12.35, the project works of each development to which this subpart applies, excluding transmission and transformation facilities and generating equipment, must be periodically inspected and evaluated by or under the responsibility and direction of at least one independent consultant, who may be a member of a consulting firm, 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.

§ 12.33 Exemption.

(a) 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.

(b) Good cause for exemption may include the finding that the development in question has no dam except dams that meet the criteria for low hazard potential as defined by the Corps of Engineers in 33 CFR Part 222.

§ 12.34 Approval of independent consultant.

At least 60 days before the initiation of an inspection under this subpart, the licensee must submit to the Director of the Office of Electric Power Regulation for approval, with a copy to the Regional Engineer, a detailed resume that (a) describes the experience of the independent consultant; and, (b) shows that the consultant is an independent consultant as defined in § 12.31(a).

§ 12.35 Specific inspection requirements.

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

(1) Due consideration of 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) 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;

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

(x) The 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; and

(3) 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 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 from 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 of 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 § 12.37 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.

§ 12.36 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) of this part.

§ 12.37 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 that report with the Regional Engineer. The report must conform to the provisions of this section and be satisfactory 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, and sections of the principal project works;

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

(v) A summary of the geological conditions that may affect the safety of the project works.

(2) To the extent that the information and analyses 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 March 1, 1981 the information and analyses 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.* The report must contain monitoring information that includes time-versus-reading graphs depicting data compiled from any existing critical or representative 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.

(i) 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.

(ii) Plan and sectional drawings of project structures sufficient to show the location of all critical or representative existing monitoring instruments must be included. If these drawings have been included in a previous report prepared and filed by an independent consultant, they may be incorporated by specific reference to that earlier report.

(2) *Analyses.* The report must:

(i) Analyze the safety 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 § 12.35;

(ii) Identify any changes in the information and analyses 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) Analyze the adequacy of existing monitoring instruments, periodic

observation programs, and other methods of monitoring project works and conditions effecting the safety of the project or project works with respect to the development.

(3) *Incorporation by reference.* To the extent that conditions, assumptions, and available information have not changed since the last previous report by an independent consultant under this subpart, the analyses required under paragraphs (c)(2)(i) and (ii) of this section may be incorporated by specific reference to the last previous report.

(4) *Recommendations.* Based on the independent consultant's field observations and evaluations 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 maintance 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.

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

(6) *List of participants.* The report must identify all professional personnel who have participated in the inspection of the project or in preparation of the report and the independent consultant who directed those activities.

(7) *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.

(8) *Signature.* The report must be signed by each independent consultant responsible for the report.

§ 12.38 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 to be filed under this subpart.

(b) *Initial inspection and report.* (1) For any development that has a dam that is more than 32.8 feet (10 meters) in height above streambed or impounds an impoundment with a gross storage capacity of more than 2,000 acre feet (2.5 million cubic meters), which development was constructed before the date of issuance of the order licensing or amending a license to include that 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 the development or amending the license to include the development.

(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 impoundment first reaches its normal maximum surface elevation, whichever occurs first.

(3) For any development not set forth in either subparagraph (b)(1) or (b)(2), the initial inspection under this subpart must be completed and the report on it filed by a date specified by the Regional Engineer. The filing date must not be more than two years after the date of notification that an inspection and report under this subpart are required.

(4) The last independent consultant's inspection and report made for a development before March 1, 1981 in compliance with the Commission's rules then in effect is deemed to fulfill the requirements for an initial inspection and report under this subpart for that development, except that the first report filed under this subpart for that development after March 1, 1981 must contain the information and analyses required by § 12.37(b).

(c) *Extension of time.* For good cause shown, the Regional Engineer may extend the time for filing an independent consultant's report under this subpart.

§ 12.39 Taking corrective measures after the report.

(a) *Corrective plan and schedule.* (1) Not later than 60 days after the report of the independent consultant is filed with the Regional Engineer, the licensee must submit to the Regional Engineer three copies of 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.* For good cause shown, the Regional Engineer may extend the time for filing the plan and schedule required by this section.

Subpart E—Other Responsibilities or Applicant or Licensee

§ 12.40 Quality control programs.

(a) *General rule.* During any construction, repair, or modification of project works, including any corrective measures taken pursuant to § 12.39 of this part, the applicant or licensee must maintain any quality control program that may be required by the Regional Engineer, commensurate with the scope of the work and meeting any requirements or standards set by the Regional Engineer. If a quality control program is required, the construction, repair, or modification may not begin until the Regional Engineer has approved the program.

(b) If the construction, repair, or modification work is performed by a construction contractor, quality control inspection must be performed by the licensee, the design engineer, or an independent firm, other than the construction contractor, directly accountable to the licensee. This paragraph is not intended to prohibit additional quality control inspections by the construction contractor, or a firm accountable to the construction contractor, for the construction contractor's purposes.

(c) If the construction, repair, or modification of project works is performed by the applicant's or licensee's own personnel, the applicant or licensee must provide for separation of authority within its organization to make certain that the personnel responsible for quality control inspection are, to the satisfaction of the Regional Engineer or other authorized Commission representative, independent from the personnel who are responsible for the construction, repair or modification.

§ 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 of the project or project works during the course of construction or operation, the applicant or licensee must install and maintain any monitoring devices and instruments that may be required by the Regional Engineer or 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 or 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 the 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 all reasonable 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 any power or communication line constructed after March 1, 1981 and any vessels using project waters must be at least sufficient to conform to any applicable requirements of the National Electrical Safety Code in effect at the time the power or communication line is constructed.

(c) The Regional Engineer may require a licensee or applicant to provide signs at or near power or communication lines to advise the public of the clearances for any power or communication lines located over, under, or in project waters.

§ 12.44 Testing spillway gates.

(a) *General requirement.* An applicant or licensee must make adequate provision, to the satisfaction of the Regional Engineer or other authorized Commission representative, to ensure that all spillway gates are operable at all times, particularly 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 least once each year a written statement, verified in accordance with § 12.13, that each spillway has been operated at least once during the twelve months preceding the inspection.

(c) *Load-test of standby power.* (1) An applicant or licensee must load-test the standby emergency power for spillway gate operation at regular intervals, but not less than once during each year, and submit to the Regional Engineer, at least once each year, a written statement, verified in accordance with § 12.13, describing the intervals at which the standby emergency power was load-tested during the year preceding the inspection.

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

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18 CFR Parts 351, 352, 356, 357, 360, 361, and 362

[Docket No. RM81-8; Order No. 119]

Regulation of Interstate Oil Pipelines

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: By this rule the Federal Energy Regulatory Commission transfers to Title 18 those regulations in Title 49, Parts 1200 to 1299, applicable to the Commission's oil pipeline jurisdiction. These rules, representing a portion of the oil pipeline rules, were delegated to the Federal Energy Regulatory Commission at the time of the Department of Energy Organization Act and have been utilized by the Commission to carry out its legislative mandate.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT:
William Topping, Office of the General Counsel, 825 North Capitol Street, NE, Washington, D.C. 20426 (202) 357-8583
or
Peter Lefkin, Office of the General Counsel, 825 North Capitol Street, NE, Washington, D.C. 20426 (202) 357-8607.

SUPPLEMENTARY INFORMATION:

Order Redesignating and Duplicating Certain Oil Pipeline Regulations

Issued: December 19, 1980.

A. Background.

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline or to the establishment of valuations for pipelines was transferred from the Interstate Commerce Commission (ICC) to the Federal Energy Regulatory Commission (FERC), pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46267 (September 13, 1977). Section 705(a) of the DOE Act provides that rules and regulations relating to functions transferred to the FERC shall continue in effect until modified by the FERC. The regulations relating to FERC's jurisdiction over oil pipelines are presently contained in Title 49 of the Code of Federal Regulations (CFR). The FERC has ordered that rules and regulations in Title 49, which relate to the FERC's jurisdiction over oil pipelines, should remain in effect until modified by the FERC.[1] The FERC has also recognized that the oil pipeline regulations appearing in Title 49 of the Code of Federal Regulations should eventually be transferred from Title 49 to Title 18 of the Code of Federal Regulations.[2]

B. Transfer to Title 18.

This rulemaking will transfer to Title 18 those regulations in Title 49, Parts 1200 to 1299, applicable to FERC's oil pipeline jurisdiction.[3] Parts 1204, 1220, 1260, 1261, 1262, and a portion of Parts 1241 and 1200[4] will be transferred to Title 18, or duplicated to contain the language that existed at the time the DOE Act took effect and any FERC modifications.[5]

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[1] Order No. 1, *Interim Regulations for the Operations of the Federal Energy Regulatory Commission*, "Order Providing for the Continuation of Functions Vested in, or Delegated to, the Federal Energy Regulatory Commission," 42 FR 55, 450 (1977).

[2] Order No. 62, *Uniform System of Accounts for Pipeline Companies and Attendant Reporting Forms*, "Order Amending Title of Account 670 of the Uniform System of Accounts for Pipeline Companies and Related Provisions and Forms," Docket No. RM80-4, p.2 (issued December 6, 1979).

[3] Transfer to Title 18 of regulations applicable to oil pipelines which are contained in Title 49, Parts 1000 to 1199 and Parts 1300 to End will be addressed at a future time.

[4] Sections 1200.1, 1241.1 1241.61 and 1241.62.

[5] The Interstate Commerce Commission, contemporaneously with this rulemaking, is eliminating Part 1204, a portion of Part 1241, Parts