

**Federal Energy Regulatory Commission****§ 12.2****PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS****Subpart A—General Provisions**

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AUTHORITY: 16 U.S.C. 791a-825r; 42 U.S.C. 7101-7352.

SOURCE: Order 122, 46 FR 9036, Jan. 28, 1981, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 12 appear at 69 FR 32438, June 10, 2004.

**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 Energy Projects 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 Energy Projects 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

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be appealed under § 385.207 of this chapter.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended by Order 225, 47 FR 19056, May 3, 1982; 49 FR 29370, July 20, 1984]

#### § 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 Energy Projects, the Director of the Division of Dam Safety and Inspections, the Regional Engineer, or any other member of the Commission staff whom 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, including recreation; 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, misoperation of, or failure to operate when attempted any facility that controls the release or storage of impounded water, such as a gate or a valve;

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(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) Internal erosion, piping, slides, or settlements of materials in any dam, foundation, 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) Security incidents (physical and/or cyber);

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

(xiii) Overtopping of any dam, abutment, or water conveyance;

(xiv) 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, Portland, New York, or San Francisco) where a particular project is located.

(11) *Water conveyance* means any canal, penstock, tunnel, flowline, flume, siphon, or other project work, constructed or natural, which facilitates the movement of water for the generation of hydropower, environmental benefit, or other purpose required by the project license.

(12) *Owner's Dam Safety Program* means the written document that formalizes a licensee's dam safety program, including, but not limited to, the licensee's dam safety policies; objectives; expectations; responsibilities; training program; communication, coordination, and reporting; record keeping; succession planning; continuous improvement; and audits and assessments.

(13) *Hazard potential* for any dam or water conveyance is a classification based on the potential consequences in the event of failure or misoperation of the dam or water conveyance, and is subdivided into categories (e.g., Low, Significant, High).

(i) *High hazard potential* generally indicates that failure or misoperation will probably cause loss of human life.

(ii) *Significant hazard potential* generally indicates that failure or misoperation will probably not cause loss of human life but may have some amount of economic, environmental, or other consequences.

(iii) *Low hazard potential* generally indicates that failure or misoperation will probably not cause loss of human life but may have some amount of economic, environmental, or other consequences, typically limited to project facilities.

(14) *Act* means the Federal Power Act.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended at 49 FR 29370, July 20, 1984; Order 647, 69 FR 32438, June 10, 2004; 87 FR 1513, Jan. 11, 2022; 87 FR 8411, Feb. 15, 2022]

#### **§ 12.4 Staff administrative responsibility and supervisory authority.**

(a) *Administrative responsibility.* The Director of the Office of Energy Projects 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, security, 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, serious injuries, or rescues that occur 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;

(B) Any Owner's Dam Safety Program filed under subpart F of this part;

(C) Any plan of corrective measures, including related schedules, submitted after the report of an independent consultant pursuant to § 12.36 or § 12.38 or any other inspection report; or

(D) Any public safety plan filed under § 12.52(b).

(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,

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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 part by a Regional Engineer or other authorized Commission representative may be appealed to the Commission under § 385.207 of this chapter.

(2) Any order or directive issued under this part 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 part 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.

(d) *Failure to comply.* If a licensee fails to comply with any order or directive issued under this part by the Commission, a Regional Engineer, or other authorized Commission representative, the licensee may be subject to sanctions, including, but not limited to, civil penalties, orders to cease generation, or license revocation.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended by Order 225, 47 FR 19056, May 3, 1982; 49 FR 29370, July 20, 1984; Order 756, 77 FR 4894, Feb. 1, 2012; 87 FR 1514, Jan. 11, 2022; 87 FR 2702, Jan. 19, 2022]

### § 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, mainte-

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nance, 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) *Initial reports.* An applicant or licensee must report by email or 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 report must be made as soon as practicable after that condition is discovered, preferably within 72 hours, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency action procedure.

(2) *Written reports.* Following the initial report required in paragraph (a)(1) of this section, the applicant or licensee must submit to the Regional Engineer a written report on the condition affecting the safety 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, serious injuries, or rescues—*(1) *Initial reports.* An applicant or licensee must report to the Regional Engineer any drowning or other incident resulting in death, serious injury, or rescue that occurs at the project works

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or involves project operation. The initial report must be made promptly after the incident is discovered, may be provided via email or telephone, and must include a description of the cause and location of the incident.

(2) *Written reports.* Following the initial report required in paragraph (b)(1), the applicant or licensee must submit to the Regional Engineer a written report.

(i) For any death, serious injury, or rescue that is considered or alleged to be project-related, or occurs at the project works, the applicant or licensee must submit to the Regional Engineer a written report that describes any remedial actions taken or proposed to avoid or reduce the chance of similar occurrences in the future. The written report must be verified in accordance with § 12.13.

(ii) For any death that is not project-related, the applicant or licensee may report the death by providing a copy of an article from print or electronic media or a report from a law enforcement agency, if available.

(iii) Serious injuries and rescues that are not project-related do not require a written report.

(3) For the purposes of this paragraph (b), *project-related* includes any deaths, serious injuries, or rescues that:

(i) Involve a project dam, spillway, intake, outlet works, tailrace, power canal, powerhouse, powerline, other water conveyance, or other appurtenances;

(ii) Involve changes in water levels or flows caused by generating units, project gates, or other flow regulating equipment;

(iii) Involve a licensee employee, contractor, or other person performing work at a licensed project facility and are related in whole or in part to the work being performed; or

(iv) Are otherwise attributable to project works and/or project operations.

(4) For the purposes of this paragraph (b), *serious injury* includes any injury that results in treatment at a medical facility or a response by licensee staff or another trained professional.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended at 87 FR 1514, Jan. 11, 2022; 87 FR 2702, Jan. 19, 2022; 87 FR 8411, Feb. 15, 2022]

**§ 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 § 12.51; and

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

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(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 select its own storage media to maintain original records or record copies at the project site, provided that appropriate equipment is 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.

(d) *Provision of records.* If the project is subject to subpart D of this part, or if requested by the Regional Engineer, the applicant or licensee must provide to the Regional Engineer physical and electronic copies of the documents listed in paragraph (a)(1) of this section, except as provided in paragraph (a)(2) of this section.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended at 87 FR 1514, Jan. 11, 2022]

### § 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 an emergency action plan and appendices, verified in accordance with § 12.13.

(b) The emergency action plan must be:

(1) Developed in consultation and co-operation 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

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who might be affected by a project emergency as defined in § 12.3(b)(9).

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended at 87 FR 1515, Jan. 11, 2022]

### § 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 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 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

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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.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended at 49 FR 29370, July 20, 1984; 87 FR 1515, Jan. 11, 2022]

### § 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) of this section, 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

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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) of this section, 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 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.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended at 87 FR 1515, Jan. 11, 2022]

**§ 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—Review, Inspection, and Assessment by Independent Consultant**

SOURCE: 87 FR 1515, Jan. 11, 2022, unless otherwise noted.

**§ 12.30 Applicability.**

This subpart D applies to any licensed project development that:

(a) Has a dam

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

(2) With an impoundment gross storage capacity of more than 2,000 acre-feet (2.5 million cubic meters), as defined in § 12.31(d);

(b) Has a project work (dam or water conveyance) or any portion thereof that has a high hazard potential, as defined in § 12.3(b)(13)(i); or

(c) Is determined by the Regional Engineer or other authorized Commission representative to require inspection by an independent consultant under this subpart D.

**§ 12.31 Definitions.**

For purposes of this subpart D:

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

(1) Is a licensed professional engineer;

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

(3) Is not an employee of the licensee or its affiliates;

(4) Has not been an employee of the licensee or its affiliates within two years prior to performing engineering and/or scientific services for an inspection or assessment under this subpart D; and

(5) Has not been an agent acting on behalf of the licensee or its affiliates, prior to performing engineering and/or scientific services for an inspection or assessment under this subpart D.

(b) An *independent consultant team* means a group of one or more people that:

(1) Includes at least one independent consultant, as defined in paragraph (a) of this section;

(2) Includes additional qualified engineering and scientific professionals as supporting team members, as needed, who meet the requirements of paragraphs (a)(3) through (5) of this section;

(3) Has demonstrable experience and expertise in dam design, construction, and the evaluation and assessment of the safety of existing dams and their appurtenances, commensurate with the scale, complexity, and relevant technical disciplines of the project and type of review, inspection, and assessment being performed (periodic inspection or comprehensive assessment, as defined in this section).

(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; and

(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 toe 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) *Periodic inspection* means an inspection that meets the requirements of § 12.35 and is performed by an independent consultant team.

(f) *Comprehensive assessment* means a project review, inspection, and assessment that meets the requirements of § 12.37 and is performed by an independent consultant team.

(g) *Previous Part 12D Inspection* means the most recent inspection performed in accordance with the provisions of this subpart D (a periodic inspection, comprehensive assessment, or an inspection performed in accordance with the rules established by Order 122).

(h) *Previous Part 12D Report* means the report on the Previous Part 12D Inspection.

[87 FR 1515, Jan. 11, 2022; 87 FR 8411, Feb. 15, 2022]

### § 12.32 General inspection requirement.

The project works of each development to which this subpart applies, excluding transmission and transformation facilities, must be inspected on a periodic basis by an independent consultant team to identify any actual or potential deficiencies that might endanger life, health, or property, including deficiencies that may be in the condition of those project works or in the quality or adequacy of project maintenance, safety, methods of operation, analyses, and other conditions. A report must be prepared by the independent consultant team, by or under the direction of at least one independent consultant, who may be a member of a consulting firm, to document the findings and evaluations made during their inspection. The inspection must be performed by the independent consultant team, and the report must be filed by the licensee, in accordance with the procedures in this subpart D. The licensee must ensure that the independent consultant team's report meets all of the requirements set forth in this subpart D.

**Federal Energy Regulatory Commission****§ 12.34****§ 12.33 Exemption.**

(a) Upon written request from the licensee, the Director of the Division of Dam Safety and Inspections may grant an exemption from the requirements of this subpart D in 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, canal, or other water conveyance except those that meet the criteria for low hazard potential as defined in § 12.3(b)(13)(iii).

(c) The Director of the Division of Dam Safety and Inspections, for good cause shown, may rescind any exemption from this subpart D granted by the Director, and may require that a comprehensive assessment be completed prior to considering a subsequent request for exemption from the licensee.

**§ 12.34 Approval of independent consultant team.**

(a) The licensee must obtain written approval of the independent consultant team, and the facilitator(s) for a potential failure mode analysis or risk analysis, from the Director of the Division of Dam Safety and Inspections, prior to the performance of a periodic inspection or comprehensive assessment under this subpart D.

(b) At least 180 days prior to performing a periodic inspection or comprehensive assessment under this subpart D, the licensee must submit to the Director of the Division of Dam Safety and Inspections, with a copy to the Regional Engineer, a detailed part 12D inspection plan that includes an independent consultant team proposal that describes the technical disciplines and level of expertise required to perform the inspection.

(1) If the independent consultant team comprises one person, the detailed independent consultant team proposal must:

(i) Describe the experience of the independent consultant; and  
(ii) Show that the independent consultant meets the requirements as defined in §§ 12.31(a) and 12.31(b)(3).

(2) If the independent consultant team comprises more than one person, the detailed independent consultant team proposal must:

(i) Designate one or more persons to serve as independent consultant(s);

(ii) Describe the experience of each member of the independent consultant team;

(iii) Show that each independent consultant meets the requirements as defined in § 12.31(a);

(iv) Show that each member of the independent consultant team who is not designated as an independent consultant meets the requirements as defined in § 12.31(a)(3) through (5); and

(v) Show that the independent consultant team meets the requirements as defined in § 12.31(b)(3).

(3) If any member of the independent consultant team has performed or substantially contributed to any previous investigation, analysis, or other work product that is required to be reviewed and evaluated by the independent consultant team as part of the inspection being performed, the independent consultant team proposal must include a clear delineation of roles and responsibilities that ensures no team member will be responsible for reviewing and evaluating their own previous work.

(4) If required information about any supporting team member(s) is not available at the time the independent consultant team proposal is submitted to the Director of the Division of Dam Safety and Inspections, the independent consultant team proposal must state that the information will be provided in the preliminary report required by § 12.42.

(5) The 180-day period in paragraph (b) is measured from the scheduled date of the physical field inspection, potential failure mode analysis, or risk analysis, whichever occurs first.

(c) Regardless of experience and qualifications, any independent consultant may be disapproved by the Director of the Division of Dam Safety and Inspections for good cause, such as having had one or more reports on an inspection under this subpart D rejected by the Commission within the preceding five years.

(d) The Director of the Division of Dam Safety and Inspections may, for good cause shown, grant a waiver of the 10-year requirement in § 12.31(a)(2). Any petition for waiver under this

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paragraph must be filed in accordance with § 385.207 of this chapter.

### § 12.35 Periodic inspection.

A periodic inspection must include:

(a) *Review of prior reports.* The independent consultant team must review and consider all relevant reports on the safety of the development made by or written under the direction of Federal or state agencies, submitted under Commission regulations, or made by other consultants. The licensee must provide to the independent consultant team all information and reports necessary to fulfill the requirements of this section. The independent consultant team must perform sufficient review to have, at the time of the periodic inspection, a full understanding of the design, construction, performance, condition, upstream and downstream hazard, monitoring, operation, and potential failure modes of the project works.

(b) *Physical field inspection.* The independent consultant team must perform a physical field inspection of accessible project works, including galleries, adits, vaults, conduits, earthen and concrete-lined spillway chutes, the exterior of water conveyances, and other non-submerged project works that may require specialized access to facilitate inspection. The inspection shall include review and assessment of all relevant data concerning:

- (1) Settlement;
- (2) Movement;
- (3) Erosion;
- (4) Seepage;
- (5) Leakage;
- (6) Cracking;
- (7) Deterioration;
- (8) Hydraulics;
- (9) Hydrology;
- (10) Seismicity;

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

(12) The condition and performance of foundation drains, dam body drains, relief wells, and other pressure-relief systems;

(13) The condition and performance of any post-tensioned anchors installed, and other major modifications completed, to improve the stability of project works;

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

(15) Regional and site geological conditions.

(c) *Review of surveillance and monitoring plan and data.* The independent consultant team must:

(1) Review the surveillance procedures, instrumentation layout, installation details, monitoring frequency, performance history, data history and trends, and relevance to potential failure modes; and

(2) Review the frequency and scope of other surveillance activities.

(d) *Review of dam and public safety programs.* The independent consultant team must review the programs specified in this paragraph.

(1) *Hazard potential.* The independent consultant team must review the potential inundation area and document any significant changes in the magnitude and location of the population at risk since the previous inspection under this subpart D.

(2) *Emergency Action Plan.* If the project development is subject to subpart C of this part, the independent consultant team must review the emergency action plan, including the emergency action plan document itself, the licensee's training program, and any related time-sensitivity assessment(s).

(3) *Public Safety Program.* The independent consultant team must review the public access restrictions and public safety warning signs and devices near the project works pursuant to § 12.52.

(4) *Owner's Dam Safety Program.* If the project is subject to subpart F of this part, the independent consultant team must review the implementation of the licensee's Owner's Dam Safety Program with respect to the project development being inspected under this subpart D.

### § 12.36 Report on a periodic inspection.

(a) *Scope.* The report must include documentation of all the items listed in § 12.35.

(b) *Specific evaluation.* The report must include specific evaluation of:

(1) The history of performance of the project works through visual observations, analysis of data from monitoring instruments, and previous inspections;

(2) The quality and adequacy of maintenance, surveillance, methods of project operations, and risk reduction measures for the protection of public safety and continued project operation;

(3) Potential failure modes, including:

(i) Each identified potential failure mode associated with the project works and whether any potential failure mode is active or developing; and

(ii) Whether any inspection observations or other conditions indicate that an unidentified potential failure mode is active, developing, or is of sufficient concern to warrant development through a supplemental potential failure mode analysis;

(4) Whether any observed conditions warrant reconsideration of the current hazard potential classification; and

(5) The adequacy of the project's:

(i) Emergency action plan;

(ii) Public safety program; and

(iii) Implementation of the Owner's Dam Safety Program with respect to the project development being inspected under this subpart D.

(c) *Changes since the previous inspection.* The report must include a status update and evaluation of any changes since the Previous Part 12D Inspection concerning:

(1) *Hydrology.* Identify any events that may affect the conclusions of the hydrologic or hydraulic analyses of record and evaluate the effect on the safety and stability of project works.

(2) *Seismicity.* Identify any seismic events that may affect the conclusions of the seismicity analyses of record and evaluate the effect on the safety and stability of project works.

(3) *Modifications to project works.* Identify any modifications made to project works and evaluate the performance thereof with respect to the design intent.

(4) *Methods of operation.* Describe any changes to standard operating procedures, equipment available for project operation, and evaluate the effect on the safety and stability of project works.

(5) *Results of special inspections.* Summarize the findings of any special inspections (dive inspection, rope-access gate inspection, toe drain inspection, etc.), if any.

(6) *Previous recommendations.* List and document the status of recommendations made by the independent consultant(s) in the Previous Part 12D Report, and any earlier recommendations that remained incomplete at the time of the Previous Part 12D Report.

(7) *Outstanding studies and studies completed since the previous inspection.* List and document the status of any studies completed since the Previous Part 12D Inspection and those that remain outstanding at the time of the periodic inspection.

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

(1) Any corrective measures, described in § 12.41, necessary for the structures, maintenance or surveillance procedures, or methods of operation of the project works;

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

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

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

(f) *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(s) who directed those activities.

(g) *Statement of independence.* Each independent consultant responsible for the report must declare that all conclusions and recommendations in the

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report are made independently of the licensee, its employees, and its representatives.

(h) *Signature.* The report must be signed and sealed, with a professional engineer's seal, by each independent consultant responsible for the report.

### § 12.37 Comprehensive assessment.

A comprehensive assessment must include:

(a) *Review of prior reports and analyses of record.* The independent consultant team must review and consider all relevant reports on the safety of the development made by or written under the direction of Federal or state agencies, submitted under Commission regulations, or made by other consultants. The licensee must provide to the independent consultant team all information, reports, and analyses of record necessary to fulfill the requirements of this section.

(1) In addition to the requirements of § 12.35(a), the independent consultant team must have a full understanding of the risk associated with the project works.

(2) The independent consultant team shall perform a detailed review of the as-built drawings; monitoring data; and the methods, assumptions, calculations, results, and conclusions of the analyses of record pertaining to:

(i) Geology and seismicity;  
(ii) Hydrology and hydraulics;  
(iii) Stability and structural integrity of project works; and

(iv) Any other analyses relevant to the safety, stability, and operation of project works.

(b) *Physical field inspection.* The independent consultant team must perform a physical field inspection that complies with § 12.35(b).

(c) *Review of surveillance and monitoring plan and data.* The independent consultant team must perform a review of surveillance and monitoring plan and data that complies with § 12.35(c).

(d) *Review of dam and public safety programs.* The independent consultant team must perform a review of dam and public safety programs that complies with § 12.35(d).

(e) *Supporting Technical Information Document.* The comprehensive assessment shall include a review of the Sup-

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porting Technical Information Document.

(f) *Potential failure mode analysis.* The comprehensive assessment shall include a potential failure mode analysis.

(g) *Risk analysis.* The comprehensive assessment shall include a risk analysis. The Regional Engineer may, for good cause shown, grant a waiver of the requirement to complete a risk analysis. Any petition for waiver under this paragraph must be filed in accordance with § 385.207 of this chapter.

### § 12.38 Report on a comprehensive assessment.

(a) *Scope.* The comprehensive assessment report must include documentation of all the items listed in § 12.37.

(b) *Specific evaluation.* In addition to the items listed in § 12.36(b)(1) through § 12.36(b)(5), the comprehensive assessment report must evaluate:

(1) The adequacy of spillways, including the effects of overtopping of non-overflow structures, as described in § 12.39;

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

(3) The potential for internal erosion and/or piping of embankments, foundations, and abutments;

(4) The design and construction practices used during original construction and subsequent modifications, in comparison with the industry best practices in use at the time of the inspection under this subpart D;

(5) The adequacy of the Supporting Technical Information Document and the attached electronic records; and

(6) The adequacy and findings of the potential failure mode analysis and risk analysis report(s).

(c) *Analyses of record.* The comprehensive assessment report must include the independent consultant team's evaluation of the assumptions, methods, calculations, results, and conclusions of the items listed in § 12.37(a)(2)(i) through (iv). The evaluation must:

(1) Address the accuracy, relevance, and consistency with the current state of the practice of dam engineering;

(2) Be accompanied by sufficient documentation of the independent consultant team's rationale, including, as

needed, new calculations by the independent consultant team to verify that the assumptions, methods, calculations, results, and conclusions in the analyses of record are correct; and

(3) If the independent consultant team is unable to review the analyses of record for any of the items listed in § 12.37(a)(2)(i) through (iv); or if the independent consultant team disagrees with the assumptions, methods, calculations, results, or conclusions therein; the independent consultant(s) must recommend that the licensee complete new analyses to address the identified concerns.

(d) *Changes since the previous inspection.* The requirements of this section are the same as described in § 12.36(c).

(e) *Recommendations.* The requirements of this section are the same as described in § 12.36(d).

(f) *Dissenting views.* The requirements of this section are the same as described in § 12.36(e).

(g) *List of participants.* The requirements of this section are the same as described in § 12.36(f).

(h) *Statement of independence.* The requirements of this section are the same as described in § 12.36(g).

(i) *Signature.* The requirements of this section are the same as described in § 12.36(h).

### § 12.39 Evaluation of spillway adequacy.

The adequacy of any spillway must be evaluated, as part of a comprehensive assessment or as otherwise requested by the Regional Engineer, by considering hazard potential which would result from failure of the project works during normal and flood flows.

(a) If failure would present a hazard to human life or cause significant property damage, the independent consultant team must evaluate the following for floods up to and including the probable maximum flood:

(1) The ability of project works to withstand the loading or overtopping which may occur during floods;

(2) The capacity of spillways to prevent the reservoir from rising to an elevation that would endanger the project works; and

(3) The potential for misoperation of; failure to operate; blockage of; or de-

bilitating damage to a spillway and its appurtenances (including but not limited to structural, mechanical, and electrical components of gates, valves, chutes, and training walls); and the effect thereof on the maximum reservoir level and potential for surcharged loading or overtopping to occur during floods.

(b) If failure would not present a hazard to human life or cause significant property damage, spillway adequacy may be evaluated by means of a design flood of lesser magnitude than the probable maximum flood provided that the most recent comprehensive assessment report required by § 12.38 provides a detailed explanation of and rationale for the finding that structural failure would not present a hazard to human life or cause significant property damage.

### § 12.40 Time for inspections and reports.

(a) *Projects previously inspected by independent consultant.* For any project that was inspected under this subpart D prior to April 11, 2022, under the Commission's rules in effect on January 1, 2022:

(1) A periodic inspection or comprehensive assessment must be completed, and the report on it filed, within five years of the due date of the Previous Part 12D Report.

(2) For any report due to be filed under this subpart D after October 11, 2023, the Regional Engineer may require that it be a report on a comprehensive assessment or a report on a periodic inspection.

(3) The first comprehensive assessment under this subpart must be completed, and the report on it filed, by December 31, 2038.

(b) *Projects not previously inspected by independent consultant.* For any project that was not inspected under this subpart D prior to April 11, 2022, under the Commission's rules in effect on January 1, 2022:

(1) For any development that meets the criteria specified in § 12.30(a)(1) or § 12.30(a)(2), and was constructed before the date of issuance of the order licensing that development, or amending a license to include that development, the first comprehensive assessment

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under this subpart D must be completed, and the report on it filed, not later than two years after the date of issuance of the order licensing that development or amending the license to include that development.

(2) For any development that was constructed after the date of issuance of the order licensing that development, or amending a license to include that development, the first comprehensive assessment under this subpart D must be completed, and the report on it filed, not later than five years after the date of issuance of the order licensing that development or amending the license to include that development.

(3) For any development not set forth in either paragraph (b)(1) or (b)(2) of this section, the first comprehensive assessment under this subpart D 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 a comprehensive assessment and report under this subpart D are required.

(c) *Subsequent inspections and reports.* For subsequent reports filed under this subpart D:

(1) A comprehensive assessment must be completed, and the report on it filed, within 10 years of the date the previous comprehensive assessment report was due to be filed.

(2) A periodic inspection must be completed, and the report on it filed, within five years of the date the previous comprehensive assessment report was due to be filed.

(d) *Extension of time.* For good cause shown, the Regional Engineer may extend the time for filing the report on a comprehensive assessment or periodic inspection under this subpart D.

(e) *Type of Report.* For good cause, the Regional Engineer may require that any report due to be filed under this subpart D be a report on a comprehensive assessment or a report on a periodic inspection, notwithstanding the type of review (periodic inspection or comprehensive assessment) scheduled to be performed under paragraphs (c)(1) and (c)(2) of this section.

### § 12.41 Corrective measures.

(a) *Corrective measures.* For items identified during a periodic inspection or comprehensive assessment as requiring corrective action, the following conditions apply:

(1) *Corrective plan and schedule.* (i) Not later than 60 days after a report on a periodic inspection or comprehensive assessment is filed with the Regional Engineer, the licensee must submit to the Regional Engineer a plan and schedule for addressing the recommendations of the independent consultant(s) and for investigating, designing, and carrying out any corrective measures that the licensee proposes to implement.

(ii) 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(s). Any proposed alternative must be accompanied by the licensee's complete justification and detailed analysis and evaluation in support of that alternative.

(2) *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, and on an annual basis must submit a status report on the corrective measures until all have been completed.

(3) *Extension of time.* For good cause shown, the Regional Engineer may extend the time for filing the plan and schedule required by this section.

(b) *Emergency corrective measures.* The licensee must provide that if, in the course of a periodic inspection or comprehensive assessment conducted under this subpart D, an independent consultant discovers any condition for which emergency corrective measures are advisable, such as a condition affecting the safety of a project or project works as defined in § 12.3(b)(4) of this part, 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. Emergency corrective measures must be included in

the corrective plan and schedule required by paragraph (a)(1) of this section, and are also subject to paragraphs (a)(2) and (a)(3) of this section.

**§ 12.42 Preliminary reports.**

At least 30 days prior to the performance of a periodic inspection or comprehensive assessment, a preliminary report prepared by the independent consultant team must be filed by the licensee with the Regional Engineer to document the initial findings, understanding, and preparation of the independent consultant team.

(a) For any periodic inspection, the 30-day period is measured from the scheduled date of the physical field inspection.

(b) For any comprehensive assessment, the 30-day period is measured from the scheduled date of the physical field inspection, potential failure mode analysis, or risk analysis, whichever occurs first.

(c) If the Regional Engineer determines that the preliminary report does not clearly demonstrate that the independent consultant team is adequately prepared for the inspection, the Regional Engineer may require the inspection to be postponed. Any such postponement shall not constitute good cause for an extension of time under § 12.40(d).

(d) If any required supporting team member information was not provided with the independent consultant team proposal required by § 12.34(b), it must be provided with the preliminary report.

**Subpart E—Other Responsibilities of Applicant or Licensee****§ 12.50 Quality control programs.**

(a) *General rule.* During any construction, repair, or modification of project works, including any corrective measures taken pursuant to § 12.41 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.

[Order 122, 46 FR 9036, Jan. 28, 1981. Redesignated and amended at 87 FR 1519, Jan. 11, 2022; 87 FR 8411, Feb. 15, 2022]

**§ 12.51 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

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other authorized Commission representative to monitor that condition.

[Order 122, 46 FR 9036, Jan. 28, 1981. Redesignated at 87 FR 1519, Jan. 11, 2022; 87 FR 8411, Feb. 15, 2022]

### § 12.52 Warning and safety devices.

(a) 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.

(b) The Regional Engineer may require the applicant or licensee to prepare, periodically update, and file with the Commission a public safety plan that formalizes the installation, operation, and maintenance of all necessary public safety devices.

[87 FR 1519, Jan. 11, 2022; 87 FR 8411, Feb. 15, 2022]

### § 12.53 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.

[Order 122, 46 FR 9036, Jan. 28, 1981. Redesignated at 87 FR 1519, Jan. 11, 2022; 87 FR 8411, Feb. 15, 2022]

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### § 12.54 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 an 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 gate 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 an inspection.

[Order 122, 46 FR 9036, Jan. 28, 1981. Redesignated and amended at 87 FR 1519, Jan. 11, 2022; 87 FR 8411, Feb. 15, 2022]

### §§ 12.55–12.59 [Reserved]

## Subpart F—Owner's Dam Safety Program

SOURCE: 87 FR 1519, Jan. 11, 2022, unless otherwise noted.

### § 12.60 Applicability.

The licensee of any dam or other project work classified as having a high

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or significant hazard potential, as defined in § 12.3(b)(13)(i) and (ii), is required to submit an Owner's Dam Safety Program to the Regional Engineer.

**§ 12.61 Definitions.**

For purposes of this subpart F:

(a) *Chief Dam Safety Engineer* means the designated individual, who is a licensed professional engineer with experience in dam safety, who oversees the implementation of the Owner's Dam Safety Program and has primary responsibility for ensuring the safety of the licensee's dam(s) and other project works.

(b) *Chief Dam Safety Coordinator* means the designated individual, who is not required to be a licensed professional engineer, who oversees the implementation of the Owner's Dam Safety Program and has primary responsibility for ensuring the safety of the licensee's dam(s) and other project works.

**§ 12.62 General requirements.**

(a) The Owner's Dam Safety Program shall designate either a Chief Dam Safety Engineer or Chief Dam Safety Coordinator, as defined in § 12.61. Any Owner's Dam Safety Program that includes one or more dams or other project works classified as having a high hazard potential, as defined in § 12.3(b)(13)(i), shall designate a Chief Dam Safety Engineer.

(b) The Owner's Dam Safety Program must be signed by the Owner and, as applicable, the Chief Dam Safety Engineer or the Chief Dam Safety Coordinator.

(c) The Owner's Dam Safety Program must be reviewed and updated on a periodic basis as described in § 12.64 and, if applicable, must undergo an independent external audit or peer review as described in § 12.65.

(d) The Owner may delegate to others, such as consultants, the work of establishing and implementing the Owner's Dam Safety Program and the role of Chief Dam Safety Engineer or Chief Dam Safety Coordinator, as applicable.

(1) If the role of Chief Dam Safety Engineer or Chief Dam Safety Coordinator is delegated to an outside party who does not oversee the day-to-day

implementation of the Owner's Dam Safety Program, the Owner must designate an individual responsible for overseeing the day-to-day implementation.

(2) Any delegation made in accordance with paragraph (d) of this section must be documented in the Owner's Dam Safety Program.

(3) The Owner retains ultimate responsibility for the safety of the dam(s) and other project works covered by the Owner's Dam Safety Program.

**§ 12.63 Contents of Owner's Dam Safety Program.**

The Owner's Dam Safety Program shall contain, at a minimum, the following sections:

- (a) Dam safety policy, objectives, and expectations;
- (b) Responsibilities for dam safety;
- (c) Dam safety training program;
- (d) Communication, coordination, reporting, and reports;
- (e) Record keeping and databases; and
- (f) Continuous improvement.

**§ 12.64 Annual review and update of Owner's Dam Safety Program.**

The Owner's Dam Safety Program, and the implementation thereof, shall be reviewed at least once annually by the licensee's dam safety staff and discussed with senior management of the Owner's organization. The licensee shall submit the results of the annual review, including findings, analysis, corrective measures, and/or revisions to the Owner's Dam Safety Program, to the Regional Engineer.

**§ 12.65 Independent external audit and peer review.**

(a) *Applicability.* For licensees of one or more dams or other project works classified as having a high hazard potential, as defined in § 12.3(b)(13)(i), an independent external audit or peer review of the Owner's Dam Safety Program, and the implementation thereof, shall be performed at an interval not to exceed five years.

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(b) *Qualifications.* A statement of qualifications for the proposed auditor(s) or peer review team that demonstrates independence from the licensee and its affiliates shall be submitted to the Regional Engineer for review, and written acceptance thereof must be obtained from the Regional Engineer prior to performing the audit or peer review.

(c) *Reporting.* (1) The auditor(s) or peer review team shall document their findings in a report.

(2) The report on the audit or peer review shall be reviewed by the Owner, Chief Dam Safety Engineer or Chief Dam Safety Coordinator, and management having responsibility in the area(s) audited or reviewed.

(3) The report on the audit or peer review shall be submitted to the Regional Engineer.

## PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

### Subpart A—General Provisions

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- 16.1 Applicability.
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16.18 Annual licenses for projects subject to sections 14 and 15 of the Federal Power Act.

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- 16.23 Failure to file timely notices of intent.
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- 16.25 Disposition of a project for which no timely application is filed following a notice of intent to file.
- 16.26 Disposition of a project for which no timely application is filed following a notice of intent not to file.

AUTHORITY: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

SOURCE: Order 513, 54 FR 23806, June 2, 1989, unless otherwise noted.