

FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Dam Safety and Inspections– Atlanta Regional Office
Gwinnett Commerce Center
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April 5, 2022

Addressee List Enclosed

Subject: Revisions to the Commission’s Safety of Water Power Projects and Project Works, 18 CFR Part 12, Commission Order No. 880

Dear Licensee/Exemptee:

On December 16, 2021 the Commission unanimously approved the issuance of a final rule on the Safety of Water Power Projects and Project Works, RM20-9-000.¹ The effective date of the final rule under Commission Order No. 880 is 90 days after the published date of the final rule in the Federal Register. The rule was published in the Federal Register on January 11, 2022; therefore, the effective date of the Order is April 11, 2022.

To address recommendations on the part 12D inspection process, and to codify guidance issued by the Commission’s Office of Energy Projects, Division of Dam Safety and Inspections (D2SI) over the past several years, the final rule revises dam safety regulations found in the Code of Federal Regulations (CFR) Title 18, Part 12. In the final rule, the Commission revises 18 CFR Part 12 by replacing Subpart D in its entirety, adding new Subpart F, and making minor revisions to Subparts A, B, C, and E. In addition to making various minor revisions and updates to our 18 CFR Part 12 regulations, the final rule accomplishes four overarching objectives that are integral to strengthening the Commission’s dam safety program and addressing shortcomings identified by the forensic investigations that followed the Oroville Dam spillway incident.

First, the final rule implements two tiers of 18 CFR Part 12, Subpart D independent consultant safety inspections, in addition to Commission staff’s regular dam safety inspections. The two-tier structure includes two types of inspections: a comprehensive assessment and a periodic inspection. Each type of inspection will be

¹ Available at <https://www.ferc.gov/media/rm20-9-000>

performed at a 10-year interval, with the periodic inspection occurring midway between comprehensive assessments. A comprehensive assessment will accomplish the more rigorous, in-depth review of design and construction, and a comparison to modern standards, techniques, and the state of the practice, that the Oroville Independent Forensic Team (IFT) recommended. A periodic inspection will help determine whether the project is performing adequately between comprehensive assessments.

Second, the final rule changes the requirements of the content of the submittal to the Commission for the review and evaluation of the qualifications of independent consultants that conduct 18 CFR Part 12, Subpart D inspections. Currently, § 12.34 of the Commission's regulations requires the licensee to submit to the Director of the Division of Dam Safety and Inspections (D2SI), for approval, a resume describing the independent consultant's experience. The final rule requires licensees to submit to the Director of D2SI an independent consultant team proposal that comprises one or more independent consultants and additional engineering or scientific personnel, as needed, which must demonstrate that the members of that team possess an appropriate level of expertise for the specific project under consideration and the type of inspection being performed, whether it is a Comprehensive Analysis or a Periodic Inspection. This change reflects the reality that, for many of the projects under the Commission's jurisdiction, a single independent consultant will not possess the appropriate level and diversity of technical proficiency necessary to evaluate all aspects of the project.

Third, the final rule codifies existing guidance related to the Owner's Dam Safety Program. Currently, the Commission's 18 CFR Part 12 regulations do not explicitly require a licensee to develop an Owner's Dam Safety Program. The final rule codifies the requirement that licensees of one or more high or significant hazard potential dams must prepare, maintain, file with the Commission, and periodically review and update an Owner's Dam Safety Program. Licensees must designate a person responsible for overseeing day-to-day implementation of the dam safety program.

Fourth, the final rule modifies licensee reporting and preparedness requirements related to public safety at or near hydroelectric projects. Currently, licensees are required to install and maintain public safety devices and to report deaths or serious injuries at their projects. The final rule revises the definition of a "project-related" incident to clarify that licensees are required to report those public and project personnel safety incidents that are related to project operation; to report rescues in addition to deaths and serious injuries; and to prepare, maintain, and submit a public safety plan to D2SI, which is the current practice required by existing D2SI guidance.

The Commission has also added four new chapters to its Engineering Guidelines. Chapter 15 provides guidance for developing and maintaining a Supporting Technical

Information Document.² Chapter 16 provides guidance on the scope of the part 12D independent consultant inspection program.³ Chapter 17 provides guidance for conducting a Potential Failure Mode Analysis.⁴ Chapter 18 provides guidance for conducting a Level 2 Risk Analysis.⁵

Licensees and exemptees are strongly encouraged to review the revisions to 18 CFR Part 12 included in the Order and the four new chapters of the Engineering Guidelines currently available on our website. The Commission will begin implementation of the Order and new Engineering Guideline chapters on April 11, 2022.

The Commission issues a Part 12D reminder letter to the licensee or exemptee approximately 18 months prior to the established Part 12D Report due date. Licensees and exemptees with Part 12D Report due dates after October 1, 2023 will be required to follow the provisions of 18 CFR Part 12, Subpart D included in Order 880. Licensees and exemptees with Part 12D Report due dates on or before October 1, 2023 are permitted to use either the existing regulations (prior to Order 880) or those that go into effect on April 11, 2022. Unless requested otherwise, we will assume that those projects with reports due prior to October 1, 2023 will use the existing (prior to Order 880) regulations. All other provisions of Order 880 will be effective on April 11, 2022. This includes the revised public safety incident reporting of 18 CFR Part 12.10 and the Owner's Dam Safety Program reporting requirements in 18 CFR Part 12, Subpart F.

The Commission is in the process of developing the schedule for comprehensive assessments to be performed for each project under 18 CFR Part 12, Subpart D. It is anticipated that the comprehensive assessment schedule will be available by the end of 2022.

The Commission is also currently developing a series of training courses designed to summarize and provide clarity on the revised contents of 18 CFR Part 12 and the four new Engineering Guideline chapters. Additional information on the content and the schedule of the training courses will be provided on the D2SI webpage.⁶

² Available at https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20211216-3084&optimized=false

³ Available at https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20211216-3085&optimized=false

⁴ Available at https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20211216-3086&optimized=false

⁵ Available at https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20211216-3088&optimized=false

⁶ Available at <https://www.ferc.gov/dam-safety-and-inspections>

The Commission believes that the revisions to our dam safety regulations are necessary and, once implemented along with the new chapters of the Engineering Guidelines, will significantly improve our dam safety program.

Please let me know if you have any questions regarding the contents of this letter. I can be reached at (678) 245-3075.

Sincerely,

Wayne B. King, P.E.
Regional Engineer

Enclosure:
Addressee List