

## § 209.140

matters concerning offshore drilling, including environmental considerations, are the responsibility of the Department of the Interior.

(b) The following rules have been developed jointly by the Los Angeles district engineer and the 11th Coast Guard District, in consultation with the Bureau of Land Management and the U.S. Geological Survey for drilling in the Gulf of Santa Catalina:

(1) All drilling with a single tract will be covered by a single application.

(2) Where practicable, applications shall be submitted at least 120 days in advance of drilling for tracts where drilling is expected to be accomplished within the traffic separation scheme, the precautionary zone or within 2 nautical miles of a traffic lane.

(3) Applications shall include the location of any known proposed drilling site and the estimated start and completion dates for each. Updated information on the plan shall be furnished as soon as available. One individual (and alternate) shall be designated by the applicant as responsible for maintaining close liaison with all involved agencies.

(4) Where it is not feasible to perform exploratory work from outside the traffic lanes or  $\frac{1}{4}$  mile buffer zones, or precautionary zone, authorizations will include the following conditions:

(i) Exploratory vessels within a traffic lane will, to the degree practicable, be sited near traffic lane boundaries.

(ii) Exploratory vessels within one traffic lane, or in the precautionary zone, shall be separated by at least 8 nautical miles in the direction of the lane axis.

(iii) Exploratory vessels located within the traffic lanes, or the precautionary zone, shall not have their pendant buoys within 3,000 yards from the pendant buoys of any other vessel.

(iv) Exploratory rigs and vessels engaged in offshore development may have no cables, anchors, buoys, or other associated equipment within the traffic lanes,  $\frac{1}{4}$  mile buffer zones, or the precautionary zone, at a depth of less than 100 feet, unless such equipment is marked with class I private

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aids to navigation in accordance with current Federal regulations.

(67 Stat. 462 (43 U.S.C. 1333(f))

[43 FR 28475, June 30, 1978]

### § 209.140 Operations of the Corps of Engineers under the Federal Power Act.

(a) *General.* This section outlines policies and procedures applicable to those operations in which the Corps of Engineers may be called upon to participate under the Federal Power Act. Such operations include: Investigations and reports on applications for permits and licenses for development of power affecting navigable waters; supervision of investigations, construction, and operation of projects under such permits and licenses; preparation of special reports as required by the Federal Power Commission; and review of plans of dams or other structures affecting navigation. The foregoing functions are performed by the Corps of Engineers only upon request of the Federal Power Commission.

(b) *Authority of Division and District Engineers.* Section 2 of the revised Federal Power Act provides that the Federal Power Commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army, to serve the Commission as Engineer officer or officers, or in any other capacity, in field work outside the seat of government, their duties to be prescribed by the Commission. By authority of the Secretary of the Army, and in accordance with the instructions issued by the President in a letter to the Secretary of the Army dated May 18, 1931, Division Engineers will be detailed to serve the Commission as engineer officers in field work outside the seat of government, their duties to be prescribed by the Commission, and to be performed under the supervision of the Chief of Engineers. District Engineers will be designated to carry out the field inspections and investigations under supervision of the Division Engineer. When a Division Engineer is detailed by the Chief of Engineers to assist the Commission in either the investigation or supervision of

a project he will be the accredited representative of the Commission. The actual field work will be done by the designated District Engineer who will make a report to the Division Engineer. All reports and such correspondence as would normally be forwarded to the Commission will be addressed to the Chief of Engineers.

(c) *Procedure for investigations and report on applications for permits and licenses.* (1) Upon request by the Federal Power Commission, the Chief of Engineers will assign the investigation of an application for permit or license under the Federal Power Act to a Division Engineer, who will submit a report on the investigation as provided herein. The date that the report is to be submitted will be specified. The Division Engineer, upon assignment of an investigation involving extensive studies, will when requested by the Chief of Engineers submit an estimate of the cost of the investigation, listing the probable expenditures for salaries separate from the estimated costs of non-personal services.

(2) If in the investigation of an application or a declaration of intention filed under the Federal Power Act the Division Engineer considers a public hearing desirable in the interests of navigation or flood control, the Chief of Engineers will be notified whereupon the matter will be brought to the attention of the Commission. No public hearing will be held unless specifically authorized by the Commission or by the Chief of Engineers. If a hearing is authorized it will be limited strictly to consideration of the purpose for which approval is granted.

(3) The report will describe and discuss material facts having a definite bearing on the interests of navigation and flood control and the general effect the project would have on a comprehensive plan of developing the water resources of the basin. Specific reference will be made to pertinent published documents containing the results of studies and/or resolutions directing studies to be made. In the case of an application for permit or license for an unconstructed project the report will include a recommendation as to whether development should be undertaken by the United States rather than

by a licensee. A recommendation for Federal development will be supported by a showing as to how this would serve the Corps of Engineers programs and policies. In the case of an application for permit or license for a constructed project the report should contain appropriate comments concerning possible redevelopment to improve the usefulness of the project in relation to the objectives of the Corps program in the basin.

(4) The report on an application for license will contain recommendations of the Division Engineer concerning the inclusion in the license of any terms and conditions that are considered to be necessary or desirable in the public interest from the standpoint of Corps of Engineers responsibilities.

(5) The report on an application for permit will contain such recommendations as required to insure coordination of the applicant's studies with the Division or District Engineer in cases where interests of the Corps of Engineers are involved. In all cases, the report will contain, in lieu of specific recommendations, a discussion of interests which should be protected by articles in a license issued subsequent to the permit period.

(6) If the project is on a Federal reservation or contemplates the use of a dam, either of which is under the jurisdiction of the Department of the Army, the report should state, giving reasons:

(i) Whether the project will interfere or be inconsistent with the purpose for which such reservation was created or acquired and what conditions, if any, should be imposed for the adequate protection and utilization of the reservation.

(ii) Whether the dam may be advantageously used by the United States for public purposes in addition to authorized purposes and whether it should be reserved for such use.

(iii) Whether the development should be undertaken by the United States.

(7) The reports will not be released or made public except by specific authority of the Chief of Engineers, nor will copies of a report, its findings, or recommendations be furnished to the applicant, to interested parties, or to the Commission until released by the Chief of Engineers.

(d) *Procedure for supervision of operations under permits and licenses.* (1) When supervision of the operations of an applicant under a permit or a license is requested by the Federal Power Commission, the Chief of Engineers will assign responsibility for supervision to the Division Engineer. The operations to be supervised, such as investigations being conducted by a permittee, construction of a project under a license or operation of completed projects, will be as specified by the Commission.

(2) Projects will be classified as major, minor, minor part or transmission line projects as indicated in the Federal Power Act and as specified in the instructions from the Commission.

(3) Inspection during the construction of a major project will be made monthly, or as often as may be necessary for the Division Engineer to assure himself that the terms of the license are being complied with and the work is of acceptable quality and in accordance with the approved plans. The frequency of inspections of minor, minor part, and transmission line projects is left to the discretion of the Division Engineer.

(4) After a project has been completed and placed in operation and is under the supervision of the Division Engineer, annual inspection will be made of major and minor projects but inspection of transmission line projects will not be made unless specifically requested by the Commission.

(5) Reports on supervision and inspections of operations under Federal Power Commission permits and licenses will be submitted in accordance with instructions in paragraph (e) of this section.

(e) *Reports on supervision and inspection of operations under Federal Power Commission permits licenses.* Periodic reports, as appropriate to assigned responsibilities and as described in paragraphs (e) (1) through (3), inclusive, of this section will be submitted for each Federal Power Commission permit or license for which a Division Engineer has been assigned responsibility for supervision of operations under provisions of the Federal Power Act. All of the described reports will be submitted

in triplicate to the Chief of Engineers for transmittal to the Federal Power Commission. Unless otherwise stated transmittal letters will not be required and the reports will be mailed so as to reach the Chief of Engineers not later than the 15th of the month following the end of the report period.

(1) *Reports on supervision of construction under a FPC License.* When a Division Engineer is assigned responsibility for supervision and inspection of construction of a licensed project, the requirements for submission of reports will be specified.

(2) *Annual Report on operation of project under supervision of the Division Engineer.* Reports on the operation and maintenance of each major and minor licensed project for which supervision of operations has been assigned to a Division Engineer will be submitted annually after the initial installation covered by the license has been completed. Such reports will be made on Federal Power Commission Form 10, "Operation Report" and, pursuant to paragraph 39u of AR 335-15, do not require a reports control symbol. A special report will be made in case of severe flood or interruption in operation due to failure of material or accident. Reports on operation and maintenance of transmission line projects are not required unless requested by the Commission.

(3) *Annual Report on operation of projects with licenses containing conditions prescribed in the interest of navigation.* When the Federal Power Commission notifies the Chief of Engineers that it will assume the supervision of operation of a licensed project, the Division Engineer will not be required to make detailed inspections and reports. However, the Division Engineer will continue to be responsible for the project insofar as it affects the interest of navigation. The inspection of projects in this class is left to the discretion of the Division Engineer but annual reports will be submitted in triplicate, through the Chief of Engineers, on Federal Power Commission Form 10, "Operation Report", omitting the items under "Supervision expense for period", but including the following information only under "Memorandum Report".

(i) Whether the operation of the project has been satisfactory insofar as the interests of navigation are concerned.

(ii) Whether any infraction by the licensee of the conditions in the interest of navigation has come to the attention of the Division Engineer.

(f) *Delegation of authority for approval of structural plans for non-Federal hydroelectric projects affecting navigation.* The authority vested in the Secretary of the Army by section 4(e) of the Federal Power Act is hereby delegated to the Chief of the Engineers for promulgation with regard to approval of plans of structures filed with the Federal Power Commission in connection with licensing of non-Federal hydroelectric projects.

(Sec. 4(e), 49 Stat. 840; 16 U.S.C. 797(e); Secretary of the Army memorandum for the Chief of Engineers, dated March 11, 1975)

[33 FR 18670, Dec. 18, 1968, as amended at 40 FR 17023, Apr. 16, 1975]

CROSS REFERENCE: For regulations of the Federal Energy Regulatory Commission, see 18 CFR chapter I.

**§ 209.141 Coordination of hydroelectric power operations with power marketing agencies.**

(a) *Purpose.* This regulation establishes policies and procedures for coordinating the operation of the Corps of Engineers' hydroelectric generating facilities with the power marketing agencies.

(b) *Applicability.* This regulation applies to all civil works field operating agencies (FOA) having generating facilities producing marketable electric power.

(c) *References.* (1) Section 5, Pub. L. 534, 78th Congress, Flood Control Act of 1944, December 22, 1944 (58 Stat. 889).

(2) Section 302, Pub. L. 95-91, 95th Congress, Department of Energy Organization Act, August 4, 1977 (91 Stat. 565).

(d) *Background.* Section 5 of the Act of December 22, 1944 (Pub. L. 534, 78th Congress), provides that electric power and energy generated at reservoir projects under the control of the Department of the Army and in the opinion of the Secretary of Army not required in the operation of such projects shall be delivered to the Secretary of

Interior for transmittal and disposal in a manner to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. Section 302 of the Department of Energy Organization Act (Pub. L. 95-91) transfers all functions of the Secretary of Interior under section 5 of the 1944 Act to the Secretary of Energy together with all other functions of the Secretary of Interior, and officers and components of the Department of the Interior, with respect to the Southeastern Power Administration; the Southwestern Power Administration; the Alaska Power Administration; the Bonneville Power Administration; and the power marketing functions of the Bureau of Reclamation.

(e) *Policies.* (1) The Corps is responsible for operating the hydroelectric power projects and providing information affecting cost and availability of power to the power marketing agencies. Marketing the generated power declared excess to the needs of the projects and recovering Federal investment are the responsibilities of the power marketing agencies.

(2) All FOA Commanders will develop, in coordination with their respective power marketing agency, a system for exchanging operating information. The system will include general operating information and information on conditions that could substantially affect costs or power availability.

(f) *Delegation.* Responsibility for coordinating the exchange of information may be delegated to the District Engineer at the discretion of the Division Engineer.

(g) *Procedures*—(1) *Specific requirements*—(i) *Continuing.* Prompt written notification will be provided to the appropriate power marketing agency each time a change in power operations or conditions which could substantially affect costs or power availability is anticipated.

(ii) *Annual.* Annually, when no changes in power operations or costs are expected for the succeeding 12-month period, the marketing agency will be notified of that fact in writing.

(2) *FOA responsibility.* The FOA directly responsible for communicating