



FEDERAL ENERGY REGULATORY COMMISSION

Guide to the Hydroelectric License and Exemption Amendment Process

March 1992



Division of Project Compliance and Administration
Office of Hydropower Licensing
Federal Energy Regulatory Commission
Washington, DC 20426



FEDERAL ENERGY REGULATORY COMMISSION

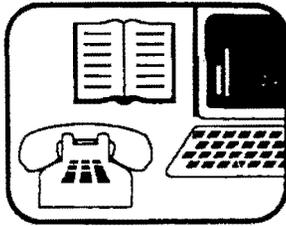
Guide to the Hydroelectric License and Exemption Amendment Process

March 1992



Division of Project Compliance and Administration
Office of Hydropower Licensing
Federal Energy Regulatory Commission
Washington, DC 20426

NOTICE



The regulations cited in this guide are subject to change. It is the applicant's responsibility to be aware of changes in the Federal Energy Regulatory Commission's (Commission) regulations which may affect any application. This can be accomplished by monitoring the formal documents issued by the Commission each business day or by using one or more of the services described below.

Formal Document Electronic Bulletin Board: The Commission Issuance Posting System (CIPS) is an electronic bulletin board service that provides access to the latest Commission daily issuances and press releases, and Commission Agenda. CIPS is offered at no charge to the user. It is available 23 hours a day. The system is unavailable from 8:00 to 9:00 a.m. Monday through Friday. Users are permitted up to 60 minutes connect time per call. Information remains on CIPS for 30 days, and is then permanently deleted. The files subsystem contains the full text of the documents to accommodate downloading. CIPS may be accessed by using a personal computer with a modem. CIPS telephone number is (202) 208-1397. For assistance in locating information on CIPS, call (202) 208-2474.

Federal Register: Published each business day, the *Federal Register* contains official notices of initial filings and applications, as well as proposed and final rulemakings of the Commission. To subscribe, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 or call (202) 783-3238 for information.

Federal Energy Guidelines: FERC Reports and FERC Statutes and Regulations: These are looseleaf, indexed services that contain proposed and final rulemakings, delegation orders, notices, opinions, orders, initial decisions, and final decisions. To subscribe, contact Commerce Clearing House, 4025 West Peterson Ave., Chicago, IL 60646, or call (312) 583-8500.

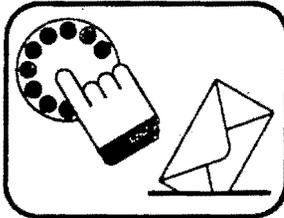
Computer Databases: Several services provide access to Commission documents by computer. These include LEXIS and WESTLAW. For information, write or call the offices below.

LEXIS—Available from Mead Data Central, P.O. Box 933, Dayton, OH 45401. Phone (1-800) 544-7390.

WESTLAW—Available from West Publishing Company, P.O. Box 64779, St. Paul, MN 55164. Phone (1-800) 328-9833.

CONTACTS

This guide was prepared by the Division of Project Compliance and Administration, Office of Hydropower Licensing.



It is available from the Federal Energy Regulatory Commission. Information about purchasing this guide or other Commission reports may be obtained by calling the Commission Public Reference and Files Maintenance Branch, on (202) 208-1371 or by writing to the Commission, Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, DC 20426.

The following publications may be of interest:

Code of Federal Regulations, Title 18, Parts 1 to 149 and Parts 280 to 399, U.S. Government Printing Office, Washington, D.C.

Hydroelectric Project Licensing Handbook

Hydroelectric Project Relicensing Handbook

Engineering Guidelines for the Evaluation of Hydropower Projects

Public Safety at Hydropower Projects

Questions and comments concerning the content of this guide may be directed to the Division of Project Compliance and Administration at (202) 219-2750.

TABLE OF CONTENTS

TOPIC	PAGE
Notice	iii
Contacts	v
Table of Contents	vii
Introduction	1
Purpose of Guide	3
Chapter 1: Common Project Modifications Requiring an Amendment	5
Chapter 2: How Does the License Amendment Process Work?	9
Chapter 3: How Does the Exemption Amendment Process Work?	15
Chapter 4: What Goes Into the Amendment Application?	19
Licensed Project	19
Exempted Project	24
Chapter 5: Questions and Answers	27
A. General Guidelines	27
B. Capacity-related Items	30
C. Operation and Design Changes	32
D. Land and Water Use Rights	33
E. Extension of Time	33
F. Procedural Matters	34
G. Other Questions	37
Appendix: Regulations Governing Amendments of Licensed and Exempted Facilities	39
Figure 1 License amendment process flowchart	10
Figure 2 Exemption amendment process for small hydroelectric projects and conduit facilities	16
Table 1 Exhibits and resource discussions typically included in noncapacity-related amendments	23

INTRODUCTION



Pursuant to the Federal Power Act (FPA), as amended by the Electric Consumers Protection Act (ECPA), the Commission is authorized to issue licenses and exemptions for non-federal hydroelectric power projects. After the Commission issues a license or an exemption, modifications to the originally authorized project license or exemption are often necessary. The modifications could range from a simple time extension for completing a required study to a complex, major design change before constructing a project, to a modification of an existing project. Fundamentally, the key element in determining the need for amending a license or exemption is whether the contemplated action is consistent with the authorizing documents. Filing procedures are detailed in the Commission's regulations and are summarized in this guidebook.

PURPOSE OF GUIDE

This guide provides step-by-step procedures to amend a license or an exemption from license. It does not cover changes to a license application because that subject is one of several addressed in the Commission's *Hydroelectric Project Licensing Handbook*.



A key element of the amendment process is contact with the Commission staff. You should contact the staff regarding any proposed modification to your project that affects the terms and conditions of your license or exemption. If you are uncertain about what steps to take, the Commission staff in the Division of Project Compliance and Administration can advise you.

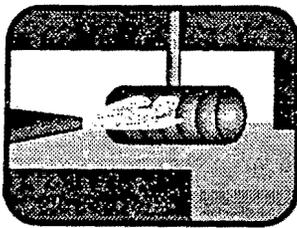
While this guide is helpful in understanding the amendment process, **it is not a substitute for the regulations themselves.** Before contacting the Commission or submitting an amendment application, licensees and exemptees should review the Commission regulations in Title 18 of the *Code of Federal Regulations* (18 CFR Part 4).

CHAPTER 1

Common Project Modifications Requiring an Amendment

License and exemption amendments are generally required when there is a proposed change to a project previously authorized by a Commission order issuing a license or exemption. Most project changes that require an amendment can be classified into six categories: capacity changes, design changes, operational changes, land status changes, compliance filings, and time extensions.

During project construction, minor modifications to the approved plans are often necessary to adjust to actual site conditions. These types of very minor project modifications are known as “as-built” changes and occur as a result of discussions between the licensee or exemptee and the appropriate Commission Regional Office.



1. Capacity Changes

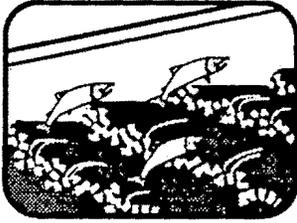
The Commission defines capacity-related license amendments as changes in a hydropower project that involve additional capacity not previously authorized, and that: (1) would increase the actual or proposed total installed capacity¹ of the project; (2) would result in an increase in the maximum hydraulic capacity² of the project of 15 percent or more; and (3) would result in an increase in the installed nameplate capacity³ of 2 megawatts (MW) or more. *Changes in capacity that do not meet all of the above criteria are considered noncapacity-related amendments.*

The Commission’s regulations (18 CFR §4.201) and its *Hydroelectric Project Licensing Handbook* describe the responsibilities of the licensee regarding capacity-related amendments.

- 1 The installed capacity is the sum of the nameplate capacity of all the generating units in a hydroelectric project.
- 2 The maximum hydraulic capacity is the maximum water flow rate that can be discharged simultaneously through all the project turbines for generation at any time.
- 3 The nameplate capacity of a generating unit is the manufacturer’s rating of the generator as printed on the unit.

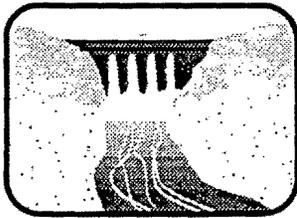
Capacity changes that are considered noncapacity-related amendments are fairly common amendments to licenses. These noncapacity changes occur when:

- **The nameplate capacity of the installed generating unit is different from that stated in the license order.** For example, the Commission recently reviewed a change in the installed capacity of an 82,800 kilowatt (kW) project that was previously authorized at 82,500 kW. Because the change in capacity was less than 2 MW, the Commission considered the change a noncapacity-related amendment. On another project, the Commission considered a decrease in the authorized capacity from 990 kW to 935 kW a noncapacity-related amendment. In both cases, the Commission approved the amendment applications.
- **A turbine to be installed has a different capacity than what was licensed.** Frequently, after a project has been licensed, it is less costly for a licensee to purchase a used or new off-the-shelf turbine that has a greater capacity than that authorized. Also, it is common for a licensee to install a turbine with a smaller capacity than that authorized. In either case, the licensee must provide an explanation of such a change for the Commission staff's evaluation. For example, a licensee requested a capacity decrease from 3,900 kW to 2,250 kW, because the larger unit would be uneconomical. The Commission approved the decrease even though the reduced capacity did not fully use the energy potential of the site.
- **Rewinding of a generator changes the installed capacity.** On a project recently approved by the Commission, rewinding of the generators produced a 24,500-kW increase in installed capacity, bringing the total capacity to 114,500 kW. Even though the installed capacity increased by more than 2 MW, this amendment was a noncapacity-related amendment because there was no change in hydraulic capacity.
- **A turbine is to be replaced with a more efficient or larger turbine.** The Commission expects this type of noncapacity-related amendment to become more prevalent in the future as older, less efficient turbines are replaced with modern, more efficient ones.
- **The number of generating units is changed.** Often, older units will be taken out of service because they are no longer economical.



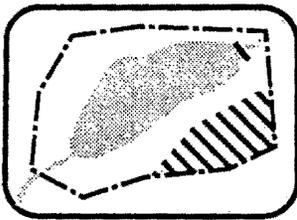
2. Design Changes

Significant changes in the physical features of a project, such as new structures, relocation of transmission lines, or alterations of existing structures, may occur during construction or operation. Common design changes include increases in dam height, modifications to transmission lines or routes, installation of fish ladders or fishery enhancement structures, construction of afterbays, and the addition of flashboards to a spillway.



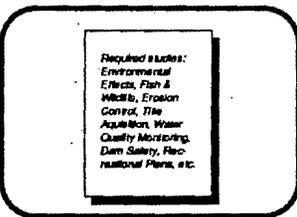
3. Operational Changes

After a facility is completed, a licensee or exemptee may wish to change the way a project is operated, such as increase the operating level in the reservoir, modify the minimum instream flow requirement, or revise the ramping rate.



4. Land Status Changes

Changes in the status of project lands are frequently requested by licensees. These changes generally include altered usage of lands of the United States, changes in land rights, non-project use of project lands, or changes in the recreational usage of the site. Unless already provided for as an article in the existing license, an amendment of this type is required when: (1) the actual acreage of federal lands within the project boundary differs from the licensed amount; (2) there is a sale of project land, or an exchange, transfer, or leasing of project property; (3) a request is made for water withdrawals from a project reservoir; (4) a request is made for road, bridge, or other utility rights-of-way on project lands; and (5) dredging of project lands is proposed.

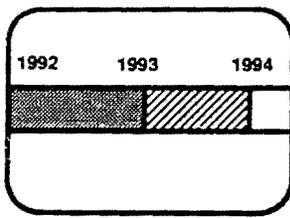


5. Compliance Filings

In any license or exemption issued by the Commission, certain terms and conditions are included. These conditions are referred to as "articles." Articles require a licensee or exemptee to adhere to requirements that may govern project operation, require monitoring studies, or address a variety of issues related to environmental effects and engineering. These requirements may include water quality monitoring, fish and wildlife studies, title acquisition, recreational plans, soil erosion control, maintenance of minimum flows, operational limitations such as ramping rates, cultural resources protection measures, dam safety issues, annual charges, and schedules for the above items.

License or exemption articles may require the licensee or exemptee to file study results, mitigation plans, study plans, or schedules with the Commission. Such filings are termed compliance filings. The Commission determines if the filing complies with the article requirements and presents its findings in a letter or order. An example of a compliance filing occurs when a license article specifies the preparation of an erosion control plan. The licensee would need to develop a plan to ensure that soil erosion would be minimized. The Commission would review the erosion control plan to assess its acceptability and present its findings in a letter. When the Commission requires that compliance filings be submitted for its "approval," the approval is obtained in the form of an amendment order.

Modifications to, deletions of, partial waivers of, and revisions of inconsistencies in license or exemption articles are also considered amendments.



6. Time Extensions

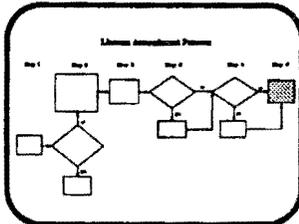
When licenses and exemptions are issued, time limits are generally placed on the construction of the project and on various conditions (articles) in the license or exemption. Frequently, the licensee or exemptee needs more time to comply with the conditions or to start or complete construction of a facility. In such instances, it is possible to seek modification of the time limits specified by the Commission.

You may be considering modifications other than those mentioned above. If so, the Commission staff can advise you if an amendment application needs to be filed, or whether you can proceed with your modification without Commission approval.

The turnaround time for processing an amendment varies. In simple cases, it can be a matter of days, particularly if a valid urgency exists. In difficult cases, turnaround time will naturally be longer. The time required for Commission processing depends on the complexity of the amendment, the completeness of the amendment application, the degree of effect on the public, the concerns of resource agencies, and the extent of work that the Commission needs to do in assessing impacts. Prior consultations with the Commission and the appropriate resource agencies, however, often produce prompt authorizations.

CHAPTER 2

How Does the License Amendment Process Work?



When a licensee proposes to change a project, the procedures presented in this chapter should be followed. Five key questions must be addressed during this process:

1. Does the change constitute a modification of the license?
2. Is the change capacity-related?
3. Which exhibits need to be filed?
4. Is the modification substantial or would property holders be affected?
5. Is an environmental assessment required?

Figure 1 illustrates the key steps in the license amendment process which are described in detail below.

Step 1: Licensee proposes amendment

After you have decided to make a project change, the first consideration is to determine the type of modification and the potential engineering and environmental effects. If the change is for a time extension, request the extension in writing, including the reason for the request. If your change is a capacity change, a design or operational change, a land status change, a compliance filing, or an article modification, proceed to Step 2.

Step 2: Is your amendment a capacity-related amendment as defined in 18 CFR §4.201(b)?

If the proposed change involves additional capacity not previously authorized, and that: (1) would increase the actual or proposed total installed capacity of the project; (2) would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more; and (3) would result in an increase in the installed nameplate capacity of 2 MW or more (capacity-related amendment), consult 18 CFR §4.201(b). All of the above criteria must be met for an amendment to be capacity-related. If only one criterion applies, the amendment is a noncapacity-related amendment. You should also refer to Chapter 5 of the *Hydroelectric Project*

License Amendment Process

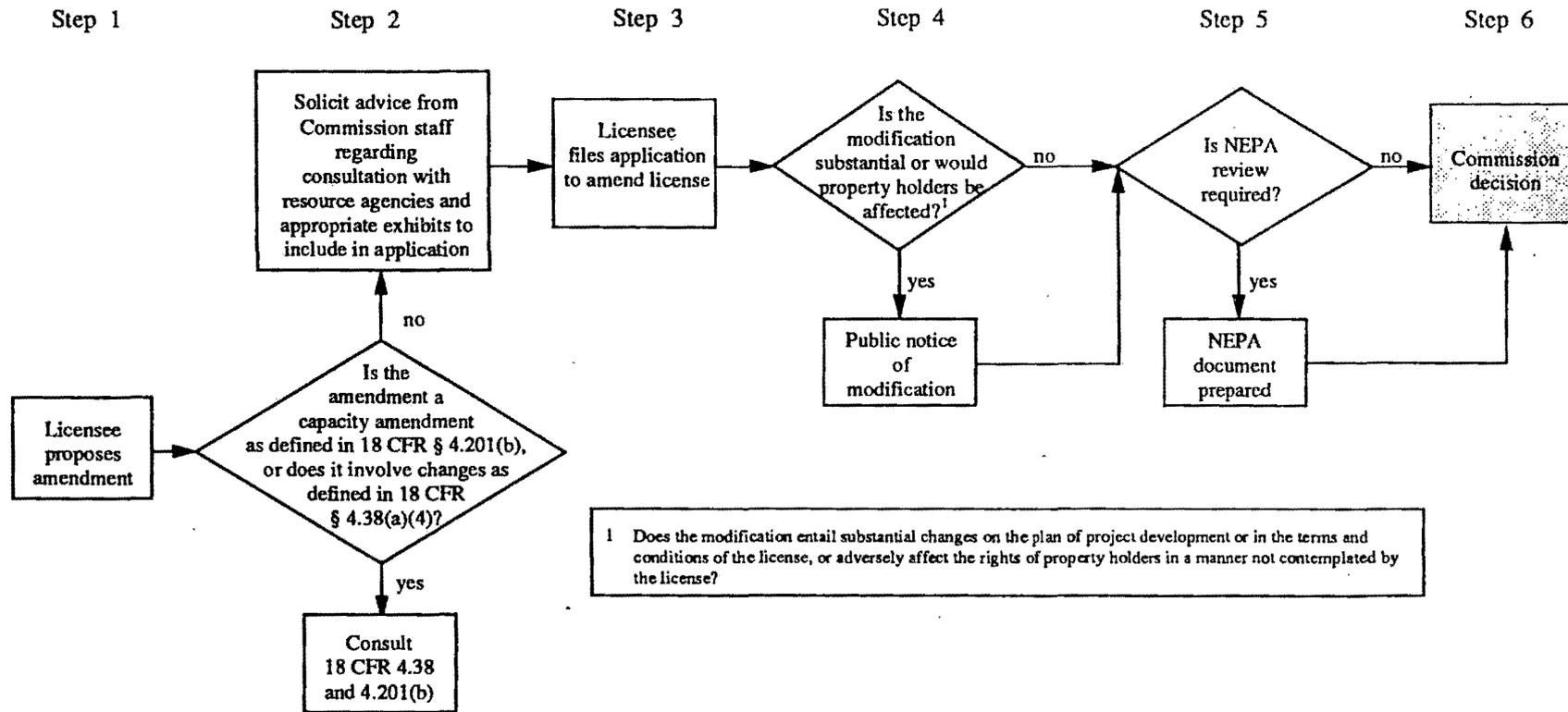


Figure 1. License amendment process flowchart (Source: the staff).

Licensing Handbook for further information on capacity-related amendments.

If the proposed change is not a capacity-related amendment, ask the Commission staff to identify what resource agencies, if any, should be consulted, and the appropriate exhibits, or revisions or additions to any exhibits on file, to include in the amendment application. Resource agency means a Federal, state, or interstate agency exercising administration over the areas of flood control, navigation, irrigation, recreation, fish and wildlife, water resource management (including water rights), or cultural or other relevant resources of the state or states in which a project is or will be located [18 CFR §4.30(b)]. As appropriate, consult with the Federal agencies administering United States lands, and the certifying agency under Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act). The selection of agencies depends upon the types of resources affected and on the impacts that are anticipated. The three stage agency consultation process (18 CFR §4.38) does not apply to noncapacity-related amendments, except for those changes identified in 18 CFR §4.38(a)(4)(v). These changes involve: (a) the construction of a new dam or diversion in a location where there is no existing dam or diversion; (b) any repair, modification, or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or elevation of an existing impoundment; or (c) the addition of new water power turbines other than to replace existing turbines.

Step 3: Licensee files application to amend license

For noncapacity-related amendments, the nature of the proposed change, the type of project (based on proposed capacity), and the construction status of the project determine which exhibits need to be included in your amendment application. The exhibits to be considered are those previously filed with the Commission as part of the original, new, or amended license. All exhibits that require revision because of the nature of the proposed amendments must be filed. However, only revisions to appropriate portions of exhibits on file with the Commission are required. For example, if an amendment would affect only a portion of the environmental resources under the Exhibit E on file, such as water quality and fish, the amendment application should contain a revised Exhibit E addressing water quality and fish. The revised exhibit should also contain a statement of effect for the remaining resources not adversely affected by the amendment (e.g., wildlife and botanical

resources, historical and archeological resources, recreational resources, etc. of Exhibit E).

In the revised Exhibit E, all affected resources must be described, potential impacts discussed, and where necessary, environmental protection, mitigation, and enhancement plans proposed. Chapter 4 discusses the contents of an amendment application for the various types of project modifications. The revised exhibits are governed by regulations contained in 18 CFR §4.41, §4.51, or §4.61. (18 CFR §4.41 regulations apply to a major unconstructed or major modified project; 18 CFR §4.51 regulations apply to a major project-existing dam; and 18 CFR §4.61 regulations apply to a minor water power project, or a major water power project of 5 MW or less.)

Step 4: Is the modification substantial or would property holders be affected?

If the Commission determines that the modification entails substantial changes in the plan of project development or in the terms and conditions of the license, or adversely affects the rights of property holders in a manner not contemplated by the licensee, then pursuant to Section 6 of the FPA, 16 U.S.C. 799, the Commission gives notice of the proposal at least 30 days before a decision on the application.

Step 5: Is National Environmental Policy Act (NEPA) review required?

Generally, the Commission prepares an environmental assessment if the proposed modifications would cause ground disturbance on project lands, or cause different impacts from those assessed for the existing license. Environmental assessments are not normally prepared for the following types of amendments: (1) minor capacity changes that are defined as noncapacity-related amendments; (2) design changes that do not involve land disturbance; (3) changes in the status of project lands if there is no associated land disturbance; and (4) most compliance filings. They are also not normally prepared when project lands are to be used for utilities, piers, landings, boat docks, landscaping, or shoreline erosion control structures. The Commission's regulations implementing NEPA (18 CFR §380.4) provide further information on categorical exclusions. However, exceptions may be made where circumstances indicate that an action may be a major Federal

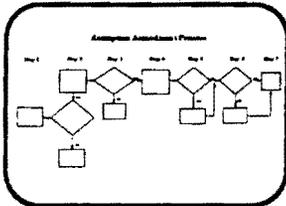
action significantly affecting the quality of the human environment. Exceptions may also be made if the following are potentially affected: Indian lands, wilderness areas, wild and scenic rivers, wetlands, units of the National Park System or National Refuges, anadromous fish, or endangered species.

Step 6: Commission decision

After the NEPA review has been completed, the Commission or its delegate determines if the license should be amended. In contested projects, the Commission itself makes the determination.

CHAPTER 3

How Does the Exemption Amendment Process Work?



Exemption amendments follow a slightly different process than license amendments. In this case, the following key questions must be addressed:

1. Would the change cause a violation of the agency-imposed terms and conditions or materially alter the design, location, method of construction, or the operation of the project works?
2. Does the revised project still qualify for the exemption?
3. Which exhibits need to be revised?
4. Is the modification substantial or would property holders be affected?
5. Is an environmental assessment required?

Figure 2 presents a step-by-step diagram of the exemption amendment process for small hydroelectric power projects of 5 MW or less, and small conduit hydroelectric facilities.

Step 1: Fish and wildlife agency notification

After deciding to change the design, location, method of construction, or operation of its project, the exemptee must first notify the Federal and state fish and wildlife agencies that authored the original terms and conditions of the exemption and inform them in writing of the changes it intends to implement.

Step 2: Would the change violate the agency-imposed terms and conditions or materially alter the design, location, method of construction, or the operation of the project works?

The appropriate Federal and state fish and wildlife agencies review the changes to determine if the changes would cause a violation of the terms and conditions originally imposed on the exemptee's project. If the agencies determine that the changes

Exemption Amendment Process¹

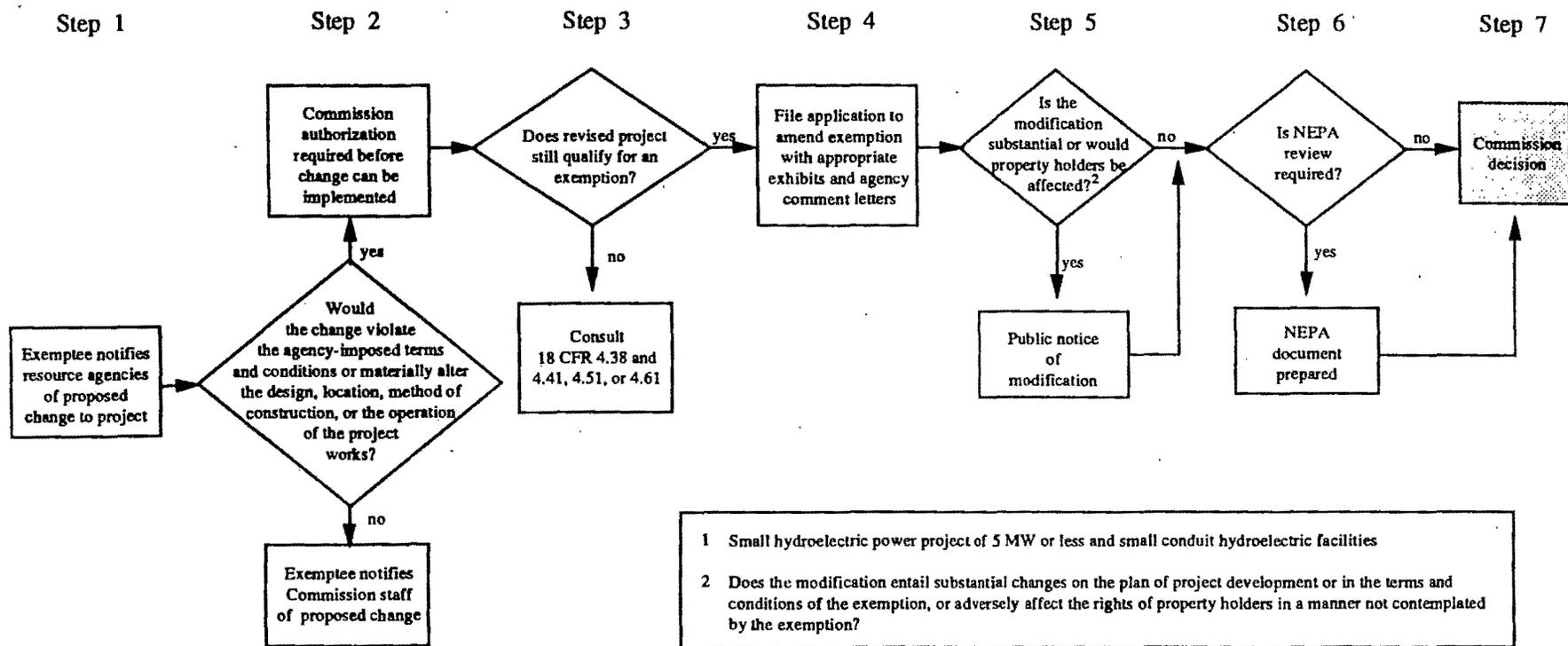


Figure 2. Exemption amendment process for small hydroelectric projects and conduit facilities (Source: the staff).

would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction, or operation of the project, the exemptee may implement the changes. The exemptee should consult with the Commission staff for assistance in determining whether the proposed changes would materially alter the design, location, method of construction, or operation of the project.

If any of the appropriate Federal and state fish and wildlife agencies determine that the changes would cause the project to violate the terms and conditions imposed by the agencies, or if the changes would materially alter the design, location, method of construction, or the operation of the project works, the exemptee may not implement the changes without first acquiring authorization from the Commission to amend its exemption.

Step 3: Does the revised project still qualify for an exemption?

The Commission staff examines the proposed change and determines whether the revised project would still qualify for an exemption. If the modified project would no longer meet the definition of a small hydroelectric power project or a small conduit hydroelectric facility, the project would lose its status as "exempt" [Refer to 18 CFR § 4.30(b)]. The applicant would need to return to the relevant resource agencies and consult with them on the proposed change as part of an application to license the facility. (Refer to 18 CFR §4.38 and §4.41, §4.51 or §4.61.)

If the revised project still qualifies for an exemption (as determined by the Commission), then an amendment application must be filed.

Step 4: Revise appropriate exhibits

To complete the amendment application, the exemptee must revise relevant exhibits that are representative of the proposed project. The exemptee should consult with the Commission staff to determine which exhibits (previously prepared for the original exemption application) should be revised for submittal with the amendment application. Generally, the amendment application must describe all resources that the proposed change would affect, potential effects on resources, and proposed environmental protection, mitigation, and enhancement plans. When the appropriate exhibits are completed, the exemptee must file the amendment application, including agency comment letters.

Step 5: Is the modification substantial or would property holders be affected?

If the Commission determines that the modification entails substantial changes in the plan of project development, or adversely affects the rights of property holders in a manner not contemplated by the exemption order, then pursuant to Section 6 of the FPA, 16 U.S.C. 799, the Commission gives notice of the proposal at least 30 days before a decision on the application.

Step 6: Is NEPA review required?

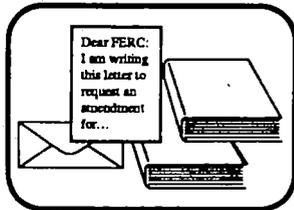
Generally, the Commission prepares an environmental assessment if the proposed modifications would cause ground disturbance at the project, or cause different impacts from those assessed for the existing exemption.

Step 7: Commission decision

After NEPA review, the Commission or its delegate makes a determination on the amendment application.

CHAPTER 4

What Goes Into the Amendment Application?



The contents of amendment applications differ for licensed and exempted projects, and are discussed in separate sections in this chapter. Depending on the type of amendment, the level of detail may vary from a one-page letter to a comprehensive multi-volume amendment application.

Licensed Project

1. Capacity-related Amendments

For capacity-related amendments, a licensee must provide the information required by 18 CFR §4.201(b). Further information on the contents of a capacity-related amendment is provided in the Commission's *Hydroelectric Project Licensing Handbook*.

2. Noncapacity-related Amendments

A letter to the Commission is appropriate for the following proposed noncapacity-related amendments: (1) capacity changes that are considered noncapacity-related amendments; (2) certain types of project land status changes; (3) compliance filings and most article modifications; and (4) time extensions. The letter must provide reasons for the amendment, and include relevant resource agency letters of comment, exhibits, and applicable drawings, as discussed below.

Capacity Changes

For a noncapacity-related amendment, the project description in Exhibit A should be revised to reflect the proposed capacity. If the capacity change is minimal and is the result of on-the-shelf availability of the turbine-generating unit, an economic feasibility study need not accompany the amendment application. However, if the authorized capacity has decreased substantially, then an economic feasibility study must accompany the application for the staff to determine the effect of the decrease in capacity on the comprehensive development of the river basin. Obviously, the noncapacity-related amendment process is on a case-by-case basis. Therefore, licensees are encouraged to contact the Commission staff for guidance prior to filing amendment applications.

Project Land Status Changes Permitted By License Article

In 1980, the Commission endorsed a standard license article permitting licensees to act on routine matters of land and water use rights to reduce the administrative burden on the licensee and the Commission. This standard article authorizes a licensee to approve certain types of use and occupancy of project lands and waters without prior Commission approval. Such uses and occupancies include certain recreational development, landscape plantings, non-commercial boating access facilities intended to serve single-family type dwellings, private or public marinas that can accommodate no more than 10 watercraft at a time, erosion-control structures, and easements or rights-of-way across project property for utility distribution lines, storm drains and water mains, sewers, bridges, roads, and water intake or pumping facilities.

For certain uses of project lands and waters, which the licensee can permit without prior Commission approval, the licensee must file a report annually that briefly describes for each conveyance the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use. For other uses, the licensee must file, at least 45 days before conveying any interest in project lands, a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed, the nature of the proposed use, the resource agencies consulted, and the Federal or state approvals required. Most conveyances granted under this article are subject to specific conditions identified in the article. These conditions must be fulfilled before an interest in project property is conveyed. Conveyance of land under this article does not change project boundaries. A licensee must do this through an amendment of Exhibit G or K drawings reflecting exclusion of that land.

Compliance Filing

Requirements for compliance filings are provided in the license articles. Refer to the specific license article to determine the level of detail and type of information required in a compliance filing.

Time Extensions

For a time extension, the licensee must provide **reasonable justification** for the delay. Furthermore, the request for time extension **must** be filed reasonably in advance of the deadline. Under Section 13 of the FPA, the Commission can grant a licensee only

one extension of time for a maximum of two years to commence construction of a new project. For other situations, such as completion of construction or compliance filings, the Commission may grant multiple extensions. However, the licensee must demonstrate that reasonable diligence was exercised in pursuing compliance filings, and that there is good cause for the time extensions.

Extensions of time for the start or completion of construction must be filed with the Commission at least 90 days prior to the dates previously prescribed by the Commission. For other types of extension requests, the licensee must submit the request in a timely manner before the date on which the information is due to the Commission. If the request for extension of time is made after the due date, the Commission may still grant the time extension, but the licensee must demonstrate that there were extraordinary circumstances sufficient to justify the failure to act in a timely manner. The licensee must also submit a motion requesting a waiver of the time requirement. The Commission may reject the time extension request if the motion requesting the waiver does not accompany the extension of time request.

Design, Operation, and Other Land Status Changes

Design changes, operational changes, and certain land status changes require a detailed application. The following section may be used as a guide for completing comprehensive license amendment applications. However, specific regulations at 18 CFR §4.201 should always be relied upon before submitting an application. **The best way to ensure that you are submitting the proper amendment information is to consult with the Commission staff in advance of the submittal.**

Comprehensive license amendment applications must contain an initial statement, certain specified exhibits, and in some cases, evidence of a new request for water quality certification. This certification is required if the amendment would have a material adverse impact on the water quality in the discharge from the project.

The first item required in the amendment application is an **initial statement** that provides:

- the name of the applicant,
- current business address and telephone number,
- applicant's status as a private citizen, corporation, municipality, etc.,
- project number of the licensed facility and the date the license was issued,

- a listing of the proposed amendment(s) and why it is being requested (list articles and/or conditions that may be affected), and
- the statutory or regulatory requirements of the state(s) in which the project is located with respect to (the river) bed and banks, and to the appropriation, diversion, and use of water for power purposes (also, what steps the applicant has taken or plans to take to comply with the above laws and regulations).

The licensee must provide new exhibits, revisions, or additions to exhibits on file that are affected by the proposed change. All filings should be completed under current regulations, unless the Commission staff instructs otherwise. For licenses with an Exhibit K, outdated maps should be revised as appropriate and resubmitted. For licenses with no Exhibit E (Environmental Report), the applicant should provide information pertinent to the proposed amendment. It is not necessary to prepare an entire Exhibit E for an amendment that affects only some of the resources listed in the Exhibit E regulations. The information contained in the exhibits should be commensurate with the scope of the licensed project and the proposed amendment. For example, proposing an enlarged upper reservoir or a significantly altered downstream flow regime would necessitate more analysis than a revision of project boundaries. The required exhibits will also depend upon the type of project being altered.

The Commission staff can help licensees determine which exhibits should be modified. For design, operational, and certain land status changes, Table 1 illustrates the exhibits typically included in an amendment application and the resources that are normally most affected. In preparing an amendment application, the licensee should discuss those resources that would be affected by the proposed modification and identify those resources which would not be affected. The importance of the resource should be described in terms of national, regional, or local importance. The degree of impact should be presented in the context of the surroundings.

The licensee should also describe the natural, historical, and scenic values of the reservoir and include a discussion of how the proposed changes would be consistent with the recreational uses of the project. Where adjacent landowners could be affected, the extent of the impacts to the landowners should be identified. All landowners likely to be affected by the proposed amendment should be notified of the proposal by certified-mail. The notification must describe the licensee's proposal, contain the licensee's name, business address, and telephone number, and include a copy of the Exhibit G included in the amendment application. The

Table 1. Exhibits and resource discussions typically included in noncapacity-related amendments.¹

Exhibit/Resource	DESIGN CHANGE					OPERATIONAL CHANGE			PROJECT LAND STATUS			
	Dam Height/ Flashboards	Afterbay	Transmission Line Route	Other Facility Relocation	Mitigation Enhancement Boat Ramp	Fish Ladder	Reservoir Water Level	Minimum Flow	Ramping Rate	Water Supply ⁴	Right- of-Way Easement	Recreation Facilities (Docks, Marinas)
Exhibit A Project Description	•	•	•	•	•	•						
Exhibit B Project Operation ²	•	•					•					
Exhibit C Proposed Construction Schedule ²	•	•	•	•	•	•						
Exhibit D Statement of Costs and Financing ²	•											
Exhibit E Environmental Report												
Water Use & Quality	•	•			•	•	•	•	•	•	•	•
Fish Resources	•	•				•	•	•	•	•	•	•
Wildlife & Botanical Resources	•		•	•			•		•	•		
Historic & Archaeological Resources	•		•	•			•		•	•		
Socioeconomic Impacts	•		•				•		•	•		
Geological & Soil Resources	•						•					
Recreational Resources	•				•		•	•	•	•		•
Aesthetic Resources ³	•	•	•	•		•	•		•	•		
Land Use ³	•	•	•	•		•	•		•	•		
Alternative Locations, Designs, and Energy Sources	•	•	•	•		•			•	•		
Exhibit F	•	•		•		•						
Exhibit G	•	•	•				•			•		

1 Applicable to Major Unconstructed or Major Modified Projects (18 CFR §4.41), Major Project-Existing Dam (18 CFR §4.51), Minor Water Power Project 5 MW or less (18 CFR §4.61).

2 Exhibits B, C, and D are not required for a minor project or major project 5 MW or less.

3 Aesthetic Resources and Land Use are combined in Land Management and Aesthetics in §4.51.

4 Greater than one million gallons per day.

notification must also state that an application to amend the license has been filed with the Commission and request comments on the proposal. Requests for comments on the proposal should allow a minimum of 30 days for property owner response.

For any proposed land or water use, the licensee should show that the proposed use is not inconsistent with any approved recreation plan. The amendment application should also discuss proposed changes in project operation or how project operation would be affected.

The amendment must also summarize consultations with the resource agencies and Indian tribes, propose reasonable mitigative or enhancement measures in response to effects from the proposed amendment, and respond to any objections, recommendations, or conditions submitted by the agencies or Indian tribes. Copies of all written correspondence between the licensee, the agencies, and the tribes must be attached to the application.

Exempted Project

The Commission requires similar information for exemption amendment applications for the following types of amendments: (1) capacity changes; (2) compliance filings; and (3) time extensions (refer to licensed projects above). The notable exceptions are for commencing and completing construction of a new project. Whereas a licensee can receive only one time extension, the Commission may grant exemptees more than one extension for a good cause. Generally, construction of exempt facilities should be completed within four years from the effective date of the exemption. However, the Commission may grant multiple extensions for completion of specific construction.

The following paragraph describes more detailed amendments of exemption for operational changes. However, regulations at 18 CFR §4.96 and §4.104 should always be relied on before submitting an application. The exemptee may also contact the Commission staff for advice in preparing exhibits.

An application for amendment to an exempted project follows the same format as the original exemption application. The primary difference is that the exemptee only needs to provide information for exhibits requiring revisions.

The application should start with an **introductory statement** that includes:

- the project number and name,
- the name of the applicant,

- the location of the project,
- business address of the applicant,
- names and business addresses of all the applicant's agents, and
- the applicant's status as a private citizen, corporation, municipality, etc.

In **Exhibit A**, the exemptee should describe proposed repairs or modifications planned for any dam, impoundment, conduit, or appurtenant facilities used by the project, the number and capacity of existing and proposed generating units, the type of each hydraulic turbine, the proposed powerplant operations (run-of-river or peaking), the estimated average annual electric generation, average and design head of the plant, hydraulic capacity of each turbine, size of any impoundment used for electric generation (at normal maximum elevation), and the dates for beginning and completing construction.

Exhibit B, a general location map of the project, should be revised to reflect changes to existing and proposed structure locations, or property ownership.

Exhibit E, the environmental report, should discuss expected environmental effects from any proposed changes to operation or construction of the project. Measures to protect and enhance affected environmental resources and values, mitigative measures for adverse project impacts, and any additional information deemed important by the applicant should be provided. The level of detail for the environmental report should match the scope of the project. Exhibit E should also include resource agency letters.

Exhibit G, drawings showing the structures and equipment, should be revised to reflect proposed modifications to the structures and project equipment.

CHAPTER 5

Questions and Answers



This chapter presents typical applicant concerns in the amendment process in the form of questions and answers. If you do not find answers to your specific questions contact the Commission staff.

A. General Guidelines

1. **Q: When is an amendment of a license or an exemption required?**

A: Fundamentally, the key element in determining the need for amending a license or exemption is whether the contemplated action is consistent with the authorizing documents. Amendments would be necessary in the following circumstances:

- change in installed capacity;
- change in project boundary;
- increase in height or size of the dam for project operation;
- change in the normal maximum surface area or elevation of an existing impoundment;
- addition of new turbines and generators;
- change in operation of the project;
- addition of new terms or conditions (or deletion of existing terms or conditions);
- construction of a dam or diversion structure where there is no existing dam or diversion;
- permanent change in the minimum instream flow (whether flow is for fish, wildlife, aesthetics, water quality, or other purposes);
- permanent change in ramping rates;
- changes in project design that require modifications to mitigation or enhancement measures (e.g., relocation of wetland, change in approach velocity at screens, change in multi-level intake structure for controlled water release temperatures, etc.);
- increase in the length of primary transmission line;

- changes to the uses of project lands and waters not covered by standard water and land use articles of the license;
- changes to licensed structures that are external to the powerhouse;
- compliance filings; and
- extensions of time.

In general, an amendment would not be required for the following:

- emergency situations;
- routine operations and maintenance activities;
- temporary or short-term activities;
- monitoring activities;
- administrative actions; and
- where standard license articles delegate authority to the licensee for certain actions, such as erosion control structures, and private docks and piers.

If the changes you are planning are not covered in the above answer, contact the Commission staff for assistance.

2. Q: Is a temporary alteration of the minimum instream flow considered an amendment?

A: Temporary deviations from license and exemption requirements are only permitted in emergency situations beyond the control of the licensee or exemptee. In some cases, minimum flow requirements in licenses and exemptions may provide for temporary modification of the flow requirement upon mutual agreement with specific resource agencies. Deviations from the flow requirement in the latter case should not exceed two weeks. Temporary deviations are not permitted for routine maintenance, even for short periods, unless specifically authorized in the license or exemption articles.

An exemptee should contact the resource agencies consulted during the original exemption process to determine the potential effects of proposed temporary deviations to minimum instream flows, and to identify necessary mitigative measures. The exemptee should then contact the Commission staff to determine if an amendment of the exemption is needed. If the Commission determines that an amendment is not required, it may issue a letter acknowledging the proposed temporary changes. If the changes

are not considered temporary, the Commission would require an amendment to the exemption.

A licensee should contact the resource agencies consulted during the licensing process to determine the potential effects of proposed temporary deviations to minimum instream flows, and to identify necessary mitigative measures. This contact may reduce the overall processing time. A licensee should then inform the Commission of the agency comments and recommendations and their responses to the mitigative measures so that the Commission can determine if an amendment application is required. If the Commission determines that an amendment application is not required, it may issue a letter acknowledging the alteration of flows if agency recommendations are accepted by the licensee. If the Commission determines that the proposed temporary changes are not brief, or if the licensee does not agree with agency recommendations, the Commission will require an amendment application.

3. Q: When should a licensee or exemptee contact the Commission if the licensee or exemptee is contemplating a modification to a facility that would require an amendment?

A: A licensee may contact the Commission staff at any time for information or clarification of regulations. An exemptee should contact the appropriate Federal and state fish and wildlife agencies as an initial source of consultation when considering amendments. The exemptee should contact the Commission after consultation with the fish and wildlife agencies.

4. Q: What happens if changes are made to a project without going through the amendment process?

A: As part of its responsibilities, the Commission is charged with ensuring that each project is constructed and operated as authorized in the license or exemption order. In a case where a project has been improperly altered, or unauthorized construction or operation has taken place, the Commission's immediate objective would be to bring the project back into compliance. Depending on the nature of the noncompliance, however, the Commission may review the violation for possible civil penalty action under Section 31 of the FPA.

B. Capacity-related Items

1. Q: What is nameplate capacity and what is project-installed capacity?

A: The Commission defines the nameplate capacity of a generating unit as the manufacturer's rating of the generator as printed on the unit. If the generator unit is modified, the generator nameplate should be changed accordingly. The project-installed capacity is defined as the sum of the nameplate capacity of all the units in the project.

2. Q: What is the hydraulic capacity of a project?

A: The hydraulic capacity of a project is defined as the maximum water flow rate that can be discharged simultaneously through the project turbines for generation at any time.

3. Q: Does the Commission consider all capacity changes to licensed projects equally, or is there a threshold below which changes are considered minor?

A: The Commission considers changes to installed capacity of licensed projects differently based on the magnitude of the changes. If the proposed change involves additional capacity not previously authorized, and (1) would increase the actual or proposed total installed capacity of the project; (2) would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more; and (3) would result in an increase in the installed nameplate capacity of 2 MW or more, then the Commission requires a capacity-related amendment (refer to §4.201(b) of the Commission's regulations). For changes to installed capacity that are less than any one of the above threshold limits, the Commission does not require a capacity-related amendment application. The licensee must still consult with the agencies to ensure that the proposed amendment does not significantly affect the project as authorized. The licensee should notify the Commission staff of all changes to the authorized installed capacity. For additional information, refer to Commission Order 533, 55 FERC ¶61,193, May 8, 1991.

4. Q: Does the Commission consider all capacity changes to exempted projects as major changes or is there a threshold below which capacity changes are considered minor?

A: The Commission does not consider capacity changes to exempted projects as minor or major. The Commission considers all changes to exempted projects, not just capacity changes, in the same manner. The exemptee should contact the appropriate Federal and state fish and wildlife agencies as the first step in amending its exemption (see Figure 2, Chapter 3).

5. Q: What should a licensee or exemptee do if the number of units making up the authorized plant capacity is different from that licensed because of design or procurement changes that are made after the facility is licensed or exempted?

A: If the hydraulic capacity and the operating regime of the proposed plant would not be different from the authorized capacity and authorized operating regime, a letter application should be filed with the Commission as soon as the design or procurement decision is made notifying the Commission of the change in the number of units. Design drawings and as-built drawings of the facility will provide adequate records of the actual facility construction.

6. Q: What must the licensee or exemptee do if the installed capacity is different from the authorized capacity at an existing plant or at an unconstructed facility?

A: In both cases, the licensee or exemptee should write to the Commission describing the differences in the installed and authorized capacity and explain what caused the differences.

7. Q: What should a licensee or exemptee do if the plant cannot generate at the installed capacity due to site conditions (i.e., the maximum plant generation is always less than the plant installed capacity)?

A: A licensee should submit a letter amendment application providing the original and any revised design criteria, equipment performance data, and other pertinent factors. A detailed explanation justifying a reduction in the authorized capacity should be provided. A licensee may realize small savings in the annual capacity charges assessed by the Commission as a result of such adjustments.

An exemptee may choose to simply notify the Commission in a letter explaining the situation and request a change in the authorized capacity for record purposes.

8. Q: What happens if an amendment to an exempted project (5 MW or less exemption) would cause the installed capacity to exceed 5 MW? What happens if an amendment would cause the installed capacity of an exempted small conduit hydroelectric project to exceed 15 MW?

A: In both cases, the project would no longer be eligible for exemption from Part I of the FPA. Instead of filing an amendment application, the exemptee should file an application for original license. If the facility becomes licensed, the Commission would terminate the exemption for the project. (Refer to 18 CFR Part 4 §4.41, §4.51, or §4.61 and the *Hydroelectric Project Licensing Handbook* for filing a license application.)

9. Q. What are the implications of changing a minor project to a major project?

A. A project is considered minor if its capacity is less than 1.5 MW. If a proposed amendment would cause the capacity to exceed 1.5 MW, the project would become a major project, under the Commission definitions, and would be subject to a new set of standard and nonstandard terms and conditions. If this situation arises, the licensee should immediately consult with the Commission staff to discuss the ramifications of the changes.

C. Operation and Design Changes

1. Q: Is it true that any change from the authorized operation or design would require an amendment?

A: Yes. All changes to project operation or design specifically authorized in a license require an amendment. The licensee should contact the resource agencies and the Commission staff regarding potential effects due to proposed changes. If the changes from the authorized operation and design would have insignificant, neutral, or even beneficial impacts, the Commission may require a letter amendment application and a summary of the consultation.

Change from the authorized operation or design for an exemption may or may not require an amendment. An amendment of the exemption is required if either one or both of the following conditions apply: (1) after review of the changes by the appropriate Federal and state fish and wildlife agencies, any of the agencies determine that the proposed changes would cause a violation of the terms and conditions originally imposed on the exempted

project; or (2) the changes would materially alter the design, location, method of construction, or operation of the project. An amendment of the exemption is not required if both of the following conditions apply: (1) the appropriate Federal and state fish and wildlife agencies determine that the changes would not cause the project to violate the terms and conditions originally imposed by the agencies; and (2) the changes would not materially alter the design, location, method of construction, or operation of the project.

D. Land and Water Use Rights

1. Q: Is an amendment application required for every change in land and water uses and rights, project boundary, or change in project ownership?

A: No. In 1980, the Commission decided to ease the administrative burden on licensees and Commission staff by incorporating a standard license article that permits licensees to approve certain changes to land and water uses and rights, including easements, rights-of-way, erosion protection, water supply facilities, private docks and piers, and public marinas with less than 10 boat slips. However, the licensee must notify the Commission of the changes in an annual report. For project boundary changes, an amendment application is always required. When there is a change in project ownership, a licensee must file a transfer application.

E. Extension of Time

1. Q: Does the Commission consider all requests for extension of start or completion of construction as an amendment? If so, what details are required in an application?

A: Every request for time extension for start or completion of construction is considered an amendment. However, the Commission requires only a letter request as an application for time extension. The letter should include an explanation for the time extension. Extensions of time for the start or completion of construction must be filed at least 90 days before the proposed dates. In evaluating such requests, the Commission uses the following guidelines:

- start of project construction is considered as the earlier of the start of civil construction (ground breaking ceremony does not qualify as start of construction) or the ordering and start of fabrication of generating equipment if manufacture of the new

turbine and generator is the critical activity for the project. In either case, the Commission considers firm contracts and exchange of significant sums of monies as key parameters to define the start date of construction (refer to Commission Orders 3512 of February 21, 1989, and 3228 of September 17, 1987).

- the Commission performs a due-diligence review of the actual progress of construction to evaluate requests for extending project completion.

2. Q: How many time extensions are permitted for the start of construction for a licensed or exempted project? What is the maximum time extension a licensee/exemptee can get?

A: The Commission will grant only one extension of time for start of construction for a licensed project. The maximum period of extension of construction start is two years. The Commission recommends that any request for time extension be for a two-year period since an extension for one year, for example, cannot be extended later to a second year.

For an exempted project, the Commission may grant more than one extension if the exemptee shows good cause. However, the Commission may revoke the exemption if construction has not begun within two years.

E. Procedural Matters

1. Q: What is the fastest way to get a response to an amendment application from the Commission?

A: The Commission processes over 1,000 amendment applications per year. Those initially received in complete form get the fastest response. To ensure a complete application, read your license or exemption, read the regulations, and consult with the resource agencies and Commission staff when preparing the application.

2. Q: For a noncapacity-related amendment, what information should be provided to resource agencies and Indian tribes as part of agency consultation, when consultation is necessary?

A: For amendments to an existing license that would not increase the capacity of the project as defined in 18 CFR §4.201(b), but that would involve one of the changes specified in 18 CFR §4.38(a)(4), the applicant must provide the resource agencies and Indian tribes

with the information specified in 18 CFR §4.38(b)(1). These project changes are: (a) the construction of a new dam or diversion in a location where there is no existing dam or diversion; (b) any repair, modification, or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or elevation of an existing impoundment; or (c) the addition of new water power turbines other than to replace existing turbines. The applicant should contact the Commission staff for guidance in determining if its proposed amendment involves one of these three changes.

For all other amendments that would not increase the capacity of the project as defined in 18 CFR §4.201(b), the applicant must at a minimum, when consultation is necessary, provide the resource agencies and Indian tribes with copies of the draft application as required in 18 CFR §4.38(a)(5). The draft application should contain the information described in Chapter 4 of this guide.

3. Q: How much time is allotted for the resource agencies and Indian tribes to review consultation information submitted by an applicant?

A: For amendments to an existing license that would not increase the capacity of the project as defined in 18 CFR §4.201(b), but that would involve one of the changes specified in 18 CFR §4.38(a)(4), the licensee must follow the time requirements and procedures described in 18 CFR §§4.38(b)(2) through (6) for the resource agencies and Indian tribes to review consultation information submitted by an applicant. For all other amendments that would not increase the capacity of the project as defined in 18 CFR §4.201(b), the applicant must allow the resource agencies and Indian tribes 60 days to comment on the proposed amendment, as required in 18 CFR §4.38(a)(5).

4. Q: What should a licensee or exemptee do if a resource agency requests a study that is not relevant to the proposed amendment?

A: If a resource agency requests a study for an amendment to a license or exemption that the licensee or exemptee believes is not relevant to the proposed amendment, the licensee or exemptee should follow one of two procedures depending on the nature of the amendment. For amendments to an existing license that would not increase the capacity of the project as defined in 18 CFR §4.201(b) but that would involve one of the changes specified in 18 CFR §4.38(a)(4), the licensee must follow the dispute resolution procedures in 18 CFR §4.38(b)(5).

For amendments to an existing license that would not increase the capacity of the project as defined in 18 CFR §4.201(b) and that would not involve one of the changes specified in 18 CFR §4.38(a)(4), and amendments to exemptions, the licensee or exemptee should request the resource agency to provide the basis for the study request. The agency should explain how the information requested would be used in proposing reasonable protection, mitigation, or enhancement measures in response to impacts caused by the proposed amendment. If the licensee or exemptee still disagrees with the study, the licensee or exemptee should ask the Commission to resolve the problem.

5. Q: How much detail is required in the amendment application exhibits?

A: The level of detail required in the application exhibits should be commensurate with the scope of the project amendment. If a change is relatively minor in nature, the exhibits may be brief and to the point. If the proposed changes are large scale, the exhibits must be more comprehensive to ensure that the proposed changes are fully understood. The applicant, however, is usually not required to prepare a new set of exhibits for the application; revisions to exhibits on file with the Commission would be acceptable, provided the revised exhibits contain sufficient information to fully describe the changes to the project and its environment. You should refer to 18 CFR Part 4 and Chapter 4 of this guide, and then contact the Commission staff to discuss details.

6. Q: When will a project amendment require public notice?

A: The Commission issues a public notice of the proposed amendment if it determines that the amendment entails substantial changes on the plan of project development or in the terms and conditions of the license, or adversely affects the rights of property holders in a manner not contemplated by the license. The public notice is intended to inform persons and agencies who may be interested or affected by the proposed changes, and to provide them with an opportunity to present information to the Commission.

7. Q: If the Commission determines that a public notice is necessary, when is the public notice issued?

A: A public notice is issued after an amendment application is accepted by the Commission for filing, even if an additional information request to the applicant is outstanding.

When a public notice is issued, a minimum of 30 calendar days is provided for any response to the notice.

8. Q: Does the Commission require a revised water quality certificate as part of a license amendment?

A: A revised water quality certificate is only required if the proposed amendment would have a material adverse impact on water quality.

G. Other Questions

1. Q: How often are water projects inspected by the Commission?

A: Project inspection schedules depend on the hazard potential of the project dam. Typically, projects are inspected monthly during construction, annually for licensed and exempted facilities that are classified as having high or significant hazard potential, and once every 2 to 3 years for licensed or exempted projects that are classified as having low hazard potential. If the Commission believes that infractions have taken place at any of its projects, the Commission staff may immediately inspect the facility. For projects that experience recurrent compliance problems, a comprehensive compliance audit may be conducted.

2. Q: What is a compliance audit?

A: A compliance audit by the Commission's Office of Hydropower Licensing, Division of Project Compliance and Administration (DPCA), entails a multidisciplinary team visiting project sites to observe, monitor, and report on licensee and exemptee compliance with Commission orders, rules, and regulations, and with applicable statutes. The compliance audit team would also help licensees and exemptees achieve and maintain compliance, and understand the requirements of their licenses and exemptions.

Teams may consist of hydropower compliance specialists, fishery and wildlife biologists, civil engineers, environmental protection specialists, recreation specialists, and other members of DPCA staff chosen to best evaluate a particular project.

APPENDIX

Regulations Governing Amendments of Licensed and Exempted Facilities

TABLE OF CONTENTS

Topic	Page
Subpart D - Application for Preliminary Permit, License, or Exemption: General Provisions	
§4.38 Consultation requirements	41
Subpart J - Exemption of Small Conduit Hydroelectric Facilities	
§4.92 Contents of exemption application	47
§4.96 Amendment of exemption	49
Subpart K - Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less	
§4.104 Amendment of exemption	50
§4.107 Contents of application for exemption from licensing	50
Subpart L - Application for Amendment of License	
§4.200 Applicability	52
§4.201 Contents of application	52
§4.202 Alteration and extension of license	53

Subpart D—Application for Preliminary Permit, License or Exemption: General Provisions

[Order 533, 56 FR 23108, May 20, 1991; 56 FR 61137, Dec. 2, 1991.]

§ 4.38 Consultation requirements.

(a) Requirement to consult.

(1) Before it files any application for an original license or an exemption from licensing that is described in paragraph (a)(4) of this section, a potential applicant must consult with the relevant Federal, state, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands or facilities utilized or occupied by the project, the appropriate state fish and wildlife agencies, the appropriate state water resource management agencies, the certifying agency under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1341(c)(1), and any Indian tribe that may be affected by the proposed project.

(2) The Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies and Indian tribes.

(3) An applicant for an exemption from licensing or an applicant for a license seeking benefits under section 210 of the Public Utility Regulatory Policies Act, as amended, for a project that would be located at a new dam or diversion must, in addition to meeting the requirements of this section, comply with the consultation requirements in § 4.301.

(4) The pre-filing consultation requirements of this section apply only to an application for:

- (i) Original license;
- (ii) Exemption;
- (iii) Amendment to an application for original license or exemption that materially amends the proposed plans of development as defined in § 4.35(f)(1);

(iv) Amendment to an existing license that would increase the capacity of the project as defined in § 4.201(b); or

(v) Amendment to an existing license that would not increase the capacity of the project as defined in § 4.201(b), but that would involve:

(A) The construction of a new dam or diversion in a location where there is no existing dam or diversion;

(B) Any repair, modification, or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or elevation of an existing impoundment; or

(C) The addition of new water power turbines other than to replace existing turbines.

(5) Before it files a non-capacity related amendment as defined in § 4.201(c), an applicant must consult with the resource agencies and Indian tribes listed in paragraph (a)(1) of this section to the extent that the proposed amendment would affect the interests of the agencies or tribes. When consultation is necessary, the applicant must, at a minimum, provide the resource agencies and Indian tribes with copies of the draft application and allow them at least 60 days to comment on the proposed amendment. The amendment as filed with the Commission must summarize the consultation with the resource agencies and Indian tribes on the proposed amendment, propose reasonable protection, mitigation, or enhancement measures to respond to impacts identified as being caused by the proposed amendment, and respond to any objections, recommendations, or conditions submitted by the agencies or Indian tribes. Copies of all written correspondence between the applicant, the agencies, and the tribes must be attached to the application.

(6) This section does not apply to any application for a new license, a nonpower license, a subsequent license, or surrender of a license subject to sections 14 and 15 of the Federal Power Act.

(7) If a potential applicant has any doubt as to whether a particular application or amendment would be subject to the pre-filing consultation requirements of this section or if a waiver of the pre-filing requirements would be appropriate,

the applicant may file a written request for clarification or waiver with the Director, Office of Hydropower Licensing.

(b) *First stage of consultation.*

(1) A potential applicant must promptly contact each of the appropriate resource agencies and affected Indian tribes; provide them with a description of the proposed project and supporting information; and confer with them on project design, the impact of the proposed project (including a description of any existing facilities, their operation, and any proposed changes), reasonable hydropower alternatives, and what studies the applicant should conduct. The potential applicant must provide to the resource agencies, Indian tribes, and the Commission the following information:

(i) Detailed maps showing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the proposed project, with a description of any proposed diversion of a stream through a canal or a penstock;

(iii) A summary of the proposed operational mode of the project;

(iv) Identification of the environment to be affected, the significant resources present, and the applicant's proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi)(A) A statement (with a copy to the Commission) of whether or not the applicant will seek benefits under section 210 of PURPA by satisfy-

ing the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter;

(B) If benefits under section 210 of PURPA are sought, a statement on whether or not the applicant believes the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter) and a request for the agencies' view on that belief, if any;

(vii) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(viii) Any statement required by § 4.301(a).

(2) No earlier than 30 days, but no later than 60 days, from the date of the potential applicant's letter transmitting the information to the agencies and Indian tribes under paragraph (b)(1), the potential applicant must:

(i) Hold a joint meeting at a convenient place and time, including an opportunity for a site visit, with all pertinent agencies and Indian tribes to explain the applicant's proposal and its potential environmental impact, to review the information provided, and to discuss the data to be obtained and studies to be conducted by the potential applicant as part of the consultation process;

(ii) Consult with the resource agencies and Indian tribes on the scheduling and agenda of the joint meeting; and

(iii) No later than 15 days in advance of the joint meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(3) Members of the public must be informed of and invited to attend the joint meeting held pursuant to paragraph (b)(2)(i) of this section by means of the public notice published in accordance with paragraph (g) of this section. Members of the public attending the meeting are entitled to participate in the meeting and to express their views regarding resource issues that should be addressed in any application for license or exemption that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(2)(i) will be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meet-

ing, and must promptly provide copies of these recordings or transcripts to the Commission and, upon request, to any resource agency and Indian tribe.

(4) Not later than 60 days after the joint meeting held under paragraph (b)(2) of this section (unless extended within this time period by a resource agency or Indian tribe for an additional 60 days by sending written notice to the applicant and the Director of OHL within the first 60 day period, with an explanation of the basis for the extension), each interested resource agency and Indian tribe must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals and objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(1)(vii) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency or Indian tribe in furthering its resource goals and objectives that are affected by the proposed project.

(5)(i) If a potential applicant and a resource agency or Indian tribe disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency or Indian tribe may refer the dispute in writing to the Director of the Office of Hydropower Licensing (Director) for resolution.

(ii) At the same time as the request for dispute resolution is submitted to the Director, the entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party and any affected resource agency or Indian tribe, which may submit to the Director a written

response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(5)(i) or (b)(5)(ii) must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director pursuant to § 4.38(b)(5).

(iv) The Director will resolve disputes by letter provided to the potential applicant and all affected resource agencies and Indian tribes.

(v) If a potential applicant does not refer a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(1) or a study to the Director under paragraph (b)(5)(i), or if a potential applicant disagrees with the Director's resolution of a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(1)) or a study, and if the potential applicant does not provide the requested information or conduct the requested study, the potential applicant must fully explain the basis for its disagreement in its application.

(vi) Filing and acceptance of an application will not be delayed, and an application will not be considered deficient or patently deficient pursuant to §§ 4.32(e)(1) or (e)(2) of this chapter, merely because the application does not include a particular study or particular information if the Director had previously found, under paragraph (b)(5)(iv), that such study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the application or use of the study methodology requested is not a generally accepted practice.

(6) The first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(4) of this section or 60 days after the joint meeting held under paragraph (b)(2), whichever occurs first, unless a resource agency or Indian tribe timely notifies the applicant and the Director of OHL of its need for more time to provide written comments under paragraph (b)(4) of this section, in which case the first stage of consultation ends when all the participating agencies and Indian tribes provide the written comments required under paragraph (b)(4) or 120

days after the joint meeting held under paragraph (b)(2), whichever occurs first.

(c) *Second stage of consultation.*

(1) Unless determined to be unnecessary by the Director pursuant to paragraph (b)(5) of this section, a potential applicant must diligently conduct all reasonable studies and obtain all reasonable information requested by resource agencies and Indian tribes under paragraph (b) of this section that are necessary for the Commission to make an informed decision regarding the merits of the application. These studies must be completed and the information obtained:

(i) Prior to filing the application, if the results:

(A) Would influence the financial (e.g., instream flow study) or technical feasibility of the project (e.g., study of potential mass soil movement); or

(B) Are needed to determine the design or location of project features, reasonable alternatives to the project, the impact of the project on important natural or cultural resources (e.g., resource surveys), or suitable mitigation or enhancement measures, or to minimize impact on significant resources (e.g., wild and scenic river, anadromous fish, endangered species, caribou migration routes);

(ii) After filing the application but before issuance of a license or exemption, if the applicant otherwise complied with the provisions of paragraph (b)(1) of this section and the study or information gathering would take longer to conduct and evaluate than the time between the conclusion of the first stage of consultation and the expiration of the applicant's preliminary permit or the application filing deadline set by the Commission;

(iii) After a new license or exemption is issued, if the studies can be conducted or the information obtained only after construction or operation of proposed facilities, would determine the success of protection, mitigation, or enhancement measures (e.g., post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(6) of this section, a resource agency or Indian tribe requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis and reasoning for its request,

under paragraphs (b)(4)(i)-(vi), the potential applicant must promptly initiate the study or gather the information, unless the study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the application or use of the methodology requested by a resource agency or Indian tribe for conducting the study is not a generally accepted practice. The applicant may refer any such request to the Director of the Office of Hydropower Licensing for dispute resolution under the procedures set forth in paragraph (b)(5) and need not conduct prior to filing any study determined by the Director to be unreasonable or unnecessary or to employ a methodology that is not generally accepted.

(3)(i) The results of studies and information-gathering referenced in paragraphs (c)(1)(ii) and (c)(2) of this section will be treated as additional information; and

(ii) Filing and acceptance of an application will not be delayed and an application will not be considered deficient or patently deficient pursuant to § 4.32(e)(1) or (e)(2) merely because the study or information gathering is not complete before the application is filed.

(4) A potential applicant must provide each resource agency and Indian tribe with:

(i) A copy of its draft application that:

(A) Indicates the type of application the potential applicant expects to file with the Commission; and

(B) Responds to any comment; and recommendations made by any resource agency and Indian tribe either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information-gathering either requested by that resource agency or Indian tribe in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertain to resources of interest to that resource agency or Indian tribe and which were identified by the potential applicant pursuant to paragraph (b)(1)(vii) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measures; and

(iii) A written request for review and comment.

(5) A resource agency or Indian tribe will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) informa-

tion to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4).

(6) If the written comments provided under paragraph (c)(5) of this section indicate that a resource agency or Indian tribe has a substantive disagreement with a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold a joint meeting with the disagreeing resource agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the written comments of the disagreeing agency or Indian tribe to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures;

(ii) Consult with the disagreeing agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility on the scheduling of the joint meeting; and

(iii) At least 15 days in advance of the meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(7) The potential applicant and any disagreeing resource agency or Indian tribe may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency or Indian tribe on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency or Indian tribe, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraph (c)(4) of this section and no resource agency or Indian tribe has responded with substantive disagreements by the deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section and a resource agency or Indian tribe has responded with substantive disagreements.

(10) The second stage of consultation ends:

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency or Indian tribe has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in cases where a resource agency or Indian tribe has responded with substantive disagreements.

(d) *Third stage of consultation.*

(i) The third stage of consultation is initiated by the filing of an application for a license or exemption, accompanied by a transmittal letter certifying that at the same time copies of the application are being mailed to the resource agencies, Indian tribes, and other government offices specified in paragraph (d)(2) of this section.

(2) As soon as an applicant files such application documents with the Commission, or promptly after receipt in the case of documents described in paragraph (d)(2)(iii) of this section, as the Commission may direct the applicant must serve on every resource agency and Indian tribe consulted and on other government offices copies of:

(i) Its application for a license or an exemption from licensing;

(ii) Any deficiency correction, revision, supplement, response to additional information request, or amendment to the application; and

(iii) Any written correspondence from the Commission requesting the correction of deficiencies or the submittal of additional information.

(e) *Waiver of compliance with consultation requirements.*

(i) If a resource agency or Indian tribe waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency or tribe.

(2) If a resource agency or Indian tribe fails to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency or Indian tribe to comply.

(3) The failure of a resource agency or Indian tribe to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(f) *Application requirements documenting consultation and any disagreements with resource agencies.*

An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) and paragraphs (g) and (h) of this section, and must include a summary of the consultation process and:

(1) Any resource agency's or Indian tribe's letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreement with a resource agency or Indian tribe on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement, and

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency or Indian tribe;

(4) Evidence of any waivers under paragraph (e) of this section;

(5) Evidence of all attempts to consult with a resource agency or Indian tribe, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation;

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan;

(7)(i) With regard to certification requirements for a license applicant under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act):

(A) A copy of the water quality certification;

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(C) Evidence of waiver of water quality certification as described in paragraph (f)(7)(ii) of this section.

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(iii) Notwithstanding any other provision in Title 18, Chapter I, Subpart B, any application to amend an existing license, and any amendment to a pending application for a license, requires a new request for water quality certification pursuant to paragraph (f)(7)(i) of this section if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

(8) A description of how the applicant's proposal addresses the significant resource issues raised at the joint meeting held pursuant to paragraph (b)(2) of this section; and

(9) A list containing the name and address of every federal, state, and interstate resource agency and Indian tribe with which the applicant consulted pursuant to paragraph (a)(1) of this section.

(g) *Public Participation.*

(1) At least 14 days in advance of the joint meeting held pursuant to paragraph (b)(2) of this section, the potential applicant must publish notice, at least once, of the purpose, location, and timing of the joint meeting, in a daily or weekly newspaper published in each county in which the proposed project or any part thereof is situated. The notice shall include a summary of the major issues to be discussed at the joint meeting.

(2)(i) A potential applicant must make available to the public for inspection and reproduction the information specified in paragraph (b)(1) of this section from the date on which the notice required by paragraph (g)(1) of this section is first published until the date of the joint meeting required by paragraph (b)(2) of this section.

(ii) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(iii) A potential applicant must make available to the public for inspection at the joint meeting required by paragraph (b)(2) at least two copies of the information specified in paragraph (b)(1) of this section.

(h) *Transition Provisions.*

(1) The provisions of this section are not applicable to applications filed before June 19, 1991.

(2) The provisions of paragraphs (a) and (b) of this section are not applicable to potential applicants that complied with the provisions of paragraphs (a) and (b)(1) of this section prior to June 19, 1991.

(3) The provisions of paragraph (c) of this section are not applicable to potential applicants that complied with the provisions of paragraph (b)(2) of this section prior to June 19, 1991.

(4)(i) Any applicant that files its application on or after June 19, 1991 and that complied with the provisions of paragraphs (a) and (b)(1) of this section prior to June 19, 1991 must hold a public meeting, within 90 days from June 19, 1991, at or near the site of the proposed project, to generally explain the potential applicant's proposal for the site and to obtain the views of the public regarding resource issues that should be addressed in any application for license or exemption that may be filed by the potential applicant. The public meeting must include both day and evening sessions, and the potential applicant must make either audio recordings or written transcripts of both sessions.

(ii)(A) At least 15 days in advance of the meeting, the potential applicant must provide all affected resource agencies, Indian tribes, and the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(B) At least 14 days in advance of the meeting, the potential applicant must publish notice, at least once, of the purpose, location, and timing of the meeting, in a daily or weekly newspaper published in each county in which the proposed project or any part thereof is situated.

(iii)(A) A potential applicant must make available to the public for inspection and reproduction information comparable to that specified in paragraph (b)(1) from the date on which the

notice required by paragraph (h)(4)(ii) is first published until the date of the public meeting required by paragraph (h)(4)(i) of this section.

(B) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(C) A potential applicant must make available to the public for inspection at both sessions of the public meeting required by paragraph (h)(4)(i) at least two copies of the information specified in paragraph (h)(4)(iii)(A) of this section.

(D) A potential applicant must promptly provide copies of the audio recordings or written transcripts of the sessions of the public meeting to the Commission and, upon request, to any resource agency or Indian tribe consulted.

(iv) Any applicant holding a public meeting pursuant to paragraph (h)(4)(i) of this section must include in its filed application a description of how the applicant's proposal addresses the significant resource issues raised during the public meeting.

Subpart J—Exemption of Small Conduit Hydroelectric Facilities

§4.92 Contents of exemption application.

(a) An application for exemption for this subpart must include:

(1) An introductory statement, including a declaration that the facility for which application is made meets the requirements of § 4.30(b)(28), the facility qualifies but for the discharge requirement of § 4.30(b)(28)(v), the introductory statement must identify that fact and state that the application is accompanied by a petition for waiver of § 4.30(b)(28)(v), filed pursuant to § 385.207 of this chapter;

(2) Exhibits A, B, E, and G;

(3) An appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.31(b); and

(4) Identification of all Indian tribes that may be affected by the project.

(b) *Introductory Statement.* The introductory statement must be set forth in the following format:

BEFORE THE FEDERAL ENERGY REGULATORY
COMMISSION

*Application for Exemption for Small Conduit
Hydroelectric Facility*

[Name of applicant] applies to the Federal Energy Regulatory Commission for an exemption for the [name of facility], a small conduit hydroelectric facility that meets the requirements of [insert the following language, as appropriate: "§4.30(b)(28) of this subpart" or "§4.30(b)(28) of this subpart, except paragraph (b)(28)(v)"], from certain provisions of Part I of the Federal Power Act.

The location of the facility is:

State or Territory: _____

County: _____

Township or nearby town: _____

The exact name and business address of each applicant is: _____

The exact name and business address of each person authorized to act as agent for the applicant in this application is: _____

[Name of applicant] is [a citizen of the United States, an association of citizens of the United States, a municipality, State, or a corporation incorporated under the laws of (specify the United States or the state of incorporation, as appropriate), as appropriate].

The provisions of Part I of the Federal Power Act for which exemption is requested are:

[List here all sections or subsections for which exemption is requested.]

[If the facility does not meet the requirement of § 4.30(b)(28)(v), add the following sentence: "This application is accompanied by a petition for waiver of § 4.30(b)(28)(v), submitted pursuant to 18 CFR 385.207."]

(c) *Exhibit A.* Exhibit A must describe the small conduit hydroelectric facility and proposed mode of operation with appropriate references to Exhibits B and G. To the extent feasible the information in this exhibit may be submitted in tabular form. The following information must be included:

(1) A brief description of any conduits and associated consumptive water supply facilities, intake facilities, powerhouses, and any other structures associated with the facility.

(2) The proximate natural sources of water that supply the related conduit.

(3) The purposes for which the conduit is used.

(4) The number of generating units, including auxiliary units, the capacity of each unit, and provisions, if any, for future units.

(5) The type of each hydraulic turbine.

(6) A description of how the plant is to be operated, manually or automatically, and whether the plant is to be used for peaking.

(7) Estimations of:

(i) The average annual generation in kilowatt hours;

(ii) The average head of the plant;

(iii) The hydraulic capacity of the plant (flow through the plant) in cubic feet per second;

(iv) The average flow of the conduit at the plant or point of diversion (using best available data and explaining the sources of the data and the method of calculation); and

(v) The average amount of the flow described in paragraph (c)(7)(iv) of this section available for power generation.

(8) The planned date for beginning construction of the facility.

(9) If the hydroelectric facility discharges directly into a natural body of water and a petition for waiver of § 4.30(b)(28)(v) has not been submitted, evidence that a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located.

(10) If the hydroelectric facility discharges directly to a point of agricultural, municipal, or industrial consumption, a description of the nature and location of that point of consumption.

(11) A description of the nature and extent of any construction of a dam that would occur in association with construction of the proposed small conduit hydroelectric facility, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after that construction; and any evidence that the construction would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

(d) *Exhibit B.* Exhibit B is a general location map that must show the following information:

(1) The physical structures of the small conduit hydroelectric facility in relation to the conduit and any dam to which any of these structures is attached;

(2) A proposed project boundary enclosing all project works to be exempted from licensing; and

(3) The ownership of the parcels of land within the proposed boundary for the small conduit hydroelectric facility.

(e) *Exhibit E.* This exhibit is an Environmental Report. It must be prepared pursuant to § 4.38 and must include the following information, commensurate with the scope and environmental impact of the facility's construction and operation:

(1) A description of the environmental setting in the vicinity of the facility, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational use, socio-economic conditions, historical and archeological resources, and visual resources. The report must give special attention to endangered or threatened plant and animal species, critical habitats, and sites eligible for or included on the National Register of Historic Places. The applicant may obtain assistance in the preparation of this information from State natural resources agencies, the State historic preservation officer, and from local offices of Federal natural resources agencies.

(2) A description of the expected environmental impacts resulting from the continued operation of an existing small conduit hydroelectric facility, or from the construction and operation of a proposed small conduit hydroelectric facility, including a discussion of the specific measures proposed by the applicant and others to protect and enhance environmental resources and to mitigate adverse impacts of the facility on them.

(3) A description of alternative means of obtaining an amount of power equivalent to that provided by the proposed or existing facility.

(4) Any additional information the applicant considers important.

(f) *Exhibit G.* Exhibit G is a set of drawings showing the structures and equipment of the small conduit hydroelectric facility. The drawings must include plan, elevation, profile, section views of the power plant, and any other principal facility structure and of any dam to which a facility structure is attached. Each drawing must be an ink drawing or a drawing of similar quality on a sheet no smaller than eight and one-half inches by

eleven inches, with a scale no smaller than one inch equals 50 feet for plans and profiles and one inch equals 10 feet for sections. Generating and auxiliary equipment must be clearly and simply depicted and described. For purposes of this subpart, these drawing specifications replace those required in § 4.39 of the Commission's regulations.

[Order 76, 45 FR 28090, Apr. 28, 1980, as amended by Order 413, 50 FR 11686, Mar. 25, 1985]

§ 4.96 Amendment of exemption.

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate.

(b) If an exemption holder desires to change the design, location, method of construction, or operation of its project, it must first notify the appropriate Federal and state fish and wildlife agencies and inform them in writing of the changes it intends to implement. If these agencies determine that the changes would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction or operation of the project, the exemption holder may implement the changes. If any of these agencies determines that the changes would cause the project to violate the terms and conditions imposed by the agencies, or if the changes would materially alter the design, location, method of construction, or the operation of the project works, the exemption holder may not implement the changes without first acquiring authorization from the Commission to amend its exemption, or acquiring a license that authorizes the project, as changed.

(c) An application to amend an exemption may be filed only by the holder of the exemption. An application to amend an exemption will be governed by the Commission's regulations governing applications for exemption. The Commission will not accept applications in competition with an application to amend an exemption, unless the Director of the Office of Hydropower Licensing determines that it is in the public interest to do so.

[Order 413, 50 FR 11687, Mar. 25, 1985]

Subpart K—Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less

§ 4.104 Amendment of exemption.

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate.

(b) If an exemption holder desires to change the design, location, method of construction, or operation of its project, it must first notify the appropriate Federal and state fish and wildlife agencies and inform them in writing of the changes it intends to implement. If these agencies determine that the changes would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction, or operation of the project, the exemption holder may implement the changes. If any of these agencies determines that the changes would cause the project to violate the terms and conditions imposed by that agency, or if the changes would materially alter the design, location, method of construction, or operation of the project works, the exemption holder may not implement the changes without first acquiring authorization from the Commission to amend its exemption or acquiring a license for the project works that authorizes the project, as changed.

(c) An application to amend an exemption may be filed only by the holder of an exemption. An application to amend an exemption will be governed by the Commission's regulations governing applications for exemption. The Commission will not accept applications in competition with an application to amend an exemption, unless the Director of the Office of Hydropower Licensing determines that it is in the public interest to do so.

[Order 413, 50 FR 11688, Mar. 25, 1985]

§ 4.107 Contents of application for exemption from licensing.

(a) *General requirements.* An application for exemption from licensing submitted under this subpart must contain the introductory statement, the exhibits described in this section, the fee prescribed in § 381.601 of this chapter and, if the project structures would use or occupy any lands

other than Federal lands, an appendix containing documentary evidence showing that applicant has the real property interests required under § 4.31(c)(2)(ii). The applicant must identify in its application all Indian tribes that may be affected by the project.

(b) *Introductory statement.* The application must include an introductory statement that conforms to the following format:

BEFORE THE FEDERAL ENERGY REGULATORY
COMMISSION

Application for Exemption of Small Hydroelectric Power Project from Licensing

(1) [Name of applicant] applies to the Federal Energy Regulatory Commission for an exemption for [name of project], a small hydroelectric power project that is proposed to have an installed capacity of 5 megawatts or less, from licensing under the Federal Power Act. [If applicable: The project is currently licensed as FERC Project No. ____.]

(2) The location of the project is:
[State or territory] _____
[County] _____
[Township or nearby town] _____
[Stream or body of water] _____

(3) The exact name and business address of each applicant are: _____

(4) The exact name and business address of each person authorized to act as agent for the applicant in this application are: _____

(5) [Name of applicant] is [specify, as appropriate: a citizen of the United States or other identified nation; an association of citizens of the United States, or other identified nation; a municipality; a state; or a corporation incorporated under the laws of (specify the United States or the state or nation of incorporation, as appropriate)].

(c) *Exhibit A.* Exhibit A must describe the small hydroelectric power project and its proposed mode of operation. To the extent feasible, the information in this exhibit may be submitted in tabular form. The applicant must submit the following information:

(1) A brief description of any existing dam and impoundment proposed to be utilized by the small hydroelectric power project and any other existing or proposed project works and appurtenant facilities, including intake facilities, diver-sion structures, powerhouses, primary transmission lines, penstocks, pipelines, spillways, and other structures, and the sizes, capacities, and construction materials of those structures.

(2) The number of existing and proposed generating units at the project, including auxiliary units, the capacity of each unit, any provisions for future units, and a brief description of any plans for retirement or rehabilitation of existing generating units.

(3) The type of each hydraulic turbine of the small hydroelectric power project.

(4) A description of how the power plant is to be operated, that is, run-of-river or peaking.

(5) A graph showing a flow duration curve for the project. Identify stream gauge(s) and period of record used. If a synthetic record is utilized, provide details concerning its derivation. Furnish justification for selection of installed capacity if the hydraulic capacity of proposed generating unit(s) plus the minimum flow requirements, if not usable for power production, is less than the stream flow that is exceeded 25 percent of the time.

(6) Estimations of:

(i) The average annual generation in kilowatt-hours;

(ii) The average and design head of the power plant;

(iii) The hydraulic capacity of each turbine of the power plant (flow through the plant) in cubic feet per second;

(iv) The number of surface acres of the man-made or natural impoundment used, if any, at its normal maximum surface elevation and its net and gross storage capacities in acre-feet.

(7) The planned date for beginning and completing the proposed construction or development of generating facilities.

(8) A description of the nature and extent of any repair, reconstruction, or other modification of a dam that would occur in association with construction or development of the proposed small hydroelectric power project, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after construction.

(d) *Exhibit B.* Exhibit B is a general location map, which may be prepared on United States Geological Survey topographic quadrangle sheets or similar topographic maps of a state agency, enlarged, if necessary, to show clearly and legibly

all of the information required by this paragraph. The map must show the following information:

(1) The location of the existing and proposed physical structures of the small hydroelectric power project, including any dam or diversion structure, reservoir or impoundment, penstocks, pipelines, power plants, access roads, transmission lines, and other important features.

(2) The relationship of the project structures to the stream or other body of water on which the project is located and to the nearest town or other permanent objects that can be readily recognized in the field.

(3) A description of who owns or otherwise has real property interests in any tract of land occupied by the small hydroelectric power project or the structures to which it is directly connected.

(4) A proposed project boundary enclosing project works to be exempted from licensing.

(e) *Exhibit E.* This exhibit is an environmental report that must include the following information, commensurate with the scope and environmental impact of the construction and operation of the small hydroelectric power project. See 4.38 for consultation requirements.

(1) A description of the environmental setting of the project, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational uses, historical and archeological resources, and scenic and aesthetic resources. The report must list any endangered or threatened plant and animal species, any critical habitats, and any sites eligible for or included on the National Register of Historic Places. The applicant may obtain assistance in the preparation of this information from state natural resources agencies, the state historic preservation officer, and from local offices of Federal natural resources agencies.

(2) A description of the expected environmental impacts from the proposed construction or development and the proposed operation of the small hydroelectric power project, including any impacts from any proposed changes in the capacity and mode of operation if it is already generating electric power, and an explanation of the specific measures proposed by the applicant, the agencies consulted, and others to protect and enhance environmental resources and values and

to mitigate adverse impacts of the project on such resources.

(3) Any additional information the applicant considers important.

(f) *Exhibit G.* Exhibit G is a set of drawings showing the structures and equipment, that is, the proposed and existing project works, of the small hydroelectric power project. The drawings must include plan, elevation, and section views of the power plant, any existing dam or diversion structure, and any other principal structure of the project.

[Order 106, 45 FR 76123, Nov. 18, 1980, as amended by Order 225, 47 FR 19056, May 3, 1982; Order 413, 50 FR 11689, Mar. 25, 1985; Order 494, 53 FR 15381, Apr. 29, 1988]

Subpart L—Application for Amendment of License

SOURCE: Order 184, 46 FR 55943, Nov. 13, 1981, unless otherwise noted.

§ 4.200 Applicability.

This part applies to any application for amendment of a license, if the applicant seeks to:

(a) Make a change in the physical features of the project or its boundary, or make an addition, betterment, abandonment, or conversion, of such character as to constitute an alteration of the license;

(b) Make a change in the plans for the project under license; or

(c) Extend the time fixed on the license for commencement or completion of project works.

§ 4.201 Contents of application.

An application for amendment of a license for a water power project must contain the following information in the form specified.

(a) *Initial statement*

BEFORE THE FEDERAL ENERGY REGULATORY
COMMISSION

Application for Amendment of License

(1) [Name of applicant] applies to the Federal Energy Regulatory Commission for an amendment of license for the [name of project] water power project.

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

(3) The applicant is a [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or state, as appropriate, see 15 U.S.C. 796], licensee for the water power project designated as Project No. _____ in the records of the Federal Energy Regulatory Commission, issued on the _____ day of _____, 19_____.

(4) The amendments of license proposed and the reason(s) why the proposed changes are necessary, are: [Give a statement or description].

(5)(i) The statutory or regulatory requirements of the state(s) in which the project would be located that affect the project as proposed with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes are: [provide citation and brief identification of the nature of each requirement.]

(ii) The steps which the applicant has taken or plans to take to comply with each of the laws cited above are: [provide brief descriptions for each law.]

(b) *Required exhibits for capacity related amendments.* Any application to amend a license for a hydropower project that involves additional capacity not previously authorized, and that (1) would increase the actual or proposed total installed capacity of the project, (2) would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more, and (3) would result in an increase in the installed name-plate capacity of 2 megawatts or more, must contain the following exhibits, or revisions or additions to any exhibits on file, commensurate with the scope of the licensed project:

(1) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of more than 5 MW—Exhibits A, B, C, D, E, F, and G under § 4.41 of this chapter;

(2) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of 1.5 MW or less—Exhibits E, F, and G under § 4.61 of this chapter;

(3) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of 5 MW or less, but more than 1.5 MW—Exhibits F and G under § 4.61 of this chapter, and Exhibit E under § 4.41 of this chapter;

(4) For amendment of a license for a water power project that, at the time the application for

amendment is filed, has been constructed, and is proposed to have a total installed generating capacity of 5 MW or less—Exhibits E, F, and G under § 4.61 of this chapter;

(5) For amendment of a license for a water power project that, at the time the application is filed, has been constructed and is proposed to have a total installed generating capacity of more than 5 MW—Exhibits A, B, C, D, E, F, and G under § 4.51 of this chapter;

(c) *Required exhibits for noncapacity related amendments.* Any application to amend a license for a water power project that would not be a capacity-related amendment as described in paragraph (b), above, must contain those exhibits that require revision in light of the nature of the proposed amendments.

(d) *Consultation and waiver.* (1) If an applicant for license under this subpart believes that any exhibit required under paragraph (b) of this section is inappropriate with respect to the particular amendment of license sought by the applicant, a petition for waiver of the requirement to submit such exhibit may be submitted to the Commission under §385.207(c)(4) of this chap-

ter, after consultation with the Commission's Office of Hydropower Licensing.

(2) A licensee wishing to file an application for amendment of license under this section may seek advice from the Commission staff regarding which exhibit(s) must be submitted and whether the proposed amendment is consistent with the scope of the existing licensed project.

[Order 184, 46 FR 55943, Nov. 13, 1981, as amended by Order 225, 47 FR 19056, May 3, 1982; 48 FR 4459, Feb. 1, 1983; 48 FR 16653, Apr. 19, 1983; Order 413, 50 FR 11689, Mar. 25, 1985; 56 FR 23108, May 20, 1991; Order 533; 55 FERC §61, 193, May 8, 1991.]

§ 4.202 Alteration and extension of license.

(a) If it is determined that approval of the application for amendment of license would constitute a significant alteration of license pursuant to section 6 of the Act, 16 U.S.C. 799, public notice shall be given at least 30 days prior to action upon the application.

(b) Any application for extension of time fixed in the license for commencement or completion of construction of project works must be filed with the Commission not less than three months prior to the date or dates so fixed.