

HYDROELECTRIC PROJECT HANDBOOK FOR FILINGS OTHER THAN LICENSES AND EXEMPTIONS

Federal Energy Regulatory Commission
Washington, DC

April 2001

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

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

FOREWORD

The Hydroelectric Project Handbook For Filings Other Than Licenses and Exemptions updates information on applying for preliminary permits, conduit exemptions, amendments of licenses and exemptions, surrenders and transfers. Updated information includes more recent policy statements and rulemakings that affect these proceedings.

On September 15, 1999, the Commission issued a final rule for off-the-record communications (Docket No. RM98-1-000, Order No. 607). Consistent with the Administrative Procedures Act, the Commission's off-the-record communication rules are based on the basic tenets of fairness that "a hearing is not fair when any party has private access to the decision maker and can present evidence or argument that other parties have no opportunity to rebut," and "reliance on secret evidence may foreclose meaningful judicial review." The final rule sets forth when communications between the Commission and Commission staff, and persons outside the Commission, may take place on the record, as well as directions on how the Secretary's office will handle and notice both prohibited and exempted off-the-record communications.

In 1997, the Commission issued a final rule revising its procedural regulations governing applications for licenses and exemptions for hydroelectric projects to provide alternative administrative processes whereby, in appropriate circumstances, the pre-filing consultation process and the environmental review process can be combined. This alternative process is designed to improve

communication among affected entities and to be flexible and tailored to the facts and circumstances of the particular proceeding (Docket No. RM95-16-000, Order No. 596).

The final rule offers alternative administrative procedures for the processing of applications that are subject to the pre-filing consultation rules contained in §4.38 and §16.8 of the regulations, such as licenses to construct, operate, and maintain hydropower projects, including applications for certain major amendments to such licenses, and for applications for exemption from licensing. Under alternative processes, applicants would complete the scoping requirements of the National Environmental Policy Act (NEPA) during the pre-filing consultation.

Also in 1998, the Commission participated in a National Review Group (NRG) convened by the Electric Power Research Institute (EPRI) comprising more than 30 organizations representing a diverse cross-section of stakeholders in the hydroelectric licensing process for the purpose of improving the outcomes of hydroelectric licensing. The NRG report, Hydro Licensing Forum: Relicensing Strategies, published in December 2000, includes a section on anticipating and addressing issues of post-licensing administration and compliance. The report may be obtained from the EPRI website at www.epri.com.

The Commission published its Electronic Filing Initiative designed to facilitate licensing proceedings in 1998. As part of this initiative, the Commission began permitting participants in FERC proceedings, including preliminary permit applications, conduit exemption applications, and amendment applications to voluntarily

serve documents on one another electronically. Effective November 1, 2000, the Commission began accepting certain filings via the Internet in lieu of paper (Docket No. RM00-12, Order No. 691). Protests, comments on filings, comments on environmental documents, and reply comments may be filed electronically using the Commission filing protocol. Effective in March 2001, interventions also may be filed electronically. These actions give participants in licensing proceedings more flexibility in meeting the service requirements and the opportunity to gain experience with electronic service, and are important steps in the Commission's plan to convert to a broad-based electronic filing policy. This new rule applies only to electronic filings via the Internet. The Commission does not accept facsimile or e-mail transmission of filings in its proceedings.

These policy statements and new rules may be obtained using the Commission website at www.ferc.fed.us.

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1.0 INTRODUCTION

1.1 PURPOSE AND OVERVIEW OF THIS HANDBOOK

This handbook is for all interested parties involved in the hydropower authorization process for all filings except applications for licenses and exemptions from licensing. The handbook provides a step-by-step guide to applying for a preliminary permit, a conduit exemption, and amendments of an original license, relicense, or exemption from licensing, and can be used to improve the quality and consistency of applications. The handbook clarifies the responsibilities of the interested entities in these proceedings: prospective applicants, the Commission staff, resource agencies, Indian tribes, non-governmental organizations, and members of the public.

The handbook presents detailed information on obtaining a preliminary permit in chapter 2, and obtaining a conduit exemption in chapter 3. Chapters 4 and 5 discuss how to apply for an amendment of a license or an exemption from licensing. We also provide detailed information on the steps for the surrender or transfer of a license or exemption from licensing in chapters 6 and 7.

While this handbook provides helpful information about application procedures for filings other than licenses and exemptions from licensing, it is not a substitute for the Commission's implementing regulations at 18 CFR Subchapter B. For specific guidance, prospective applicants and other participants in these proceedings should rely on the regulations, supplemented as necessary with legal advice.

1.2 THE FEDERAL ENERGY REGULATORY COMMISSION'S ROLE IN HYDROPOWER LICENSING

Under the authority of the Federal Power Act (FPA), as amended,¹ the Federal Energy Regulatory Commission (Commission) has the exclusive authority to license nonfederal hydropower projects on navigable waterways, federal lands, and under other certain criteria.

The Division of Hydropower Administration and Compliance (DHAC) is primarily responsible for reviewing and ensuring compliance by owners of hydropower project with the conditions

¹16 U.S.C. §§791(a)-825r, as amended by the Electric Consumers Protection Act of 1986, Public Law 99-495 (1986), and the Energy Policy Act of 1992, Public Law 102-486 (1992).

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specified in their licenses and exemptions. DHAC also determines the jurisdiction of operating, unlicensed projects to ensure full compliance with the Commission's regulations and the provisions of the FPA. Finally DHAC is responsible for the processing of preliminary permit applications, conduit exemption applications, all license amendments not requiring the preparation of NEPA documents, applications for license surrenders, and applications for the transfers of licenses. It is this set of activities that are the focus of this handbook.

Applicants for amendments of licenses or amendments of exemptions from licensing may use either traditional or alternative licensing processes. In the traditional licensing process, the Commission conducts scoping after an application is accepted for filing by the Commission. An alternative process allows an applicant to conduct scoping during the pre-filing consultation prior to filing the application with the Commission.

The DHAC staff evaluate applications and make recommendations to the Commission on hydropower compliance matters. Many hydropower amendments involve natural resource issues. The amendment of license process requires that the Commission address both the economics and engineering issues and the potential environmental and socioeconomic effects of project development and operation. The following principles, established in the FPA, guide the Commission's treatment of these issues and potential effects during the application process.

- ! In deciding whether to issue a major capacity amendment to a license or exemption, the Commission must give equal consideration to developmental and environmental values including: hydroelectric development; fish and wildlife resources, including their spawning grounds and habitat; visual resources; cultural resources; recreational opportunities and other aspects of environmental quality; irrigation; flood control; and water supply.

**FPA Section
4(e)**

**Equal
Consideration
Standard**

! The Commission must ensure that the project to be licensed is best adapted to a comprehensive plan for developing the waterway for beneficial public purposes. In making this judgment, the Commission considers comprehensive plans (including those that are resource-specific) prepared by federal and state entities and the recommendations of federal and state resource agencies, Indian tribes, and the public, affected by the proposed project.

FPA Section 10(a)(1)

Comprehensive Development Standard

! In issuing major amendments of licenses, the Commission must include conditions to adequately protect, mitigate damage to, and enhance fish and wildlife (and their habitats), based on recommendations of state and federal fish and wildlife agencies.

FPA Section 10(j)

! Exemptions from licensing are subject to mandatory, terms and conditions from the Fish and Wildlife Service, the National Marine Fisheries Service, and the state fish and wildlife agency.

FPA Section 30(c)

! In cases where the proposed amendment to a licensed project or proposed conduit exemption would be located on a federal reservation, the federal agency responsible for managing that land can file terms and conditions to protect the reservation that become, upon filing, mandatory upon the Commission to include in amendment to license or exemption issued.

FPA Section 4(e)

! The FPA authorizes the Secretaries of Commerce and the Interior to prescribe fishways at licensed projects.

FPA Section 18

- ! After an amendment of license, an exemption from licensing, or conduit exemption is issued, the Commission monitors the licensee's or exemptee's compliance with the conditions of the license or exemption. Failure to comply with these conditions would subject the licensee or exemptee to civil penalties or even rescission of the license or exemption.

**FPA Section
31(a)**

2.0 APPLYING FOR A PRELIMINARY PERMIT

2.1 PURPOSE OF A PRELIMINARY PERMIT

A preliminary permit secures priority of application for license, and it provides the prospective developer with time to evaluate the feasibility of the proposed project and to complete the studies required to support a development application. A preliminary permit is *not* a prerequisite to filing a license application.

18CFR4.80

Having a preliminary permit offers certain advantages when there are multiple license applications filed for the same project (see Licensing Handbook, chapter 9.0), and it precludes the acceptance of another party's permit or development application during the term of the permit, or until the permittee files its developmental

Any citizen, association of citizens, domestic corporation, municipality, or state can file an application for preliminary permit.

18 CFR 4.31(a)

The Commission will not accept a preliminary permit application, however, for a proposed project that:

- ! would develop the same water resource that would be developed by a project for which there already is a preliminary permit in effect; **18 CFR 4.33(a)(1)**
- ! would develop the same water resource that would be developed by a project for which there has already been filed and accepted an application for license; or **18 CFR 4.33(a)(2)**
- ! would be precluded by law (e.g., the project is already licensed or would be located on a wild and scenic river). **18 CFR 4.32(e)**

2.2 CONTENT OF A PRELIMINARY PERMIT APPLICATION

Once a prospective applicant identifies a proposed project, the project must be characterized in sufficient detail to prepare a preliminary permit application.

An application for preliminary permit must include an initial statement, a verification statement, and four numbered exhibits.

18 CFR 4.32 and 4.81

The **initial statement** must contain information about the applicant, the project, the requested term of the permit, affected political jurisdictions, and a verification of the facts presented.

18 CFR 4.32 and 4.81(a)

The **verification statement** contains the signature of a Notary Public or other authorized official verifying that the information contained in the application is true.

18 CFR 4.32 (a)(4)

Exhibit 1 must describe the proposed project. The description contains four items: (1) a characterization of the project structures, reservoir, and transmission facilities; (2) estimates of energy and capacity; (3) identification of affected United States lands; and (4) other information demonstrating how the proposed development of the water resource would be in the public interest.

18 CFR 4.81(b)

Exhibit 2 must describe project studies, either completed or planned, for assessing project feasibility, determining environmental impacts, and preparing the application. When the proposed project involves constructing a new dam, additional detail must be included about proposed test pits, borings or other foundation explorations, with particular regard to reducing adverse environmental impact during the explorations.

18 CFR 4.81(c)

Exhibit 3 is a statement of costs and financing that must provide an estimate of the costs of doing the project studies described in Exhibit 2, the source of funding for these studies, and a description of the anticipated market for the power to be generated by the proposed project.

18 CFR 4.81(d)

Exhibit 4 must include maps that clearly show the location of the project, the location and relationship of the principal project features, a proposed boundary for the project, and any areas with special protected status under the National Wild and Scenic River System or Wilderness Act.

18 CFR 4.81(e)

2.3 SECURING A PRELIMINARY PERMIT

The first formal step in the preliminary permit process is filing the application.

18 CFR 4.32(b)(1)

The applicant must file an original application and 8 copies with the **Secretary, FERC, 888 First Street, NE, Washington, DC 20426**. It is recommended that another copy be provided to the Division of Hydropower Administration and Compliance at the same address.

The Commission staff reviews the application for adequacy. The application must be complete, and omission of any required information must be justified. After its review, the

Commission makes one of three determinations:

18 CFR 4.32(e)

1. The application is adequate. The Commission sends the applicant a letter of acceptance. The notification of acceptance will specify the project number assigned to the applicant's project and will confirm the filing date.
2. The application is deficient. If the application is found deficient but not patently deficient, the Commission will issue a deficiency letter. An applicant notified of a deficient application is allowed up to 45 days from the date of the letter to correct the deficiencies. Deficiencies must be corrected by submitting an original and 8 copies of the materials specified in the deficiency letter.
3. The application is rejected. The Commission can reject the application as patently deficient if it determines that the application substantially fails to comply with the requirements of application content (**18 CFR 4.32 and 4.81**) or determines that the proposed project is precluded by law. An application that is rejected can be resubmitted if the inadequacies are corrected, but the date of resubmission will be considered the official filing date.

There is a possibility for rehearing if an applicant wishes to contest the Commission's decision on the preliminary permit application. Under Rule 713 (section 385.713), an applicant may request a

rehearing on the decision to reject the preliminary permit application provided that the order rejecting the preliminary permit allows rehearing and the rehearing request is filed within 30 days of the date of the decision. Rehearing requests must state concisely the alleged error in the final decision or order.

18 CFR 385.713

Upon acceptance, the Commission notifies the public of the application in the following three ways: **18 CFR 4.32(d)**

- ! Publication in the Federal Register.
- ! Publication in a local newspaper (four separate times).
- ! Mailing notice directly to the project mailing list, which includes resource agencies and affected Indian tribes.

If the project affects lands of the United States, the Commission also must notify the responsible federal agency.

If the preliminary permit application is the first application filed for a particular site, the public notice will set an *intervention deadline* for filing protests and motions to intervene, comments, prescriptions, terms, and conditions, competing applications, and notices of intent.

At this stage of the process, other parties have an opportunity to file a competing application to develop the same water resource.

APPLYING FOR A PRELIMINARY PERMIT

The competing application can be for a preliminary permit or for a development application (i.e., license or exemption). A competing application must meet the following criteria: **18 CFR 4.36**

- ! a competing preliminary permit application must conform to all the requirements of an initial preliminary permit application;
- ! a competing development application must conform to all the requirements of an initial development application; and
- ! proof must be included that a copy of the competing application was served on the persons designated in the public notice of the initial application.

A potential applicant that intends to file a competing application and needs additional time to prepare the competing application may file a notice of intent to file the competing application. A competing applicant that files a notice of intent is given extra time to file a competing application.

- ! A competing preliminary permit application not preceded by a notice of intent must be filed by the set intervention deadline.
- ! A competing preliminary permit application filed with a notice of intent must be submitted not later than 30 days after the set intervention deadline.

A competing development application filed with a notice of intent must be submitted not later than 120 days after the established intervention deadline.

If two or more acceptable applications are filed for a preliminary permit to develop the same water resource, the Commission will select between or among the applicants on the basis of established criteria. The factors for determining preference of selection between competing preliminary permit applications include: **18 CFR 4.37**

- ! whether the applications are for preliminary permits (not developmental stage) or exemptions and licenses (developmental stage);
- ! filing date (order of time in filing the applications);
- ! whether applicants are private entities or municipalities or states (municipalities and states have preference); and
- ! for development applications (exemptions and licenses), the best adapted plan.

These factors are generally applied as follows:

- ! if application for a preliminary permit proposes to use the same water resource as an accepted application for a

license the Commission would take action on the license application first;

! If both of the applicants for a preliminary permit are either a municipality or a state or neither of them is a municipality or a state and the plans of the applicants are equally well adapted to develop, conserve, and utilize in the public interest the water resources, the Commission will favor the applicant with the earliest filing date;

! if one of the two applicants is a municipality or a state and the other is not, and the plans are both well adapted to develop, conserve, and utilize the water resource, the Commission will favor the municipality or the state

2.4 OTHER RULES RELEVANT TO PRELIMINARY PERMITS

! The term of the permit cannot be extended beyond 3 years. **FPA Section 5**

! Permits are prohibited from being transferred. **FPA Section 5**

! A request for a material change in the proposed project will trigger issuance of a public notice of the application, which may allow further competition for the site.

If a permittee fails to file an acceptable license application during the term of the permit, the permittee's priority of application for a license is lost, but the permittee can still file a license application.

The Commission may cancel a preliminary permit if the permittee fails to comply with the terms and conditions of the permit or for other good cause. **18 CFR 4.83**

! Prior to cancellation, notice and an opportunity for hearing is given.

! Permit cancellation will result in the loss of the permittee's priority of application for a license for the proposed project, but it does not preclude the permittee from filing a license application.

A permittee can voluntarily surrender its permit but only by submitting a petition to the Commission requesting the surrender. **18 CFR 4.84**

3.0 APPLYING FOR A CONDUIT EXEMPTION

This section describes aspects of the regulations that pertain specifically to conduit exemptions. **18 CFR 4.92**

3.1 APPLICATION CONTENT

An application for a conduit exemption must include:
18 CFR 4.92(a) and 4.92(b)

- ! Introductory statement.
- ! Exhibit A, describing the small conduit hydroelectric facility and proposed mode of operation.
- ! Exhibit B, a general location map that shows the physical structures, the proposed project boundary, and land ownership by parcel.
- ! Exhibit E, an environmental report that must reflect pre-filing consultation requirements. Commensurate with the scope and degree of environmental impact, it must include

a description of the project's environmental setting, the expected environmental impacts, and a description of alternative means of obtaining an equivalent amount of power.

- ! Exhibit G, a set of drawings showing the project structures and equipment, including plan, elevation, profile, and section views of the power plant and other principal structures.
- ! Appendix containing evidence that the applicant has the necessary real property interests in the lands to develop and operate the project.
- ! Identification of all potentially affected Indian tribes.
- ! Fish and wildlife agency reimbursement fees must accompany filed applications. **18 CFR 4.301**

3.2 DEVELOPMENT OF TERMS AND CONDITIONS

The procedural steps for a conduit exemption application are essentially the same as for a license application, including the three-stage consultation process. See the Hydroelectric Project

Licensing Handbook for a discussion of the procedures, from initial actions through the public notice accepting the application, which also requests the filing of terms and conditions. After comments and fish and wildlife recommendations are filed, the procedural steps differ for a conduit exemption than from those applicable to either a license or a 5 MW or less exemption application

The Commission staff then does its environmental analysis based upon the record, but does not prepare an EA. Conduit exemptions are categorically exempt from the preparation of an EA under **380.4(a)(14)**. The Commission then decides whether an exemption is to be granted. In granting an exemption from licensing, the Commission will set certain standard terms and conditions **18 CFR 4.94** and may set additional terms and conditions. **18 CFR 4.93(c)**

The Commission must include those terms and conditions that fish and wildlife agencies determine, in a timely manner, are appropriate to prevent loss of, or damage to, fish and wildlife resources. 18 CFR 4.34(f)(2)

If an application for a conduit exemption is denied, the applicant is given a chance to convert the exemption application into an application for license.

If conversion is sought, the applicant must:

- ! provide the Commission written notification within 30 days of the order denying the exemption; and
- ! provide any additional information necessary to make the exemption application conform to the requirements of a license application.

If a timely notification for conversion is not received, application processing is terminated.

3.3 SURRENDER AND AMENDMENT

An exemption holder can petition the Commission to voluntarily surrender its exemption. **18 CFR 4.95**

If construction has begun:

- ! the exemption holder must have consulted with interested fish and wildlife agencies on the plans for disposition of facilities and site restoration;

- ! the Commission will issue a public notice of the surrender request and seek comments and terms and conditions for site restoration from relevant agencies and the public; and
- ! the exemption holder must fulfill any obligations imposed by the Commission and the fish and wildlife agencies for the disposition and site restoration of facilities.

If no construction has begun:

- ! the exemption holder must fulfill any obligations under the exemption that the Commission may prescribe;
- ! the exemption will remain in effect for 30 days after the public notice of the petition is issued; and
- ! new applications involving the site may be filed as early as the next business day.

A holder of an exemption may file an application to amend its exemption, but changes can be made in some cases without the need for an application and the Commission's approval. The exemption holder may implement the changes without the Commission's approval if:

18 CFR 4.96

- ! after being notified in writing by the exemption holder of its intended changes, the appropriate fish and wildlife

agencies determine that the proposed changes would not cause the project to violate the terms and conditions imposed by the agencies; and

- ! the changes would not materially alter the design, location, or method of construction or operation.

In the absence of these two conditions, the exemption holder may not make the changes without first acquiring the Commission's authorization. The exemption holder should contact the Director of the Division of Hydropower Administration and Compliance for further guidance on filing requirements.

4.0 AMENDMENTS OF LICENSE

License amendments are generally required when there is a proposed change to a project previously authorized by a Commission order issuing a license. 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.

4.1 CONTENT OF AN APPLICATION FOR A CAPACITY-RELATED AMENDMENT

A capacity-related amendment is a project modification for additional capacity not previously authorized, which would:

18 CFR 4.201(b)

- ! increase the project's actual or proposed total installed capacity;
- ! result in an increase in the project's maximum hydraulic capacity by 15 percent or more; and
- ! result in an increase in the installed nameplate capacity of 2 MW or more.

Amendments that do not meet the foregoing criteria are called noncapacity-related amendments. Section 4.3 of this Handbook contains guidance on preparing applications for non-capacity-related amendments.

An application for a license amendment must contain an initial statement; certain specified exhibits; pre-filing consultation; and, in some cases, evidence of a new request for water quality certification. The licensee must provide the following information:

18 CFR 4.201(b)

- ! number and type of exhibits required for a capacity-related amendment which depend on:
 - the installed capacity of the project proposed for modification, and
 - the current stage of the project's development (see table 1).
- ! The content of the required exhibits is governed by the same rules as those that apply to original licenses (**18 CFR 4.41, 4.51 or 4.61**).

Table 1. Construction Status (at the time the amendment application is filed)

Installed Capacity	Not Constructed	Constructed
>5 MW	A, B, C, D, E, F, G [18 CFR 4.41]	A, B, C, D, E, F, G [18 CFR 4.51]
≤5 MW BUT >1.5 MW	F, G, [18 CFR 4.61] E [18 CFR 4.41]	E, F, G [18 CFR 4.61]
≤ 1.5 MW	E, F, G [18 CFR 4.61]	E, F, G [18 CFR 4.61]

! The pre-filing consultation requirements of **18 CFR 4.38** (or **4.3.4[i]** if using an alternative licensing process) must be completed.

! Evidence of a new request for water quality certification is only required if the amendment would result in a material adverse effect on the water quality in the discharge from the project or proposed project.

If a licensee wishing to file an application for amendment wants information on the appropriate exhibits, the licensee may seek advice from the Commission staff.

4.2 PROCEDURAL STEPS IN SECURING A CAPACITY-RELATED AMENDMENT

The capacity-related amendment process has six major steps:
18CFR4.38(a)(4)

Step 1 - First Stage Consultation or Alternative Pre-filing Consultation Process if using an alternative licensing process

Step 2 - Studies and Draft Application Preparation or Preliminary Draft Environmental Assessment if using an alternative licensing process

Step 3 - Completion of Second Stage Consultation or Pre-filing Consultation Process of an alternative licensing proceeding

Step 4 - Application Filing and Acceptance by the Commission

Step 5 - Filing of Comments, Terms and Conditions, Prescriptions, and NEPA Compliance Activities

Step 6 - Completion of the Section 10j Process and Granting or Denying a License Amendment

The rules governing these six steps, including pre-filing consultation (**18 CFR 4.38**) and the 10j process (**18 CFR 4.34**), are the same as those that govern applications for license using either the traditional or an alternative licensing process. Refer to the Commission’s Hydroelectric Project Licensing Handbook (chapters 4 and 5) for procedural guidance.

4.3 CONTENT OF AN APPLICATION FOR A NON-CAPACITY-RELATED AMENDMENT

A non-capacity-related amendment is a project modification involving:

- ! design changes in the physical features of a project such as new structures, relocation of transmission lines, or alterations of existing structures;
- ! operational changes such as modifications to operating levels, minimum instream flows, revised ramping rates and other changes affecting environmental resources;

- ! land status changes including 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;
- ! compliance filings (filings pursuant to license articles or other Commission orders) such as filing of study results, mitigation plans, study plans, or schedules ordered in the license articles;
- ! as-built extensions; and
- ! time extensions.

Depending on the type of amendment, the level of detail may vary from a one-page letter to a comprehensive, multi-volume amendment application.

Noncapacity-related amendments must be filed with the Commission at the address provided in section 2.3 of this handbook. The filing must provide reasons for the amendment, and include relevant resource agency letters of comment, exhibits, and applicable drawings, as discussed in the following section.

4.4 PROCEDURAL STEPS IN SECURING A NON-CAPACITY-RELATED AMENDMENT

An application for a license amendment must contain an initial statement; certain specified exhibits; pre-filing consultation; and, in some cases, evidence of a new request for water quality certification.

If only one of the criterion discussed in section 4.1 applies, the amendment is considered a noncapacity-related amendment.

If the proposed change is not a capacity-related amendment, the licensee must consult with any appropriate resource agencies and discuss the results of such consultation in the application. Licensees are encouraged to contact DHAC if they need help identifying the appropriate resource agencies or the appropriate exhibits, or revisions or additions to any exhibits on file, to include in the amendment application.

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.

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 to include in the amendment application.

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, or recreational resources).

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.)

5.0 SURRENDERS AND AMENDMENTS OF EXEMPTIONS

5.1 SURRENDER OF EXEMPTIONS

An exemption holder can petition to voluntarily surrender its exemption. **18 CFR 4.102**

If construction has begun:

- ! the exemption holder must consult with interested fish and wildlife agencies on the plans for disposition of facilities and site restoration;
- ! where occupancy of federal lands or reservations has been permitted, the exemption holder must notify the affected federal land agency of the petition to surrender and of the steps to be taken to restore the affected lands;
- ! the Commission will issue a public notice of the surrender request and seek comments and terms and conditions for site restoration from relevant agencies and the public; and

- ! the exemption holder must fulfill any obligations imposed by the Commission and the fish and wildlife agencies for disposition of facilities and site restoration.

If no construction has begun:

- ! the exemption holder must fulfill any obligations under the exemption that the Commission may prescribe;
- ! the exemption will remain in effect for 30 days after the public notice of the petition is issued; and
- ! a new application involving the site may be filed on the next business day.

The rules governing amendments to exemptions for small hydroelectric projects 5 MW or less are identical to those for conduit exemptions. **18 CFR 4.104**

5.2 AMENDMENTS OF EXEMPTIONS

The Commission requires much of the same information for exemption amendment applications as it does for capacity-related amendment applications. Exemption amendments can be for: (1) capacity changes; (2) compliance filings; and (3) time extensions

SURRENDERS AND AMENDMENTS OF EXEMPTIONS

(see previous discussion of licensed projects). The notable exceptions are for commencing and completing construction of a new project. Whereas a licensee can receive only a 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 4 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 18 CFR 4.104** should always be relied on before submitting an application. The exemptee also may 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 must provide only the 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 (e.g., private citizen, corporation, or municipality).

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 power plant operations (run-of-river or peaking); the estimated average annual electric generation; average and design head of the plant; hydraulic capacity for 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, or draft EA if using an ALP, must 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, mitigation measures for adverse project effects, 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 also must include resource agency letters.

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

6.0 SURRENDER OR TERMINATION OF LICENSE

6.1 SURRENDER OF LICENSE

18 CFR 6.1

Licenseses and exemptees may decide to surrender their hydropower authorizations because a project is no longer economical, because natural catastrophes have damaged or destroyed project facilities, or for a variety of other reasons. To protect the environment and the public, a license or exemption may be surrendered only upon agreement between the licensee or exemptee and the Commission. The surrender review process often can be complex because there are many environmental implications of ending Commission jurisdiction.

If construction of a licensed project has commenced:

18 CFR 6.2

- (1) the Commission must consult the resource agencies that provided the original terms and conditions. It seeks input from the public to ensure that local environmental issues are considered in the surrender proceeding.

- (2) the Commission also prepares an environmental assessment of any need for restoration for public safety and environmental integrity, which includes measures may range from simply locking a perimeter gate to removing a dam.

Licenses may be surrendered if the licensee has satisfied all conditions imposed by the Commission to protect the public interest, including those related to disposition of constructed facilities.

18 CFR 6.2

If an existing licensee elects not to file a relicense application (i.e., application for new license, nonpower license, subsequent license, or an exemption), and no other applicant files an application in a timely fashion, the existing licensee is responsible for:

- ! filing a schedule for the submittal of a surrender application;
- ! filing a surrender application according to the approved schedule; and
- ! providing for disposition of all project facilities.

SURRENDER OR TERMINATION OF LICENSE

Where project facilities have been constructed on federal lands, the licensee must:

- ! restore the project lands to a satisfactory condition; and
- ! continue paying annual charges until the effective date of the order accepting surrender.

A licensee wanting to surrender a license must file an application that:

- ! states the reason for surrender;
- ! is prepared by the licensee and filed in the same form and manner as the application for license; and
- ! is accompanied by the license and any amendments.

At least 30 days before taking action on the surrender application, the Commission must issue a public notice to alert potentially affected parties.

6.2 TERMINATION OF LICENSE

The Commission can terminate a license for two reasons:

- ! the licensee fails to begin construction of the project within the prescribed time; or **18 CFR 6.3**
- ! the licensee fails to make a good faith effort to maintain and operate the project. **18 CFR 6.4**

In both cases, the Commission provides prior notice before it acts as follows:

- ! 90-day prior notice to the licensee where there is a failure to commence construction; and
- ! 90-day public notice in the case of project abandonment.

7.0 TRANSFER OF LICENSE

Licensees may decide to transfer a hydropower license to another entity or entities for a variety of other reasons. Deregulation of the energy industry has resulted in numerous transfers of licenses to qualified transferees. To protect the environment and the public, a license may be transferred only with Commission approval.

An application for a transfer of license must be filed jointly by the existing licensee and the potential transferee. **18 CFR 9.1**

A licensee who desires to transfer a license must file an application that includes: **18 CFR 9.2**

- ! a statement consistent with section 131.20 18 CFR Subchapter D;
- ! a verification statement;
- ! a description of the qualifications of transferee to hold the license;

- ! a statement providing evidence of compliance by the transferee with all applicable state laws or, how the transferee proposes to comply; and
- ! four originals plus one additional copy for each interested State Commission.

Commission approval of the transfer is contingent upon:

18CFR9.3

- ! transfer of title to the properties under license;
- ! acknowledgment of acceptance by the transferee filed in triplicate within 60 days of the order approving the transfer;
- ! delivery of all license instruments within 60 days of the order approving the transfer;and
- ! a showing that the transfer is in the public interest.

A transferee shall be subject to all the conditions of the license and to all the provisions and conditions of the FPA, as though the transferee were the original licensee and shall be responsible for the payment of annual charges which accrue prior to the date of transfer.