

Attachment B

Division of Hydropower Administration and Compliance



Compliance Handbook

March 2004

5.0 Amendments to Licenses and Exemptions

Modifications to a project, including changes in project structures, locations, or operations, are often necessary to ensure that the project can continue to operate effectively, while providing a measure of environmental protection. Appropriate staff with related expertise are assigned to each amendment application. A licensee or exemptee wishing to voluntarily modify some aspect of its project must first obtain authorization from the Commission. The Commission normally authorizes such changes by issuing license amendments or letter orders in the case of exemptions. See **18 CFR 4.200**.

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

1) 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

2) the changes would not materially alter the design, location, or method of construction or operation. See **18 CFR 4.96**.

In the absence of these two conditions, the exemption holder may not make changes without first obtaining the Commission's authorization.

5.1 Defining the Need for an Amendment

Typical modifications that require an amendment to a license or exemption include capacity changes, design changes, operational changes, land status changes, and time extensions.

Capacity Changes: The Commission defines a capacity-related modification as one that would: (1) increase the project's actual or proposed total **installed capacity**, increase the project's maximum hydraulic capacity by 15 percent or more, *and* increase the project's nameplate capacity by 2 megawatts or more; or (2) entail significant construction or modifications as specified at **18 CFR 4.38(a)(4)(v)**. The Commission's regulations at **18 CFR 4.201** and the *Hydroelectric Project Licensing Handbook* (April 2001) describe the responsibilities of licensees regarding capacity-related amendments. Project modifications not meeting either of these criteria are considered non-capacity amendments. Noncapacity

amendments are not subject to the three-stage consultation requirements that apply to capacity amendments. See **18 CFR 4.38(a)(5)**.

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.

Operational or Other Features Changes: After a facility is completed, a licensee or exemptee may wish to change the way the project is operated, such as increase the operating level in the reservoir (generally for licensees), modify the minimum flow requirement, revise the ramping rate, or modify recreational or other project features. These changes may result from the need to resolve resource issues or from negotiations with stakeholders.

Land Status Changes: Changes in the status of project lands are frequently requested by licensees. These changes generally include altered use of United States lands, changes in land rights, non-project use of project lands and waters, or changes in the recreational use 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; or (5) dredging of project lands is proposed. See section 5.4.3 for a discussion of non-project uses of project lands and waters.

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.

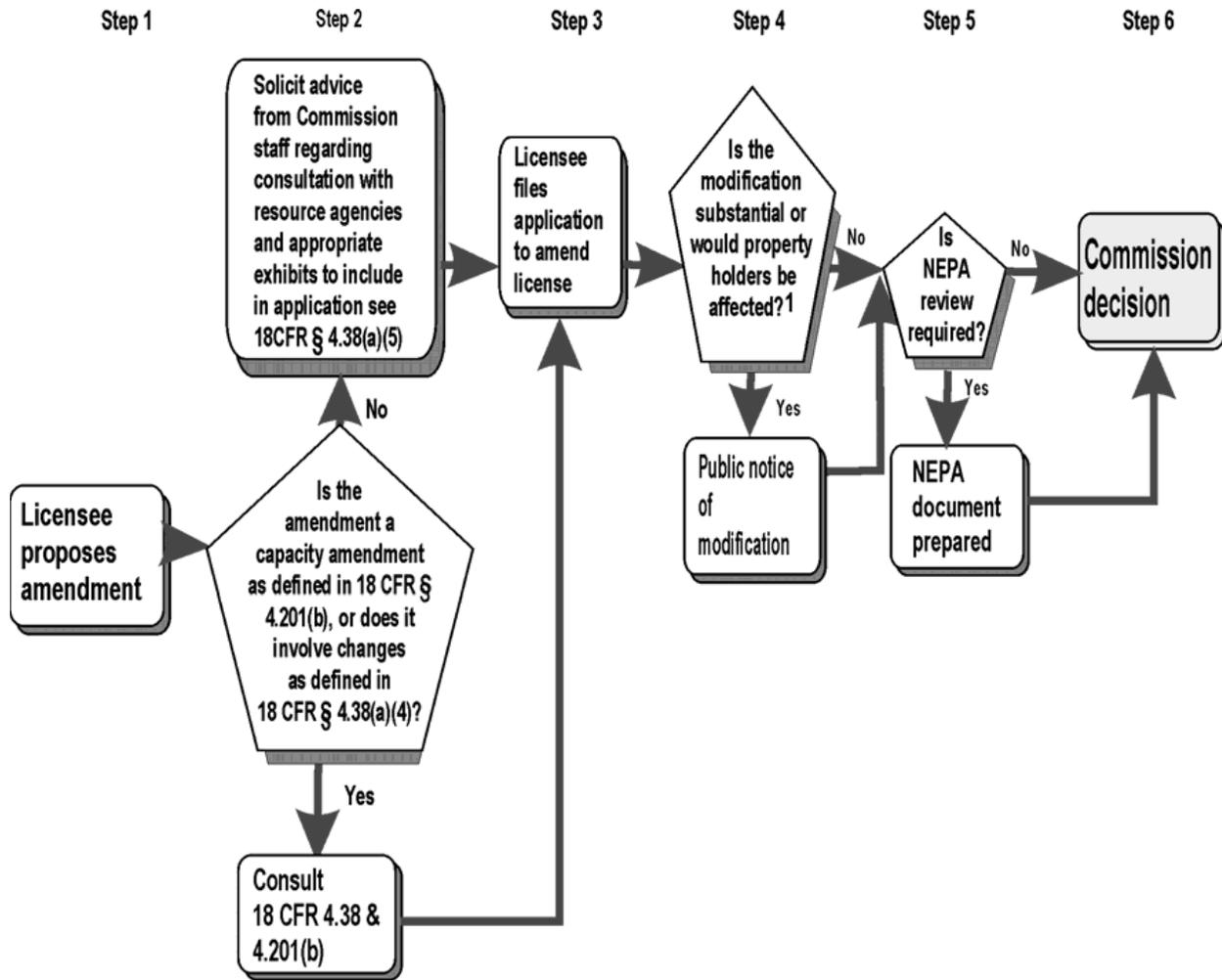
If a licensee is unsure whether an amendment to its license or exemption is required, it may ask for guidance from Commission staff. The request should include a detailed description of the proposed change, the

anticipated environmental impacts on the surrounding areas, comments from the affected resource agencies, revisions of affected exhibits, and any other information that it may deem pertinent. DHAC will notify the licensee or exemptee of its determination in writing. More informally, a licensee or exemptee may discuss its preliminary proposal with DHAC staff over the phone (see section 1.3 for staff telephone numbers).

5.2 Procedural Steps and Contents of Applications for Amendments to Licenses and Exemptions

Once the licensee or exemptee determines the need for an amendment (see section 5.1), the licensee or exemptee consults with resource agencies. The extent of agency consultation depends on whether it is a capacity-related or non-capacity-related amendment (see Appendices D and E). After pre-filing consultation is completed, the licensee or exemptee files the amendment application. DHAC staff then determine if a public notice is warranted and whether National Environmental Policy Act (NEPA) review is required. NEPA review entails preparing an environmental assessment and/or environmental impact statement. Figure 5-1 provides a diagram of the license amendment process.

**Figure 5-1
License Amendment Process**



¹ Does the modification entail substantial changes on the plan of project development or in the terms and conditions of the license, or adversely affect the rights of property holders not contemplated by the license?