

AMENDMENT TO
RULES COMMITTEE PRINT 116-63
OFFERED BY MRS. McMORRIS RODGERS OF
WASHINGTON

Page 297, line 11, strike “before” and insert “after”.

Page 297, beginning on line 11, strike “electric energy” and insert “means”.

At the end of title II, add the following:

1 **Subtitle G—Hydropower**
2 **SEC. 2701. CONFIRMING THAT HYDROPOWER IS AN ESSEN-**
3 **TIAL RENEWABLE RESOURCE.**

4 (a) SENSE OF CONGRESS ON THE USE OF HYDRO-
5 POWER RENEWABLE RESOURCES.—It is the sense of Con-
6 gress that—

7 (1) hydropower is a renewable resource for pur-
8 poses of all Federal programs and is an essential
9 source of energy in the United States; and

10 (2) the United States should protect existing
11 hydropower resources and increase substantially the
12 capacity and generation of clean, renewable hydro-

1 power resources to address a changing climate and
2 improve environmental quality in the United States.

3 (b) MODIFYING DEFINITIONS OF RENEWABLE EN-
4 ERGY TO INCLUDE HYDROPOWER.—

5 (1) ENERGY POLICY ACT OF 2005.—Section 203
6 of the Energy Policy Act of 2005 (42 U.S.C. 15852)
7 is amended—

8 (A) in subsection (a), by amending para-
9 graphs (1) through (3) to read as follows:

10 “(1) Not less than 20 percent in fiscal years
11 2021 through 2022.

12 “(2) Not less than 23 percent in fiscal years
13 2023 through 2024.

14 “(3) Not less than 25 percent in fiscal year
15 2025 and each fiscal year thereafter.”; and

16 (B) in subsection (b)(2)—

17 (i) by striking “electric energy gen-
18 erated” and inserting “energy produced”;
19 and

20 (ii) by striking “or new hydroelectric
21 generation capacity achieved from in-
22 creased efficiency or additions of new ca-
23 pacity at an existing hydroelectric project”
24 and inserting “or hydropower”.

1 (2) OTHER FEDERAL REGULATIONS, ORDERS,
2 AND POLICIES.—Not later than 180 days after the
3 date of enactment of this Act, each Federal depart-
4 ment and agency shall submit to the Committee on
5 Energy and Natural Resources of the Senate and
6 the Committee on Energy and Commerce of the
7 House of Representatives a report demonstrating
8 that the department or agency has amended any ap-
9 plicable regulation, order, or other policy of the de-
10 partment or agency related to renewable energy to
11 ensure treatment of hydropower by the Federal Gov-
12 ernment consistent with the amendments made by
13 paragraph (1).

14 (c) LICENSES FOR CONSTRUCTION.—Section 4(e) of
15 the Federal Power Act (16 U.S.C. 797(e)) is amended,
16 in the first sentence, by inserting “to mitigate the effects
17 of the applicable project on such reservation, so as to pro-
18 vide” after “deem necessary” in the first proviso.

19 (d) OPERATION OF NAVIGATION FACILITIES.—Sec-
20 tion 18 of the Federal Power Act (16 U.S.C. 811) is
21 amended by adding before the period at the end of the
22 first sentence “to mitigate effects of the applicable
23 project”.

1 **SEC. 2702. PROTECTING AND PROMOTING SMALL AND**
2 **NEXT-GENERATION HYDROPOWER**
3 **PROJECTS.**

4 (a) EXEMPTIONS FROM LICENSING REQUIREMENTS
5 FOR CERTAIN SMALL HYDROELECTRIC POWER
6 PROJECTS.—Section 405 of the Public Utility Regulatory
7 Policies Act of 1978 (16 U.S.C. 2705) is amended by
8 striking subsection (d) and inserting the following:

9 “(d) EXEMPTIONS FROM LICENSING IN CERTAIN
10 CASES.—

11 “(1) IN GENERAL.—Subject to paragraphs (2)
12 and (3), the Commission may in its discretion (by
13 rule or order), upon application and on a case-by-
14 case basis or on the basis of classes or categories of
15 projects, grant an exemption in whole or in part
16 from the requirements (including the licensing re-
17 quirements) of part I of the Federal Power Act to
18 any small hydroelectric power project—

19 “(A) having a proposed installed capacity
20 of 10,000 kilowatts or less; or

21 “(B) for which a license was issued under
22 part I of the Federal Power Act and the li-
23 censee applies for an exemption under this sub-
24 section, if—

1 “(i) the license was issued after the
2 date of enactment of the Electric Con-
3 sumers Protection Act of 1986;

4 “(ii) the Commission determines,
5 based on information available to the Com-
6 mission, that continued operation of the
7 project is not likely to jeopardize the con-
8 tinued existence of any species listed as a
9 threatened species or an endangered spe-
10 cies under the Endangered Species Act of
11 1973;

12 “(iii) the Commission determines,
13 based on information available to the Com-
14 mission, that continued operation of the
15 project is not likely to result in the de-
16 struction or adverse modification of an
17 area designated as critical habitat for any
18 species listed as a threatened species or an
19 endangered species under the Endangered
20 Species Act of 1973; and

21 “(iv) the project has an installed ca-
22 pacity of 15 megawatts or less.

23 “(2) REQUIREMENTS.—An exemption granted
24 under paragraph (1) shall be subject to the same
25 limitations (to ensure protection for fish and wildlife

1 as well as other environmental concerns) as those
2 which are set forth in subsections (c) and (d) of sec-
3 tion 30 of the Federal Power Act with respect to de-
4 terminations made and exemptions granted under
5 subsection (b) of such section 30 and subsections (c)
6 and (d) of such section 30 shall apply with respect
7 to actions taken and exemptions granted under this
8 subsection.

9 “(3) EFFECTS.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the granting of an exemp-
12 tion to a project under this subsection shall in
13 no case have the effect of waiving or limiting
14 the application (to such project) of the second
15 sentence of subsection (b) of this section.

16 “(B) ENVIRONMENTAL REVIEW.—An ex-
17 emption granted under paragraph (1)(B) shall
18 be categorically exempt from review under the
19 National Environmental Policy Act of 1969.

20 “(4) EXEMPTION PROCESS.—The Commission
21 shall make a determination with respect to any ap-
22 plication for an exemption under paragraph (1)(B)
23 not later than 90 days after submission of such ap-
24 plication, which period shall include notice and op-
25 portunity for public comment. Any exemption grant-

1 ed under paragraph (1)(B) shall become effective
2 upon the expiration of the applicable existing li-
3 cense.”.

4 (b) EXPEDITED LICENSING OF NEXT-GENERATION
5 HYDROPOWER.—Part I of the Federal Power Act (16
6 U.S.C. 792 et seq.) is amended by adding at the end the
7 following:

8 **“SEC. 37. EXPEDITED LICENSING OF NEXT-GENERATION**
9 **HYDROPOWER PROJECTS.**

10 “(a) IN GENERAL.—The Commission shall issue li-
11 censes for all next-generation hydropower projects in ac-
12 cordance with this section.

13 “(b) DEFINITIONS.—In this section:

14 “(1) EMERGING HYDROPOWER TECHNOLOGY
15 PROJECT.—The term ‘emerging hydropower tech-
16 nology project’ means a project that the Commission
17 determines—

18 “(A) will produce electricity from a gener-
19 ator driven by a turbine that converts the po-
20 tential energy of falling or flowing water;

21 “(B) will utilize turbine or generating tech-
22 nology, an energy storage method, or a measure
23 to protect, mitigate, or enhance environmental
24 resources, that is not in widespread, utility-

1 scale use in the United States as of the date of
2 enactment of this section;

3 “(C) will not be, based on information
4 available to the Commission, likely to jeopardize
5 the continued existence of any species listed as
6 a threatened species or an endangered species
7 under the Endangered Species Act of 1973; and

8 “(D) will not be, based on information
9 available to the Commission, likely to result in
10 the destruction or adverse modification of an
11 area designated as critical habitat for any spe-
12 cies listed as a threatened species or an endan-
13 gered species under the Endangered Species
14 Act of 1973.

15 “(2) NEXT-GENERATION HYDROPOWER
16 PROJECT.—The term ‘next-generation hydropower
17 project’ means a project that—

18 “(A) is required to be licensed under this
19 Act;

20 “(B) is not—

21 “(i) a qualifying conduit hydropower
22 facility under section 30; or

23 “(ii) exempted from licensing under—
24 “(I) section 30; or

1 “(II) section 405 of the Public
2 Utility Regulatory Policies Act of
3 1978; and

4 “(C) is—

5 “(i) an emerging hydropower tech-
6 nology project;

7 “(ii) a qualifying facility, as defined in
8 section 34;

9 “(iii) a closed-loop pumped storage
10 project under section 35;

11 “(iv) a marine or hydrokinetic project,
12 including a project that utilizes a wave
13 technology, tidal technology, or in-river
14 technology; or

15 “(v) a hydropower facility within an
16 irrigation, water supply, industrial, agricul-
17 tural, or other open or closed water con-
18 duit system.

19 “(c) EXPEDITED LICENSING PROCESS.—

20 “(1) NOTIFICATION OF INTENT.—

21 “(A) FILING OF NOTIFICATION.—An appli-
22 cant for any next-generation hydropower project
23 shall commence the licensing process by filing a
24 notification of intent with the Commission.

1 “(B) DEADLINE FOR FILING.—Notwith-
2 standing section 15(b)(1), an applicant for a
3 next-generation hydropower project shall file a
4 notification of intent at least 3 years before the
5 expiration of the existing license, if applicable.

6 “(2) FILING OF APPLICATION.—

7 “(A) GENERAL DEADLINE.—An applicant
8 for a next-generation hydropower project shall
9 submit to the Commission an application not
10 later than 2 years after filing the notification of
11 intent under paragraph (1).

12 “(B) EXISTING LICENCEE DEADLINE.—
13 Notwithstanding section 15(c)(1), an applica-
14 tion for any next-generation hydropower project
15 shall be filed with the Commission at least 12
16 months before the expiration of the term of the
17 existing license, if applicable.

18 “(3) DEADLINE FOR ISSUANCE.—The Commis-
19 sion shall take final action on a license for a next-
20 generation hydropower project under this section not
21 later than 3 years after the applicant notifies the
22 Commission of its intent to file an application for a
23 license, as provided under paragraph (1).

1 “(d) REQUIREMENTS.—In issuing a license under
2 this section the Commission and all resource agencies with
3 regulatory responsibilities in the licensing process shall—

4 “(1) maximize reliance on existing studies and
5 information and require any person or agency re-
6 questing a new study or information to demonstrate
7 that collection of any new data or preparation of any
8 new study will not jeopardize the Commission’s abil-
9 ity to meet the licensing deadline under subsection
10 (c)(3);

11 “(2) consider whether obligations under the Na-
12 tional Environmental Protection Act of 1969 may be
13 met through preparation of an environmental assess-
14 ment or supplementing a previously prepared envi-
15 ronmental assessment or environmental impact
16 statement;

17 “(3) eliminate any nonessential meetings, re-
18 ports, and paperwork, including interim study re-
19 ports and a draft license application or similar docu-
20 ment, without compromising effective consultation
21 with, and participation of, Federal and State re-
22 source agencies, Indian tribe, and the public; and

23 “(4) consider existing project works and other
24 infrastructure to be included in the environmental
25 baseline.

1 “(e) RULE.—Not later than 90 days after the date
2 of enactment of this section, and after consultation with
3 the task force described in subsection (f), which 90 days
4 shall include public notice and opportunity for comment,
5 the Commission shall issue a rule implementing this sec-
6 tion. Such rule shall include a process, not to exceed 60
7 days, for the Commission to determine on a case-by-case
8 basis whether a proposed or existing project qualifies as
9 a next-generation hydropower project prior to the initi-
10 ation of the licensing or relicensing process.

11 “(f) TASK FORCE.—The Commission shall convene a
12 task force, with appropriate Federal and State agencies,
13 Indian tribes, and licensees under this part represented,
14 to coordinate the regulatory processes associated with the
15 authorizations required to license next-generation hydro-
16 power projects pursuant to this section.

17 “(g) CHOICE OF PROCESS.—An applicant for a
18 licence for a project described in clause (ii) or (iii) of sub-
19 section (b)(2)(C) may elect to apply under this section or
20 under section 34 or 35, as applicable.”.

21 **SEC. 2703. IDENTIFYING AND REMOVING MARKET BAR-**
22 **RIERS TO HYDROPOWER.**

23 (a) REPORT ON HYDROPOWER BARRIERS.—

24 (1) IN GENERAL.—Not later than 270 days
25 after the date of enactment of this Act, the Federal

1 Energy Regulatory Commission, in consultation with
2 the Secretary of Energy, shall submit to the Com-
3 mittee on Energy and Natural Resources of the Sen-
4 ate and the Committee on Energy and Commerce of
5 the House of Representatives a report—

6 (A) describing any barriers to the develop-
7 ment and proper compensation of conventional,
8 storage, conduit, and emerging hydropower
9 technologies caused by—

10 (i) rules of Transmission Organiza-
11 tions (as defined in section 3 of the Fed-
12 eral Power Act (16 U.S.C. 796));

13 (ii) regulations or policies—

14 (I) of the Commission; or

15 (II) under the Federal Power Act
16 (16 U.S.C. 791a et seq.); or

17 (iii) other Federal and State laws and
18 policies unique to hydropower development,
19 operation, and regulation, as compared to
20 other sources of electricity;

21 (B) containing recommendations of the
22 Commission for reducing barriers described in
23 subparagraph (A) across regulatory and market
24 sectors;

- 1 (C) identifying and determining any regu-
2 latory, market, procurement, or cost recovery
3 mechanisms that would—
- 4 (i) encourage development of conven-
5 tional, storage, conduit, and emerging hy-
6 dropower technologies; and
- 7 (ii) properly compensate conventional,
8 storage, conduit, and emerging hydropower
9 technologies for the full range of services
10 provided to the electric grid, including—
- 11 (I) balancing electricity supply
12 and demand;
- 13 (II) ensuring grid reliability;
- 14 (III) providing ancillary services;
- 15 (IV) contributing to the
16 decarbonization of the electric grid;
17 and
- 18 (V) integrating intermittent
19 power sources into the grid in a cost-
20 effective manner; and
- 21 (D) identifying ownership and development
22 models that could reduce barriers to the devel-
23 opment of conventional, storage, conduit, and
24 emerging hydropower technologies, including—

1 (i) opportunities for risk-sharing
2 mechanisms and partnerships, including
3 co-ownership models; and

4 (ii) opportunities to foster lease-sale
5 and lease-back arrangements with publicly
6 owned electric utilities.

7 (2) COMMISSION PROCEEDINGS.—The Commis-
8 sion shall base the report under paragraph (1) on
9 the findings of the Commission in—

10 (A) Docket No. AD16–20;

11 (B) Docket No. RM16–23; and

12 (C) any other relevant proceedings.

13 (3) TECHNICAL CONFERENCE AND PUBLIC
14 COMMENT.—In preparing the report under para-
15 graph (1), the Commission shall solicit public input,
16 including by convening a technical conference and
17 providing an opportunity for public submission of
18 written comments on a draft report.

19 (b) DEFINITIONS.—In this section:

20 (1) ANCILLARY SERVICES.—The term “ancil-
21 lary services” means the specialty services and func-
22 tions provided by the electric grid that facilitate and
23 support the continuous flow of electricity so that
24 supply will continually meet demand, including—

25 (A) autonomous dynamic voltage support;

- 1 (B) balancing;
- 2 (C) black start capabilities;
- 3 (D) frequency control;
- 4 (E) load following;
- 5 (F) operating, flexibility, contingency, and
- 6 other reserves;
- 7 (G) reactive power; and
- 8 (H) synchronized regulation.

9 (2) CONVENTIONAL, STORAGE, CONDUIT, AND

10 EMERGING HYDROPOWER TECHNOLOGIES.—The

11 term “conventional, storage, conduit, and emerging

12 hydropower technologies” means hydropower in all

13 its forms and modes of operation, including—

14 (A) the use of dams or similar infrastruc-

15 ture to store water in a reservoir or divert flows

16 from a waterway, and to release stored or di-

17 verted water through a turbine to generate elec-

18 tricity according to any mode of operation, such

19 as run-of-river, peaking, reregulating, storage,

20 or load following;

21 (B) a configuration of two water reservoirs

22 at different elevations that can generate power

23 as water moves down through a turbine, and

24 pump water back to the upper reservoir when

1 the turbine operations are reversed, including
2 both closed- and open-loop systems;

3 (C) marine and hydrokinetic technologies,
4 including wave, tidal, and in-river systems;

5 (D) mini- and micro-hydropower facilities
6 within irrigation, water supply, industrial, agri-
7 cultural, or other open or closed water conduit
8 systems; and

9 (E) other facilities that produce electricity
10 from generators driven by turbines that convert
11 the potential energy of falling or flowing water.

12 **SEC. 2704. MODERNIZING HYDROPOWER LICENSING.**

13 Part I of the Federal Power Act (16 U.S.C. 792 et
14 seq.) is further amended by adding at the end the fol-
15 lowing:

16 **“SEC. 38. LICENSING PROCESS COORDINATION AND IM-
17 PROVEMENT.**

18 “(a) DEFINITION OF FEDERAL AUTHORIZATION.—In
19 this section, the term ‘Federal authorization’ means any
20 authorization required under Federal law (including any
21 license, condition of any license by a Secretary under sec-
22 tion 4(e), prescription submitted by a Secretary under sec-
23 tion 18, permit, special use authorization, certification,
24 opinion, consultation, determination, or other approval)
25 with respect to an application for a license under this part.

1 “(b) DESIGNATION AS LEAD AGENCY.—

2 “(1) IN GENERAL.—The Commission shall act
3 at the lead agency for purposes of all applicable
4 Federal authorizations (including for purposes of
5 complying with the National Environmental Policy
6 Act of 1969), and for purposes of complying with
7 any required State or local environmental reviews.

8 “(2) OTHER AGENCIES.—Each Federal, State,
9 and local government agency considering an aspect
10 of an application for a Federal authorization shall
11 coordinate with the Commission and comply with the
12 deadline established in the schedule developed for
13 the license under this part, in accordance with the
14 rule issued under subsection (d)(2)(C).

15 “(c) USE OF EXISTING STUDIES.—

16 “(1) IN GENERAL.—To the maximum extent
17 practicable and in accordance with the best available
18 science, the Commission and other Federal and
19 State agencies with a responsibility for a Federal au-
20 thorization shall—

21 “(A) use relevant existing studies and
22 data; and

23 “(B) avoid duplicating current, existing
24 studies that are applicable to the relevant
25 project.

1 “(2) DEMONSTRATION.—When requiring any
2 new study or collection of information, the Commis-
3 sion or other Federal or State agency with a respon-
4 sibility for a Federal authorization shall—

5 “(A) explain how the new study or other
6 information is necessary to support the agency’s
7 decisionmaking with respect to the Federal au-
8 thorization;

9 “(B) identify how existing information rea-
10 sonably available to the agency is inadequate to
11 support the agency’s decisionmaking with sub-
12 stantial evidence; and

13 “(C) include an analysis of how the value
14 of the required new study or other information
15 outweighs the cost of producing it.

16 “(d) SCHEDULE.—

17 “(1) TIMING FOR ISSUANCE.—It is the sense of
18 Congress that, except as otherwise provided in this
19 part, all Federal authorizations required for a
20 project should be issued within a reasonable time, so
21 as to facilitate a final Commission licensing decision
22 within 2 years after the date on which the license
23 application for the project under this part is consid-
24 ered to be complete by the Commission.

25 “(2) COMMISSION SCHEDULE.—

1 “(A) IN GENERAL.—The Commission, in
2 accordance with the rule issued under subpara-
3 graph (C), shall—

4 “(i) establish a schedule for—

5 “(I) all filings and issuances nec-
6 essary and appropriate for its
7 issuance of a license issued under this
8 part; and

9 “(II) the issuance of all Federal
10 authorizations for the applicable
11 project; and

12 “(ii) issue such schedule when the
13 Commission determines that the license ap-
14 plication for the project is ready for envi-
15 ronmental analysis.

16 “(B) REQUIREMENTS.—In establishing the
17 schedule under subparagraph (A), the Commis-
18 sion shall—

19 “(i) consult and cooperate with the
20 Federal and State agencies responsible for
21 a Federal authorization;

22 “(ii) ensure the expeditious comple-
23 tion of all proceedings relating to a Fed-
24 eral authorization; and

1 “(iii) comply with applicable schedules
2 established by Federal law with respect to
3 a Federal authorization.

4 “(C) RULEMAKING.—

5 “(i) COMMISSION RULEMAKING TO ES-
6 TABLISH PROCESS TO SET SCHEDULE.—
7 Not later than 180 days after the date of
8 enactment of this section, the Commission,
9 in consultation with appropriate Federal
10 and State agencies and after providing no-
11 tice and opportunity for public comment,
12 shall issue a final rule establishing a proc-
13 ess for setting a schedule under subpara-
14 graph (A).

15 “(ii) CONSIDERATIONS.—In issuing a
16 rule under this subparagraph, the Commis-
17 sion shall ensure that the schedule for each
18 Federal authorization—

19 “(I) includes deadlines for ac-
20 tions by—

21 “(aa) any Federal or State
22 agency with responsibilities for a
23 Federal authorization;

24 “(bb) the applicant;

25 “(cc) the Commission; and

1 “(dd) other agencies and
2 participants in a proceeding;

3 “(II) is developed in consultation
4 with the applicant and any Federal or
5 State agency with responsibility for
6 the applicable Federal authorization;

7 “(III) provides an opportunity
8 for any Federal or State agency with
9 responsibility for a Federal authoriza-
10 tion to identify and resolve issues of
11 concern, consistent with subsections
12 (e) and (f);

13 “(IV) complies with applicable
14 schedules established under Federal
15 law;

16 “(V) ensures expeditious comple-
17 tion of all proceedings required under
18 Federal and State law, to the max-
19 imum extent practicable; and

20 “(VI) facilitates completion of
21 Federal and State agency studies, re-
22 views, and any other procedures re-
23 quired prior to, or concurrent with,
24 the preparation of the environmental
25 document of the Commission required

1 under the National Environmental
2 Policy Act of 1969, to the maximum
3 extent practicable.

4 “(3) ADHERENCE TO SCHEDULE.—

5 “(A) IN GENERAL.—The Commission,
6 Federal, and State agencies with responsibility
7 for a Federal authorization, the license appli-
8 cant, and all other agencies and other partici-
9 pants in proceedings for Federal authorizations
10 for the project shall meet the deadlines estab-
11 lished by the schedule developed under para-
12 graph (2).

13 “(B) EXTENSION OF SCHEDULE DEAD-
14 LINES.—

15 “(i) FEDERAL AUTHORIZATIONS.—A
16 Federal or State agency that is unable to
17 complete its disposition of a Federal au-
18 thorization by the deadline set forth in the
19 schedule established by the Commission
20 under paragraph (2) shall, not later than
21 30 days prior to such deadline, file for an
22 extension with the Commission. The Com-
23 mission shall issue a one-time extension of
24 up to 90 days to any such Federal or State

1 agency upon a demonstration of good
2 cause.

3 “(ii) OTHER EXTENSIONS.—The Com-
4 mission may grant extensions requested by
5 the license applicant or other licensing par-
6 ticipants to facilitate settlement, address
7 unforeseen circumstances, or accommodate
8 other showings of good cause if the Com-
9 mission determines that any such extension
10 would reduce the overall time period for
11 decisionmaking on required Federal au-
12 thorizations for the project, increase the
13 administrative efficiency of the processes
14 for Federal authorizations, or improve the
15 quality of information available to Federal
16 and State agencies with a responsibility for
17 a Federal authorization.

18 “(iii) REISSUANCE OF SCHEDULE.—If
19 the Commission grants an extension under
20 this paragraph, the Commission shall re-
21 issue the schedule and applicable deadlines
22 to reflect the extension of time granted.

23 “(C) LIMITATION.—Notwithstanding the
24 Commission’s authority to extend the schedule
25 as provided in subparagraph (B), the Commis-

1 sion shall not grant any extension that would
2 increase by 1 year or longer the time period in
3 the original schedule issued under paragraph
4 (2) for obtaining all Federal authorizations for
5 the applicable project.

6 “(4) FAILURE TO MEET SCHEDULE DEAD-
7 LINES.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graph (C), if a Federal or State agency fails to
10 complete its disposition of a Federal authoriza-
11 tion in accordance with the schedule deadline
12 established under paragraph (2) (as may be ex-
13 tended under paragraph (3))—

14 “(i) in the case of a Federal agency,
15 \$5,000 of unobligated funds shall be re-
16 scinded; or

17 “(ii) in the case of a State agency,
18 \$5,000 of unobligated funds shall be re-
19 scinded from Federal fish and wildlife or
20 water resources funding programs to the
21 State.

22 “(B) SUBSEQUENT RESCISSION.—Subject
23 to subparagraph (C), for each additional week
24 after any deadline established by the Commis-
25 sion under paragraph (2) (as may be extended

1 under paragraph (3) remains uncompleted by a
2 Federal or State agency with a responsibility
3 for a Federal authorization, an additional re-
4 scission of \$5,000 shall occur as provided in
5 subparagraph (A).

6 “(C) MAXIMUM ANNUAL RESCISSION.—For
7 each individual Federal authorization for a
8 project, the total amounts rescinded under sub-
9 paragraphs (A) and (B) shall not exceed, in any
10 fiscal year, \$100,000.

11 “(D) LIMITATION.—No head of a Federal
12 or State department or agency shall reprogram
13 funds from another Federal account or program
14 for the loss of the funds under this paragraph.
15 No head of a Federal or State agency shall re-
16 port or include any rescinded funds as an ad-
17 ministrative cost for purposes of annual charges
18 under section 10(e).

19 “(e) INCONSISTENT OR CONFLICTING LICENSE
20 TERMS.—

21 “(1) CONSULTATION TO RESOLVE INCONSIST-
22 ENCY OR CONFLICT.—

23 “(A) IN GENERAL.—If a term or condition
24 of a Federal authorization submitted for inclu-
25 sion in a license under this part conflicts or is

1 otherwise inconsistent with another such term
2 or condition, the Commission shall initiate and
3 facilitate consultation between the Federal or
4 State resource agencies submitting conflicting
5 or inconsistent terms or conditions, to attempt
6 to resolve the inconsistency or conflict, includ-
7 ing with any such conditions recommended for
8 inclusion in the license by the Commission.

9 “(B) MEETINGS.—The consultation period
10 under this subsection shall extend up to 90
11 days and shall include at least one technical
12 conference or similar meeting. The Commission
13 shall issue notice of any such conference or
14 other consultation meeting, which shall be open
15 to participation by the license applicant, other
16 agencies, and other licensing participants.

17 “(C) AMENDMENT AND REISSUANCE.—If
18 the agencies submitting the terms or conditions
19 resolve the inconsistency or conflict, the Com-
20 mission and other consulting agencies shall set
21 a reasonable schedule and deadline, that is not
22 later than 90 days after the conclusion of the
23 consultation, for the agencies to amend and re-
24 issue their Federal authorizations to reflect the
25 resolution, as appropriate.

1 “(2) RESOLUTION OF INCONSISTENCY OR CON-
2 FLICT.—

3 “(A) STATEMENTS.—If agencies are un-
4 able to resolve an inconsistency or conflict
5 under paragraph (1), not later than 30 days
6 after the conclusion of the consultation process
7 under such paragraph, the agencies shall sub-
8 mit to the public record maintained by the
9 Commission a statement that identifies the in-
10 consistency or conflict, explains the position
11 taken by each agency causing the inconsistency
12 or conflict, and provides an analysis, supported
13 by information in the public record, of the fac-
14 tual basis for the inconsistent or conflicting po-
15 sition taken by each agency.

16 “(B) REFERRAL.—Following such submis-
17 sion, the Commission shall refer the matter for
18 resolution as provided in subsection (f).

19 “(f) RESOLUTION OF INTERAGENCY DISPUTES.—

20 “(1) REFERRAL TO OMB.—For any dispute
21 under subsections (c), (d), or (e) among Federal and
22 State agencies with responsibility for a Federal au-
23 thorization, as well as any dispute between any such
24 agency and the license applicant, the Commission
25 may, upon its own motion or the request of the head

1 of any such agency or the license applicant, refer the
2 matter to the Director of the Office of Management
3 and Budget.

4 “(2) ACTION BY OMB.—With respect to any dis-
5 pute referred to the Director under paragraph (1),
6 the Director, in consultation with the Chair of the
7 Council on Environmental Quality, shall act as ap-
8 propriate—

9 “(A) to ensure a timely participation;

10 “(B) to ensure a timely decision;

11 “(C) to mediate the dispute; or

12 “(D) to refer the matter to the President.

13 “(3) PARTICIPATION.—The license applicant
14 and other interested participants shall be provided
15 the opportunity to participate in the resolution of
16 any issues under this subsection.”

