

116TH CONGRESS
2D SESSION

H. R. 7410

To modernize the hydropower licensing process and to promote next generation hydropower projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 2020

Mrs. RODGERS of Washington (for herself, Mr. DUNCAN, and Mr. NEWHOUSE) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Oversight and Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To modernize the hydropower licensing process and to promote next generation hydropower projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hydropower Clean En-
5 ergy Future Act”.

1 **SEC. 2. CONFIRMING THAT HYDROPOWER IS AN ESSENTIAL**
2 **RENEWABLE RESOURCE.**

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

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

9 (2) the United States should protect existing
10 hydropower resources and increase substantially the
11 capacity and generation of clean, renewable hydro-
12 power resources to address a changing climate and
13 improve environmental quality in the United States.

14 (b) MODIFYING DEFINITIONS OF RENEWABLE EN-
15 ERGY TO INCLUDE HYDROPOWER.—

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

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

21 “(1) Not less than 20 percent in fiscal years
22 2021 through 2022.

23 “(2) Not less than 23 percent in fiscal years
24 2023 through 2024.

25 “(3) Not less than 25 percent in fiscal year
26 2025 and each fiscal year thereafter.”; and

1 (B) in subsection (b), by striking para-
2 graph (2) and inserting the following:

3 “(2) RENEWABLE ENERGY.—The term ‘renew-
4 able energy’ means energy produced from solar,
5 wind, biomass, landfill gas, ocean (including tidal,
6 wave, current, and thermal), geothermal, municipal
7 solid waste, or hydropower.”.

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

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

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

6 **SEC. 3. PROTECTING AND PROMOTING SMALL AND NEXT-**
 7 **GENERATION HYDROPOWER PROJECTS.**

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

13 “(d) EXEMPTIONS FROM LICENSING IN CERTAIN
 14 CASES.—

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

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

1 “(B) for which a license was issued under
2 part I of the Federal Power Act and the li-
3 censee applies for an exemption under this sub-
4 section, if—

5 “(i) the license was issued after the
6 date of enactment of the Electric Con-
7 sumers Protection Act of 1986;

8 “(ii) the Commission determines,
9 based on information available to the Com-
10 mission, that continued operation of the
11 project is not likely to jeopardize the con-
12 tinued existence of any species listed as a
13 threatened species or an endangered spe-
14 cies under the Endangered Species Act of
15 1973;

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

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

3 “(2) REQUIREMENTS.—An exemption granted
4 under paragraph (1) shall be subject to the same
5 limitations (to ensure protection for fish and wildlife
6 as well as other environmental concerns) as those
7 which are set forth in subsections (c) and (d) of sec-
8 tion 30 of the Federal Power Act with respect to de-
9 terminations made and exemptions granted under
10 subsection (b) of such section 30 and subsections (c)
11 and (d) of such section 30 shall apply with respect
12 to actions taken and exemptions granted under this
13 subsection.

14 “(3) EFFECTS.—

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

21 “(B) ENVIRONMENTAL REVIEW.—An ex-
22 emption granted under paragraph (1)(B) shall
23 be categorically exempt from review under the
24 National Environmental Policy Act of 1969.

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

4 “(B) will utilize turbine or generating tech-
5 nology, an energy storage method, or a measure
6 to protect, mitigate, or enhance environmental
7 resources, that is not in widespread, utility-
8 scale use in the United States as of the date of
9 enactment of this section;

10 “(C) will not be, based on information
11 available to the Commission, likely to jeopardize
12 the continued existence of any species listed as
13 a threatened species or an endangered species
14 under the Endangered Species Act of 1973; and

15 “(D) will not be, based on information
16 available to the Commission, likely to result in
17 the destruction or adverse modification of an
18 area designated as critical habitat for any spe-
19 cies listed as a threatened species or an endan-
20 gered species under the Endangered Species
21 Act of 1973.

22 “(2) NEXT-GENERATION HYDROPOWER
23 PROJECT.—The term ‘next-generation hydropower
24 project’ means a project that—

1 “(A) is required to be licensed under this
2 Act;

3 “(B) is not—

4 “(i) a qualifying conduit hydropower
5 facility under section 30; or

6 “(ii) exempted from licensing under—

7 “(I) section 30; or

8 “(II) section 405 of the Public
9 Utility Regulatory Policies Act of
10 1978; and

11 “(C) is—

12 “(i) an emerging hydropower tech-
13 nology project;

14 “(ii) a qualifying facility, as defined in
15 section 34;

16 “(iii) a closed-loop pumped storage
17 project under section 35;

18 “(iv) a marine or hydrokinetic project,
19 including a project that utilizes a wave
20 technology, tidal technology, or in-river
21 technology; or

22 “(v) a hydropower facility within an
23 irrigation, water supply, industrial, agricul-
24 tural, or other open or closed water con-
25 duit system.

1 “(c) EXPEDITED LICENSING PROCESS.—

2 “(1) NOTIFICATION OF INTENT.—

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

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

12 “(2) FILING OF APPLICATION.—

13 “(A) GENERAL DEADLINE.—An applicant
14 for a next-generation hydropower project shall
15 submit to the Commission an application not
16 later than 2 years after filing the notification of
17 intent under paragraph (1).

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

24 “(3) DEADLINE FOR ISSUANCE.—The Commis-
25 sion shall take final action on a license for a next-

1 generation hydropower project under this section not
2 later than 3 years after the applicant notifies the
3 Commission of its intent to file an application for a
4 license, as provided under paragraph (1).

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

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

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

21 “(3) eliminate any nonessential meetings, re-
22 ports, and paperwork, including interim study re-
23 ports and a draft license application or similar docu-
24 ment, without compromising effective consultation

1 with, and participation of, Federal and State re-
2 source agencies, Indian tribe, and the public; and

3 “(4) consider existing project works and other
4 infrastructure to be included in the environmental
5 baseline.

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

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

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

1 **SEC. 4. IDENTIFYING AND REMOVING MARKET BARRIERS**
2 **TO HYDROPOWER.**

3 (a) REPORT ON HYDROPOWER BARRIERS.—

4 (1) IN GENERAL.—Not later than 270 days
5 after the date of enactment of this Act, the Federal
6 Energy Regulatory Commission, in consultation with
7 the Secretary of Energy, shall submit to the Com-
8 mittee on Energy and Natural Resources of the Sen-
9 ate and the Committee on Energy and Commerce of
10 the House of Representatives a report—

11 (A) describing any barriers to the develop-
12 ment and proper compensation of conventional,
13 storage, conduit, and emerging hydropower
14 technologies caused by—

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

18 (ii) regulations or policies—

19 (I) of the Commission; or

20 (II) under the Federal Power Act
21 (16 U.S.C. 791a et seq.); or

22 (iii) other Federal and State laws and
23 policies unique to hydropower development,
24 operation, and regulation, as compared to
25 other sources of electricity;

1 (B) containing recommendations of the
2 Commission for reducing barriers described in
3 subparagraph (A) across regulatory and market
4 sectors;

5 (C) identifying and determining any regu-
6 latory, market, procurement, or cost recovery
7 mechanisms that would—

8 (i) encourage development of conven-
9 tional, storage, conduit, and emerging hy-
10 dropower technologies; and

11 (ii) properly compensate conventional,
12 storage, conduit, and emerging hydropower
13 technologies for the full range of services
14 provided to the electric grid, including—

15 (I) balancing electricity supply
16 and demand;

17 (II) ensuring grid reliability;

18 (III) providing ancillary services;

19 (IV) contributing to the decar-
20 bonization of the electric grid; and

21 (V) integrating intermittent
22 power sources into the grid in a cost-
23 effective manner; and

24 (D) identifying ownership and development
25 models that could reduce barriers to the

1 development of conventional, storage, conduit,
2 and emerging hydropower technologies, includ-
3 ing—

4 (i) opportunities for risk-sharing
5 mechanisms and partnerships, including
6 co-ownership models; and

7 (ii) opportunities to foster lease-sale
8 and lease-back arrangements with publicly
9 owned electric utilities.

10 (2) COMMISSION PROCEEDINGS.—The Commis-
11 sion shall base the report under paragraph (1) on
12 the findings of the Commission in—

13 (A) Docket No. AD16–20;

14 (B) Docket No. RM16–23; and

15 (C) any other relevant proceedings.

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

22 (b) DEFINITIONS.—In this section:

23 (1) ANCILLARY SERVICES.—The term “ancil-
24 lary services” means the specialty services and func-
25 tions provided by the electric grid that facilitate and

1 support the continuous flow of electricity so that
2 supply will continually meet demand, including—

- 3 (A) autonomous dynamic voltage support;
- 4 (B) balancing;
- 5 (C) black start capabilities;
- 6 (D) frequency control;
- 7 (E) load following;
- 8 (F) operating, flexibility, contingency, and
9 other reserves;
- 10 (G) reactive power; and
- 11 (H) synchronized regulation.

12 (2) CONVENTIONAL, STORAGE, CONDUIT, AND
13 EMERGING HYDROPOWER TECHNOLOGIES.—The
14 term “conventional, storage, conduit, and emerging
15 hydropower technologies” means hydropower in all
16 its forms and modes of operation, including—

- 17 (A) the use of dams or similar infrastruc-
18 ture to store water in a reservoir or divert flows
19 from a waterway, and to release stored or di-
20 verted water through a turbine to generate elec-
21 tricity according to any mode of operation, such
22 as run-of-river, peaking, reregulating, storage,
23 or load following;
- 24 (B) a configuration of two water reservoirs
25 at different elevations that can generate power

1 as water moves down through a turbine, and
2 pump water back to the upper reservoir when
3 the turbine operations are reversed, including
4 both closed- and open-loop systems;

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

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

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

14 **SEC. 5. MODERNIZING HYDROPOWER LICENSING.**

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

18 **“SEC. 38. LICENSING PROCESS COORDINATION AND IM-
19 PROVEMENT.**

20 “(a) DEFINITION OF FEDERAL AUTHORIZATION.—In
21 this section, the term ‘Federal authorization’ means any
22 authorization required under Federal law (including any
23 license, condition of any license by a Secretary under sec-
24 tion 4(e), prescription submitted by a Secretary under sec-
25 tion 18, permit, special use authorization, certification,

1 opinion, consultation, determination, or other approval)
2 with respect to an application for a license under this part.

3 “(b) DESIGNATION AS LEAD AGENCY.—

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

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

17 “(c) USE OF EXISTING STUDIES.—

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

23 “(A) use relevant existing studies and
24 data; and

1 “(B) avoid duplicating current, existing
2 studies that are applicable to the relevant
3 project.

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

8 “(A) explain how the new study or other
9 information is necessary to support the agency’s
10 decision making with respect to the Federal au-
11 thorization;

12 “(B) identify how existing information rea-
13 sonably available to the agency is inadequate to
14 support the agency’s decision making with sub-
15 stantial evidence; and

16 “(C) include an analysis of how the value
17 of the required new study or other information
18 outweighs the cost of producing it.

19 “(d) SCHEDULE.—

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

1 application for the project under this part is consid-
2 ered to be complete by the Commission.

3 “(2) COMMISSION SCHEDULE.—

4 “(A) IN GENERAL.—The Commission, in
5 accordance with the rule issued under subpara-
6 graph (C), shall—

7 “(i) establish a schedule for—

8 “(I) all filings and issuances nec-
9 essary and appropriate for its issu-
10 ance of a license issued under this
11 part; and

12 “(II) the issuance of all Federal
13 authorizations for the applicable
14 project; and

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

19 “(B) REQUIREMENTS.—In establishing the
20 schedule under subparagraph (A), the Commis-
21 sion shall—

22 “(i) consult and cooperate with the
23 Federal and State agencies responsible for
24 a Federal authorization;

1 “(ii) ensure the expeditious comple-
2 tion of all proceedings relating to a Fed-
3 eral authorization; and

4 “(iii) comply with applicable schedules
5 established by Federal law with respect to
6 a Federal authorization.

7 “(C) RULEMAKING.—

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

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

22 “(I) includes deadlines for ac-
23 tions by—

1 “(aa) any Federal or State
2 agency with responsibilities for a
3 Federal authorization;

4 “(bb) the applicant;

5 “(cc) the Commission; and

6 “(dd) other agencies and
7 participants in a proceeding;

8 “(II) is developed in consultation
9 with the applicant and any Federal or
10 State agency with responsibility for
11 the applicable Federal authorization;

12 “(III) provides an opportunity
13 for any Federal or State agency with
14 responsibility for a Federal authoriza-
15 tion to identify and resolve issues of
16 concern, consistent with subsections
17 (e) and (f);

18 “(IV) complies with applicable
19 schedules established under Federal
20 law;

21 “(V) ensures expeditious comple-
22 tion of all proceedings required under
23 Federal and State law, to the max-
24 imum extent practicable; and

1 “(VI) facilitates completion of
2 Federal and State agency studies, re-
3 views, and any other procedures re-
4 quired prior to, or concurrent with,
5 the preparation of the environmental
6 document of the Commission required
7 under the National Environmental
8 Policy Act of 1969, to the maximum
9 extent practicable.

10 “(3) ADHERENCE TO SCHEDULE.—

11 “(A) IN GENERAL.—The Commission,
12 Federal, and State agencies with responsibility
13 for a Federal authorization, the license appli-
14 cant, and all other agencies and other partici-
15 pants in proceedings for Federal authorizations
16 for the project shall meet the deadlines estab-
17 lished by the schedule developed under para-
18 graph (2).

19 “(B) EXTENSION OF SCHEDULE DEAD-
20 LINES.—

21 “(i) FEDERAL AUTHORIZATIONS.—A
22 Federal or State agency that is unable to
23 complete its disposition of a Federal au-
24 thorization by the deadline set forth in the
25 schedule established by the Commission

1 under paragraph (2) shall, not later than
2 30 days prior to such deadline, file for an
3 extension with the Commission. The Com-
4 mission shall issue a one-time extension of
5 up to 90 days to any such Federal or State
6 agency upon a demonstration of good
7 cause.

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

23 “(iii) REISSUANCE OF SCHEDULE.—If
24 the Commission grants an extension under
25 this paragraph, the Commission shall re-

1 issue the schedule and applicable deadlines
2 to reflect the extension of time granted.

3 “(C) LIMITATION.—Notwithstanding the
4 Commission’s authority to extend the schedule
5 as provided in subparagraph (B), the Commis-
6 sion shall not grant any extension that would
7 increase by 1 year or longer the time period in
8 the original schedule issued under paragraph
9 (2) for obtaining all Federal authorizations for
10 the applicable project.

11 “(4) FAILURE TO MEET SCHEDULE DEAD-
12 LINES.—

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

19 “(i) in the case of a Federal agency,
20 \$5,000 of unobligated funds shall be re-
21 scinded; or

22 “(ii) in the case of a State agency,
23 \$5,000 of unobligated funds shall be re-
24 scinded from Federal fish and wildlife or

1 water resources funding programs to the
2 State.

3 “(B) SUBSEQUENT RESCISSION.—Subject
4 to subparagraph (C), for each additional week
5 after any deadline established by the Commis-
6 sion under paragraph (2) (as may be extended
7 under paragraph (3)) remains uncompleted by a
8 Federal or State agency with a responsibility
9 for a Federal authorization, an additional re-
10 scission of \$5,000 shall occur as provided in
11 subparagraph (A).

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

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

1 “(e) INCONSISTENT OR CONFLICTING LICENSE
2 TERMS.—

3 “(1) CONSULTATION TO RESOLVE INCONSIST-
4 ENCY OR CONFLICT.—

5 “(A) IN GENERAL.—If a term or condition
6 of a Federal authorization submitted for inclu-
7 sion in a license under this part conflicts or is
8 otherwise inconsistent with another such term
9 or condition, the Commission shall initiate and
10 facilitate consultation between the Federal or
11 State resource agencies submitting conflicting
12 or inconsistent terms or conditions, to attempt
13 to resolve the inconsistency or conflict, includ-
14 ing with any such conditions recommended for
15 inclusion in the license by the Commission.

16 “(B) MEETINGS.—The consultation period
17 under this subsection shall extend up to 90
18 days and shall include at least one technical
19 conference or similar meeting. The Commission
20 shall issue notice of any such conference or
21 other consultation meeting, which shall be open
22 to participation by the license applicant, other
23 agencies, and other licensing participants.

24 “(C) AMENDMENT AND REISSUANCE.—If
25 the agencies submitting the terms or conditions

1 resolve the inconsistency or conflict, the Com-
2 mission and other consulting agencies shall set
3 a reasonable schedule and deadline, that is not
4 later than 90 days after the conclusion of the
5 consultation, for the agencies to amend and re-
6 issue their Federal authorizations to reflect the
7 resolution, as appropriate.

8 “(2) RESOLUTION OF INCONSISTENCY OR CON-
9 FFLICT.—

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

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

1 “(f) RESOLUTION OF INTERAGENCY DISPUTES.—

2 “(1) REFERRAL TO OMB.—For any dispute
3 under subsections (c), (d), or (e) among Federal and
4 State agencies with responsibility for a Federal au-
5 thorization, as well as any dispute between any such
6 agency and the license applicant, the Commission
7 may, upon its own motion or the request of the head
8 of any such agency or the license applicant, refer the
9 matter to the Director of the Office of Management
10 and Budget.

11 “(2) ACTION BY OMB.—With respect to any dis-
12 pute referred to the Director under paragraph (1),
13 the Director, in consultation with the Chair of the
14 Council on Environmental Quality, shall act as ap-
15 propriate—

16 “(A) to ensure a timely participation;

17 “(B) to ensure a timely decision;

18 “(C) to mediate the dispute; or

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

20 “(3) PARTICIPATION.—The license applicant
21 and other interested participants shall be provided
22 the opportunity to participate in the resolution of
23 any issues under this subsection.”.

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