

AMENDMENT TO H.R. 3043
OFFERED BY M

Page 1, beginning on line 6, amend section 2 of the bill to read as follows:

1 **SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.**

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

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

8 (2) the United States should increase substan-
9 tially the capacity and generation of clean, renewable
10 hydropower that would improve environmental qual-
11 ity in the United States.

12 (b) MODIFYING THE DEFINITION OF RENEWABLE
13 ENERGY TO INCLUDE HYDROPOWER.—Section 203 of the
14 Energy Policy Act of 2005 (42 U.S.C. 15852) is amend-
15 ed—

16 (1) in subsection (a), by striking “the following
17 amounts” and all that follows through paragraph (3)
18 and inserting “not less than 15 percent in fiscal year

1 2017 and each fiscal year thereafter shall be renew-
2 able energy.” ; and

3 (2) in subsection (b), by striking paragraph (2)
4 and inserting the following:

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

11 (c) PRELIMINARY PERMITS.—Section 5 of the Fed-
12 eral Power Act (16 U.S.C. 798) is amended—

13 (1) in subsection (a), by striking “three” and
14 inserting “4”; and

15 (2) by amending subsection (b) to read as fol-
16 lows:

17 “(b) The Commission may—

18 “(1) extend the period of a preliminary permit
19 once for not more than 4 additional years beyond
20 the 4 years permitted by subsection (a) if the Com-
21 mission finds that the permittee has carried out ac-
22 tivities under such permit in good faith and with
23 reasonable diligence; and

24 “(2) if the period of a preliminary permit is ex-
25 tended under paragraph (1), extend the period of

1 such preliminary permit once for not more than 4
2 additional years beyond the extension period granted
3 under paragraph (1), if the Commission determines
4 that there are extraordinary circumstances that war-
5 rant such additional extension.”.

6 (d) TIME LIMIT FOR CONSTRUCTION OF PROJECT
7 WORKS.—Section 13 of the Federal Power Act (16 U.S.C.
8 806) is amended in the second sentence by striking “once
9 but not longer than two additional years” and inserting
10 “for not more than 8 additional years,”.

11 (e) LICENSE TERM.—Section 15(e) of the Federal
12 Power Act (16 U.S.C. 808(e)) is amended—

13 (1) by striking “(e) Except” and inserting the
14 following:

15 “(e) LICENSE TERM ON RELICENSING.—

16 “(1) IN GENERAL.—Except”; and

17 (2) by adding at the end the following:

18 “(2) CONSIDERATION.—In determining the
19 term of a license under paragraph (1), the Commis-
20 sion shall consider, among other things, project-re-
21 lated investments to be made by the licensee under
22 a new license issued under this section, as well as
23 project-related investments made by a licensee over
24 the term of the existing license (including any terms
25 under annual licenses). In considering such invest-

1 ments, the Commission shall give the same weight
2 to—

3 “(A) investments to be made by the li-
4 censee to implement a new license issued under
5 this section, including—

6 “(i) investments in redevelopment,
7 new construction, new capacity, efficiency,
8 modernization, rehabilitation, and safety
9 improvements; and

10 “(ii) investments in environmental,
11 recreation, and other protection, mitiga-
12 tion, or enhancement measures that will be
13 required or authorized by the license; and

14 “(B) investments made by the licensee over
15 the term of the existing license (including any
16 terms under annual licenses), beyond those re-
17 quired by the existing license when issued,
18 that—

19 “(i) resulted in, during the term of
20 the existing license—

21 “(I) redevelopment, new con-
22 struction, new capacity, efficiency,
23 modernization, rehabilitation, or safe-
24 ty improvements; or

1 “(II) environmental, recreation,
2 or other protection, mitigation, or en-
3 hancement measures; and

4 “(ii) did not result in the extension of
5 the term of the existing license by the
6 Commission.”.

7 (f) ALTERNATIVE CONDITIONS AND PRESCRIP-
8 TIONS.—Section 33 of the Federal Power Act (16 U.S.C.
9 823d) is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (1), by striking “deems”
12 and inserting “determines”;

13 (B) in paragraph (2)(B), in the matter
14 preceding clause (i), by inserting “determined
15 to be necessary” before “by the Secretary”;

16 (C) by striking paragraph (4); and

17 (D) by striking paragraph (5);

18 (2) in subsection (b)—

19 (A) by striking paragraph (4); and

20 (B) by striking paragraph (5); and

21 (3) by adding at the end the following:

22 “(c) FURTHER CONDITIONS.—This section applies to
23 any further conditions or prescriptions proposed or im-
24 posed pursuant to section 4(e), 6, or 18.”.

Page 6, beginning on line 15, amend section 3 of the bill to read as follows:

1 **SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVE-**
2 **MENTS.**

3 (a) HYDROPOWER LICENSING AND PROCESS IM-
4 PROVEMENTS.—Part I of the Federal Power Act (16
5 U.S.C. 792 et seq.) is amended by adding at the end the
6 following:

7 **“SEC. 34. HYDROPOWER LICENSING AND PROCESS IM-**
8 **PROVEMENTS.**

9 “(a) DEFINITION.—In this section, the term ‘Federal
10 authorization’—

11 “(1) means any authorization required under
12 Federal law with respect to an application for a li-
13 cense under this part; and

14 “(2) includes any permits, special use author-
15 izations, certifications, opinions, or other approvals
16 as may be required under Federal law to approve or
17 implement the license under this part.

18 “(b) DESIGNATION AS LEAD AGENCY.—

19 “(1) IN GENERAL.—The Commission shall act
20 as the lead agency for the purposes of coordinating
21 all applicable Federal authorizations and for the
22 purposes of complying with the National Environ-
23 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

1 “(2) OTHER AGENCIES AND INDIAN TRIBES.—

2 “(A) IN GENERAL.—Each Federal, State,
3 and local government agency and Indian tribe
4 considering an aspect of an application for Fed-
5 eral authorization shall coordinate with the
6 Commission and comply with the deadline es-
7 tablished in the schedule developed for the li-
8 cense under this part in accordance with the
9 rule issued by the Commission under subsection
10 (c).

11 “(B) IDENTIFICATION.—The Commission
12 shall identify, as early as practicable after it is
13 notified by the applicant for a license under this
14 part, any Federal or State agency, local govern-
15 ment, or Indian tribe that may consider an as-
16 pect of an application for a Federal authoriza-
17 tion.

18 “(C) NOTIFICATION.—

19 “(i) IN GENERAL.—The Commission
20 shall notify any agency and Indian tribe
21 identified under subparagraph (B) of the
22 opportunity to participate in the process of
23 reviewing an aspect of an application for a
24 Federal authorization.

1 “(ii) DEADLINE.—Each agency and
2 Indian tribe receiving a notice under clause
3 (i) shall submit a response acknowledging
4 receipt of the notice to the Commission
5 within 30 days of receipt of such notice
6 and request.

7 “(D) ISSUE IDENTIFICATION AND RESOLU-
8 TION.—

9 “(i) IDENTIFICATION OF ISSUES.—
10 Federal, State, and local government agen-
11 cies and Indian tribes that may consider
12 an aspect of an application for Federal au-
13 thorization shall identify, as early as pos-
14 sible, and share with the Commission and
15 the applicant, any issues of concern identi-
16 fied during the pendency of the Commis-
17 sion’s action under this part relating to
18 any Federal authorization that may delay
19 or prevent the granting of such authoriza-
20 tion, including any issues that may prevent
21 the agency or Indian tribe from meeting
22 the schedule established for the license
23 under this part in accordance with the rule
24 issued by the Commission under subsection
25 (c).

1 “(ii) ISSUE RESOLUTION.—The Com-
2 mission may forward any issue of concern
3 identified under clause (i) to the heads of
4 the relevant State and Federal agencies
5 (including, in the case of an issue of con-
6 cern identified by a State or local govern-
7 ment agency or Indian tribe, the Federal
8 agency overseeing the delegated authority,
9 or the Secretary of the Interior with re-
10 gard to an issue of concern identified by
11 an Indian tribe, as applicable) for resolu-
12 tion. If the Commission forwards an issue
13 of concern to the head of a relevant agen-
14 cy, the Commission and the relevant agen-
15 cy shall enter into a memorandum of un-
16 derstanding to facilitate interagency co-
17 ordination and resolution of such issues of
18 concern, as appropriate.

19 “(c) SCHEDULE.—

20 “(1) COMMISSION RULEMAKING TO ESTABLISH
21 PROCESS TO SET SCHEDULE.—Not later than 180
22 days after the date of enactment of this section the
23 Commission shall, in consultation with the appro-
24 priate Federal agencies, issue a rule, after providing
25 for notice and public comment, establishing a proc-

1 ess for setting a schedule following the filing of an
2 application under this part for a license for the re-
3 view and disposition of each Federal authorization.

4 “(2) ELEMENTS OF SCHEDULING RULE.—In
5 issuing a rule under this subsection, the Commission
6 shall ensure that the schedule for each Federal au-
7 thorization—

8 “(A) includes deadlines for actions by—

9 “(i) any Federal or State agency, local
10 government, or Indian tribe that may con-
11 sider an aspect of an application for the
12 Federal authorization;

13 “(ii) the applicant;

14 “(iii) the Commission; and

15 “(iv) other participants in any appli-
16 cable proceeding;

17 “(B) is developed in consultation with the
18 applicant and any agency and Indian tribe that
19 submits a response under subsection
20 (b)(2)(C)(ii);

21 “(C) provides an opportunity for any Fed-
22 eral or State agency, local government, or In-
23 dian tribe that may consider an aspect of an
24 application for the applicable Federal authoriza-

1 tion to identify and resolve issues of concern, as
2 provided in subsection (b)(2)(D);

3 “(D) complies with applicable schedules es-
4 tablished under Federal and State law;

5 “(E) ensures expeditious completion of all
6 proceedings required under Federal and State
7 law, to the extent practicable; and

8 “(F) facilitates completion of Federal and
9 State agency studies, reviews, and any other
10 procedures required prior to, or concurrent
11 with, the preparation of the Commission’s envi-
12 ronmental document required under the Na-
13 tional Environmental Policy Act of 1969 (42
14 U.S.C. 4321 et seq.).

15 “(d) TRANSMISSION OF FINAL SCHEDULE.—

16 “(1) IN GENERAL.—For each application for a
17 license under this part, the Commission shall estab-
18 lish a schedule in accordance with the rule issued by
19 the Commission under subsection (c). The Commis-
20 sion shall publicly notice and transmit the final
21 schedule to the applicant and each agency and In-
22 dian tribe identified under subsection (b)(2)(B).

23 “(2) RESPONSE.—Each agency and Indian
24 tribe receiving a schedule under this subsection shall

1 acknowledge receipt of such schedule in writing to
2 the Commission within 30 days.

3 “(e) ADHERENCE TO SCHEDULE.—All applicants,
4 other licensing participants, and agencies and Indian
5 tribes considering an aspect of an application for a Fed-
6 eral authorization shall meet the deadlines set forth in the
7 schedule established pursuant to subsection (d)(1).

8 “(f) APPLICATION PROCESSING.—The Commission,
9 Federal, State, and local government agencies, and Indian
10 tribes may allow an applicant seeking a Federal authoriza-
11 tion to fund a third-party contractor selected by such an
12 agency or tribe to assist in reviewing the application. All
13 costs of an agency or tribe incurred pursuant to direct
14 funding by the applicant, including all costs associated
15 with the third party contractor, shall not be considered
16 costs of the United States for the administration of this
17 part under section 10(e).

18 “(g) COMMISSION RECOMMENDATION ON SCOPE OF
19 ENVIRONMENTAL REVIEW.—For the purposes of coordi-
20 nating Federal authorizations for each license under this
21 part, the Commission shall consult with and make a rec-
22 ommendation to agencies and Indian tribes receiving a
23 schedule under subsection (d) on the scope of the environ-
24 mental review for all Federal authorizations for such li-
25 cense. Each Federal and State agency and Indian tribe

1 shall give due consideration and may give deference to the
2 Commission's recommendations, to the extent appropriate
3 under Federal law.

4 “(h) EXTENSION OF DEADLINE.—

5 “(1) APPLICATION.—A Federal, State, or local
6 government agency or Indian tribe that is unable to
7 complete its disposition of a Federal authorization
8 by the deadline set forth in the schedule established
9 under subsection (d)(1) shall, not later than 30 days
10 prior to such deadline, file for an extension with the
11 Commission.

12 “(2) EXTENSION.—The Commission shall only
13 grant an extension filed for under paragraph (1) if
14 the agency or Indian tribe demonstrates, based on
15 the record maintained under subsection (i), that
16 complying with the schedule established under sub-
17 section (d)(1) would prevent the agency or tribe
18 from complying with applicable Federal or State law.
19 If the Commission grants the extension, the Com-
20 mission shall set a reasonable schedule and deadline,
21 that is not later than 90 days after the deadline set
22 forth in the schedule established under subsection
23 (d)(1), for the agency or tribe to complete its dis-
24 position of the Federal authorization.

1 “(i) CONSOLIDATED RECORD.—The Commission
2 shall, with the cooperation of Federal, State, and local
3 government agencies and Indian tribes, maintain a com-
4 plete consolidated record of all decisions made or actions
5 taken by the Commission or by a Federal administrative
6 agency or officer (or State or local government agency or
7 officer or Indian tribe acting under delegated Federal au-
8 thority) with respect to any Federal authorization. Such
9 record shall constitute the record for judicial review under
10 section 313(b).

11 “(j) SUBMISSION OF LICENSE RECOMMENDATIONS,
12 CONDITIONS, AND PRESCRIPTIONS.—

13 “(1) SUBMISSION OF RECOMMENDATIONS.—
14 Any Federal or State agency that is providing rec-
15 ommendations with respect to a license proceeding
16 under this part shall submit to the Commission for
17 inclusion in the consolidated record relating to the li-
18 cense proceeding maintained under subsection (i)—

19 “(A) the recommendations;

20 “(B) the rationale for the recommenda-
21 tions; and

22 “(C) any supporting materials relating to
23 the recommendations.

24 “(2) WRITTEN STATEMENT.—In a case in
25 which a Federal agency is making a determination

1 with respect to a covered measure (as defined in sec-
2 tion 35(a)), the head of the Federal agency shall
3 submit to the Commission for inclusion in the con-
4 solidated record, in addition to the information re-
5 quired under paragraph (1), a written statement
6 demonstrating that the Federal agency gave equal
7 consideration to the effects of the covered measure
8 on—

9 “(A) energy supply, distribution, cost, and
10 use;

11 “(B) flood control;

12 “(C) navigation;

13 “(D) water supply; and

14 “(E) air quality and the preservation of
15 other aspects of environmental quality.

16 “(3) INFORMATION FROM OTHER AGENCIES.—

17 In preparing a written statement under paragraph
18 (2), the head of a Federal agency may make use of
19 information produced or made available by other
20 agencies with relevant expertise in the factors de-
21 scribed in subparagraphs (A) through (E) of that
22 paragraph.

23 “(k) DELEGATION.—A Secretary may delegate the
24 authority to determine a condition to be necessary under
25 section 4(e), or to prescribe a fishway under section 18,

1 to an officer of the applicable department based, in part,
2 on the ability of the officer to evaluate the broad effects
3 of such condition or prescription on—

4 “(1) the applicable project; and

5 “(2) the factors described in subparagraphs (A)
6 through (E) of subsection (j)(2).

7 “(1) NO EFFECT ON OTHER LAWS.—Nothing in this
8 section shall be construed to affect any requirement of the
9 Federal Water Pollution Control Act, the Fish and Wild-
10 life Coordination Act, the Endangered Species Act of
11 1973, section 14 of the Act of March 3, 1899 (commonly
12 known as the Rivers and Harbors Appropriation Act of
13 1899), and those provisions in subtitle III of title 54,
14 United States Code commonly known as the National His-
15 toric Preservation Act, with respect to an application for
16 a license under this part.

17 **“SEC. 35. TRIAL-TYPE HEARINGS.**

18 “(a) DEFINITION OF COVERED MEASURE.—In this
19 section, the term ‘covered measure’ means—

20 “(1) a condition determined to be necessary
21 under section 4(e), including an alternative condition
22 proposed under section 33(a);

23 “(2) fishways prescribed under section 18, in-
24 cluding an alternative prescription proposed under
25 section 33(b); or

1 “(3) any action by the Secretary to exercise re-
2 served authority under the license to prescribe, sub-
3 mit, or revise any condition to a license under the
4 first proviso of section 4(e) or fishway prescribed
5 under section 18.

6 “(b) AUTHORIZATION OF TRIAL-TYPE HEARING.—
7 An applicant for a license under this part (including an
8 applicant for a license under section 15) and any party
9 to a license proceeding shall be entitled to a determination
10 on the record, after opportunity for a trial-type hearing
11 of not more than 120 days, on any disputed issues of ma-
12 terial fact with respect to an applicable covered measure.

13 “(c) DEADLINE FOR REQUEST.—A request for a
14 trial-type hearing under this section shall be submitted not
15 later than 60 days after the date on which, as applicable—

16 “(1) the Secretary determines the condition to
17 be necessary under section 4(e) or prescribes the
18 fishway under section 18; or

19 “(2) the Secretary exercises reserved authority
20 under the license to prescribe, submit, or revise any
21 condition to a license under the first proviso of sec-
22 tion 4(e) or fishway prescribed under section 18, as
23 appropriate.

24 “(d) NO REQUIREMENT TO EXHAUST.—By electing
25 not to request a trial-type hearing under subsection (c),

1 a license applicant and any other party to a license pro-
2 ceeding shall not be considered to have waived the right
3 of the applicant or other party to raise any issue of fact
4 or law in a non-trial-type proceeding, but no issue may
5 be raised for the first time on rehearing or judicial review
6 of the license decision of the Commission.

7 “(e) ADMINISTRATIVE LAW JUDGE.—

8 “(1) IN GENERAL.—All disputed issues of mate-
9 rial fact raised by a party in a request for a trial-
10 type hearing submitted under subsection (c) shall be
11 determined in a single trial-type hearing to be con-
12 ducted by an Administrative Law Judge within the
13 Office of Administrative Law Judges and Dispute
14 Resolution of the Commission, in accordance with
15 the Commission rules of practice and procedure
16 under part 385 of title 18, Code of Federal Regula-
17 tions (or successor regulations), and within the time-
18 frame established by the Commission for each li-
19 cense proceeding (including a proceeding for a li-
20 cense under section 15) under section 34(d).

21 “(2) REQUIREMENT.—The trial-type hearing
22 shall include the opportunity—

23 “(A) to undertake discovery; and

24 “(B) to cross-examine witnesses, as appli-
25 cable.

1 “(f) STAY.—The Administrative Law Judge may im-
2 pose a stay of a trial-type hearing under this section for
3 a period of not more than 120 days to facilitate settlement
4 negotiations relating to resolving the disputed issues of
5 material fact with respect to the covered measure.

6 “(g) DECISION OF THE ADMINISTRATIVE LAW
7 JUDGE.—

8 “(1) CONTENTS.—The decision of the Adminis-
9 trative Law Judge shall contain—

10 “(A) findings of fact on all disputed issues
11 of material fact;

12 “(B) conclusions of law necessary to make
13 the findings of fact, including rulings on mate-
14 riality and the admissibility of evidence; and

15 “(C) reasons for the findings and conclu-
16 sions.

17 “(2) LIMITATION.—The decision of the Admin-
18 istrative Law Judge shall not contain conclusions as
19 to whether—

20 “(A) any condition or prescription should
21 be adopted, modified, or rejected; or

22 “(B) any alternative condition or prescrip-
23 tion should be adopted, modified, or rejected.

24 “(3) FINALITY.—A decision of an Administra-
25 tive Law Judge under this section with respect to a

1 disputed issue of material fact shall not be subject
2 to further administrative review.

3 “(4) SERVICE.—The Administrative Law Judge
4 shall serve the decision on each party to the hearing
5 and forward the complete record of the hearing to
6 the Commission and the Secretary that proposed the
7 original condition or prescription.

8 “(h) SECRETARIAL DETERMINATION.—

9 “(1) IN GENERAL.—Not later than 60 days
10 after the date on which the Administrative Law
11 Judge issues the decision under subsection (g) and
12 in accordance with any applicable schedule estab-
13 lished by the Commission under section 34(d), the
14 Secretary proposing a covered measure shall file
15 with the Commission a final determination to adopt,
16 modify, or withdraw any condition or prescription
17 that was the subject of a hearing under this section,
18 based on the decision of the Administrative Law
19 Judge.

20 “(2) RECORD OF DETERMINATION.—The final
21 determination of the Secretary filed with the Com-
22 mission shall identify the reasons for the decision
23 and any considerations taken into account that were
24 not part of, or were inconsistent with, the findings
25 of the Administrative Law Judge and shall be in-

1 cluded in the consolidated record maintained under
2 section 34(i).

3 “(i) RESOLUTION OF MATTERS.—Notwithstanding
4 sections 4(e) and 18, if the Commission finds that a final
5 determination under (h)(1) of the Secretary is inconsistent
6 with the purposes of this part or other applicable law, the
7 Commission may enter into a memorandum of under-
8 standing with the Secretary to facilitate interagency co-
9 ordination and resolve the matter.

10 “(j) JUDICIAL REVIEW.—The decision of the Admin-
11 istrative Law Judge and the record of determination of
12 the Secretary shall be included in the record of the appli-
13 cable licensing proceeding and subject to judicial review
14 of the final licensing decision of the Commission under
15 section 313(b).

16 **“SEC. 36. LICENSING STUDY IMPROVEMENTS.**

17 “(a) IN GENERAL.—To facilitate the timely and effi-
18 cient completion of the license proceedings under this part,
19 the Commission shall, in consultation with applicable Fed-
20 eral and State agencies and interested members of the
21 public—

22 “(1) compile current and accepted best prac-
23 tices in performing studies required in such license
24 proceedings, including methodologies and the design
25 of studies to assess the full range of environmental

1 impacts of a project that reflect the most recent
2 peer-reviewed science;

3 “(2) compile a comprehensive collection of stud-
4 ies and data accessible to the public that could be
5 used to inform license proceedings under this part;
6 and

7 “(3) encourage license applicants, agencies, and
8 Indian tribes to develop and use, for the purpose of
9 fostering timely and efficient consideration of license
10 applications, a limited number of open-source meth-
11 odologies and tools applicable across a wide array of
12 projects, including water balance models and
13 streamflow analyses.

14 “(b) USE OF STUDIES.—To the extent practicable,
15 the Commission and other Federal, State, and local gov-
16 ernment agencies and Indian tribes considering an aspect
17 of an application for Federal authorization (as defined in
18 section 34) shall use studies and data based on current,
19 accepted science in support of their actions. Any partici-
20 pant in a proceeding with respect to such a Federal au-
21 thorization shall demonstrate that a study requested by
22 the participant is not duplicative of current, existing stud-
23 ies that are applicable to the project.

24 “(c) INTRA-WATERSHED REVIEW.—The Commission
25 shall establish a program to develop comprehensive plans,

1 at the request of project applicants, on a watershed-wide
2 scale, in consultation with the applicants, appropriate
3 Federal agencies, and affected States, local governments,
4 and Indian tribes, in watersheds with respect to which
5 there are more than one application for a project. Upon
6 such a request, the Commission, in consultation with the
7 applicants, such Federal agencies, and affected States,
8 local governments, and Indian tribes, may conduct or com-
9 mission watershed-wide environmental studies, with the
10 participation of at least 2 applicants. Any study conducted
11 under this subsection shall apply only to a project with
12 respect to which the applicants participate.

13 **“SEC. 37. LICENSE AMENDMENT IMPROVEMENTS.**

14 “(a) QUALIFYING PROJECT UPGRADES.—

15 “(1) IN GENERAL.—As provided in this section,
16 the Commission may approve an application under
17 this section for an amendment to a license issued
18 under this part for a qualifying project upgrade.

19 “(2) APPLICATION.—A licensee filing an appli-
20 cation for an amendment to a project license, for
21 which the licensee is seeking approval as a qualified
22 project upgrade under this section, shall include in
23 such application information sufficient to dem-
24 onstrate that the proposed change to the project de-

1 scribed in the application is a qualifying project up-
2 grade.

3 “(3) NOTICE AND INITIAL DETERMINATION ON
4 QUALIFICATION.—Not later than 30 days after re-
5 ceipt of an application under paragraph (2), the
6 Commission, in consultation with other Federal
7 agencies, States, and Indian tribes the Commission
8 determines appropriate, shall publish in the Federal
9 Register a notice containing—

10 “(A) notice of the application filed under
11 paragraph (2);

12 “(B) an initial determination as to whether
13 the proposed change to the project described in
14 the application for a license amendment is a
15 qualifying project upgrade; and

16 “(C) a request for public comment on the
17 application and the initial determination.

18 “(4) PUBLIC COMMENT AND CONSULTATION.—
19 The Commission shall, for a period of 45 days be-
20 ginning on the date of publication of a notice under
21 paragraph (3)—

22 “(A) accept public comment regarding the
23 application and whether the proposed license
24 amendment is for a qualifying project upgrade;
25 and

1 “(B) consult with each Federal, State, and
2 local government agency and Indian tribe con-
3 sidering an aspect of an application for any au-
4 thorization required under Federal law with re-
5 spect to the proposed license amendment, as
6 well as other interested agencies and Indian
7 tribes.

8 “(5) FINAL DETERMINATION ON QUALIFICA-
9 TION.—Not later than 15 days after the end of the
10 public comment and consultation period under para-
11 graph (4), the Commission shall publish in the Fed-
12 eral Register a final determination as to whether the
13 proposed license amendment is for a qualifying
14 project upgrade.

15 “(6) FEDERAL AUTHORIZATIONS.—In estab-
16 lishing the schedule for a proposed license amend-
17 ment for a qualifying project upgrade, the Commis-
18 sion shall require final disposition of all authoriza-
19 tions required under Federal law with respect to an
20 application for such license amendment, other than
21 final action by the Commission, by not later than
22 120 days after the date on which the Commission
23 publishes a final determination under paragraph (5)
24 that the proposed license amendment is for a quali-
25 fying project upgrade.

1 “(7) COMMISSION ACTION.—Not later than 150
2 days after the date on which the Commission pub-
3 lishes a final determination under paragraph (5)
4 that a proposed license amendment is for a quali-
5 fying project upgrade, the Commission shall take
6 final action on the license amendment application.

7 “(8) LICENSE AMENDMENT CONDITIONS.—Any
8 condition or prescription included in or applicable to
9 a license amendment for a qualifying project up-
10 grade approved under this subsection, including any
11 condition, prescription, or other requirement of a
12 Federal authorization, shall be limited to those that
13 are—

14 “(A) necessary to protect public safety; or

15 “(B) reasonable, economically feasible, and
16 essential to prevent loss of or damage to, or to
17 mitigate adverse effects on, fish and wildlife re-
18 sources, water supply, and water quality that
19 are directly caused by the construction and op-
20 eration of the qualifying project upgrade, as
21 compared to the environmental baseline existing
22 at the time the Commission approves the appli-
23 cation for the license amendment.

24 “(9) RULEMAKING.—Not later than 180 days
25 after the date of enactment of this section, the Com-

1 mission shall, after notice and opportunity for public
2 comment, issue a rule to implement this subsection.

3 “(10) DEFINITIONS.—For purposes of this sub-
4 section:

5 “(A) QUALIFYING PROJECT UPGRADE.—
6 The term ‘qualifying project upgrade’ means a
7 change to a project licensed under this part
8 that meets the qualifying criteria, as deter-
9 mined by the Commission.

10 “(B) QUALIFYING CRITERIA.—The term
11 ‘qualifying criteria’ means, with respect to a
12 project licensed under this part, a change to the
13 project that—

14 “(i) if carried out, would be unlikely
15 to adversely affect any species listed as
16 threatened or endangered under the En-
17 dangered Species Act of 1973 or result in
18 the destruction or adverse modification of
19 critical habitat, as determined in consulta-
20 tion with the Secretary of the Interior or
21 Secretary of Commerce, as appropriate, in
22 accordance with section 7 of the Endan-
23 gered Species Act of 1973;

24 “(ii) is consistent with any applicable
25 comprehensive plan under section 10(a)(2);

1 “(iii) includes only changes to project
2 lands, waters, or operations that, in the
3 judgment of the Commission, would result
4 in only insignificant or minimal cumulative
5 adverse environmental effects;

6 “(iv) would be unlikely to adversely
7 affect water quality or water supply; and

8 “(v) proposes to implement—

9 “(I) capacity increases, efficiency
10 improvements, or other enhancements
11 to hydropower generation at the li-
12 censed project;

13 “(II) environmental protection,
14 mitigation, or enhancement measures
15 to benefit fish and wildlife resources
16 or other natural and cultural re-
17 sources; or

18 “(III) improvements to public
19 recreation at the licensed project.

20 “(b) AMENDMENT APPROVAL PROCESSES.—

21 “(1) RULE.—Not later than 1 year after the
22 date of enactment of this section, the Commission
23 shall, after notice and opportunity for public com-
24 ment, issue a rule establishing new standards and
25 procedures for license amendment applications under

1 this part. In issuing such rule, the Commission shall
2 seek to develop the most efficient and expedient
3 process, consultation, and review requirements, com-
4 mensurate with the scope of different categories of
5 proposed license amendments. Such rule shall ac-
6 count for differences in environmental effects across
7 a wide range of categories of license amendment ap-
8 plications.

9 “(2) CAPACITY.—In issuing a rule under this
10 subsection, the Commission shall take into consider-
11 ation that a change in generating or hydraulic ca-
12 pacity may indicate the potential environmental ef-
13 fects of a proposed license amendment but is not de-
14 terminative of such effects.

15 “(3) PROCESS OPTIONS.—In issuing a rule
16 under this subsection, the Commission shall take
17 into consideration the range of process options avail-
18 able under the Commission’s regulations for license
19 applications and adapt such options to amendment
20 applications, where appropriate.”.

