TITLE I—MODERNIZING AND
PROTECTING INFRASTRUCTURE

Subtitle ___.—Hydropower
Regulatory Modernization

SEC. 1301. ADMINISTRATIVE EFFICIENCY AND TRANS-
PARENCY.

Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following new sub-
sections:

“(h) Administration of Hydropower Li-
censes.—To administer the licenses and exemptions issued under this part. The Commission shall have exclu-
sive authority to enforce, amend, approve compliance with, and otherwise administer all terms, conditions, prescriptions, certifications, articles, and all other requirements included in any license or exemption issued under this part.

“(i) Effective Use of Existing Information.—
To use scientific and other technical data, regardless of source, that are available to the Commission at the time a licensing process for a project is commenced, or another action is taken, under this part, and that the Commission determines are accurate, reliable, and relevant for use in
each such action. The Commission shall seek to minimize duplicative studies and process costs by requiring the conduct of studies or other information-gathering activities only when the Commission determines that new data or other information are necessary to support decisionmaking and that the value of such new data or other information outweighs the cost of producing it. Any determination by the Commission to require a study or other information gathering activity shall be accompanied by an explanation, supported by information in the Commission’s record, that demonstrates the inadequacy of existing information.

“(j) Administration of Project Shorelines and Other Lands.—To administer and manage shorelines and other lands included in each project, including for recreational and other development unrelated to the project, but only as the Commission determines to be necessary to meet a site-specific license requirement, and only to the extent that State or local laws and regulations do not adequately address such license requirement. Except as provided in this subsection and pursuant to section 308, nothing contained in this part shall be construed as affecting any State or local law related to the management of project shorelines and other lands. Any determination by the Commission that its administration and management of project lands is necessary to meet a site-specific license
requirement shall be accompanied by an explanation, supported by information in the Commission’s record, that demonstrates the need for the Commission’s management and explains how State or local laws and regulations are inadequate to meet the site-specific license requirement.”.

SEC. 1302. PROMOTING NEW HYDROPOWER INFRASTRUCTURE.

The Federal Power Act (16 U.S.C. 791a et seq.) is amended by adding after section 33 the following new section:

“SEC. 34. HYDROPOWER FACILITIES AT EXISTING NONPOWERED DAMS.

“(a) QUALIFYING FACILITIES OF 5 MEGAWATTS OR LESS.—

“(1) NONJURISDICTIONAL.—A qualifying facility with an installed capacity of 5 megawatts or less shall not be required to be licensed under this part.

“(2) DETERMINATION.—

“(A) NOTICE OF INTENT.—Any person, State, or municipality proposing to construct a qualifying facility described in paragraph (1) shall file with the Commission a notice of intent to construct such facility. The notice shall include sufficient information to demonstrate that the facility meets the qualifying criteria.
“(B) COMMISSION NOTICE AND INITIAL DETERMINATION.—Not later than 15 days after receipt of a notice of intent filed under subparagraph (A), the Commission shall—

“(i) make an initial determination as to whether the facility meets the qualifying criteria; and

“(ii) if the Commission makes an initial determination, pursuant to clause (i), that the facility meets the qualifying criteria, publish public notice of the notice of intent filed under subparagraph (A).

“(C) COMMISSION FINAL DETERMINATION.—If, not later than 45 days after the date of publication of the public notice described in subparagraph (B)(ii)—

“(i) an entity contests whether the facility meets the qualifying criteria, the Commission shall promptly issue a written determination as to whether the facility meets such criteria; or

“(ii) no entity contests whether the facility meets the qualifying criteria, the facility shall be deemed to meet such criteria.
“(b) Exemptions for Qualifying Facilities of More Than 5 Megawatts.—

“(1) Exemption Qualifications.—Subject to the requirements of this subsection, the Commission may grant an exemption in whole or in part from the requirements of this part, including any license requirements contained in this part, to any facility the Commission determines is a qualifying facility with an installed capacity of more than 5 megawatts.

“(2) Consultation with Federal and State Agencies.—In granting any exemption under this subsection, the Commission shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency exercising administrative control over the fish and wildlife resources of the State in which the facility will be located, in the manner provided by the Fish and Wildlife Coordination Act.

“(3) Exemption Conditions.—

“(A) In General.—The Commission shall include in any exemption granted under this subsection only such terms and conditions that the Commission determines are—
“(i) necessary to protect public safety;

and

“(ii) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects to, fish and wildlife resources directly caused by the construction and operation of the qualifying facility, as compared to the environmental baseline existing at the time the Commission grants the exemption.

“(B) NO CHANGES TO RELEASE REGIME.—No Federal authorization required with respect to a qualifying facility described in paragraph (1), including an exemption granted by the Commission under this subsection, may include any condition or other requirement that results in any material change to the storage, control, withdrawal, diversion, release, or flow operations of the associated qualifying nonpowered dam.

“(4) ENVIRONMENTAL REVIEW.—The Commission’s environmental review of a proposed exemption under this subsection shall consist only of an environmental assessment, unless the Commission determines, by rule or order, that the Commission’s obli-
gations under the National Environmental Policy Act of 1969 for granting exemptions under this subsection can be met through a categorical exclusion.

“(5) Violation of Terms of Exemption.—Any violation of a term or condition of any exemption granted under this subsection shall be treated as a violation of a rule or order of the Commission under this Act.

“(6) Effect on Jurisdiction.—The jurisdiction of the Commission over any qualifying facility exempted under this subsection shall extend only to the qualifying facility exempted, and shall not extend to any conduit, transmission lines, dam, impoundment, shoreline or other land, or any project work associated with the qualifying facility exempted under this subsection.

“(c) Definitions.—For purposes of this section:

“(1) Federal Authorization.—The term ‘Federal authorization’ has the meaning given such term in section 308(a).

“(2) Qualifying Criteria.—The term ‘qualifying criteria’ means, with respect to a facility—

“(A) as of the date of enactment of this section, the facility is not licensed under, or ex-
emptied from the license requirements contained
in, this part;

“(B) the facility will be associated with a
qualifying nonpowered dam;

“(C) the facility will be constructed, oper-
ated, and maintained for the generation of elec-
tric power;

“(D) the facility will use for such genera-
tion any withdrawals, diversions, releases, or
flows from the associated qualifying nonpow-
ered dam, including its associated impoundment
or other infrastructure; and

“(E) the operation of the facility will not
result in any material change to the storage,
control, withdrawal, diversion, release, or flow
operations of the associated qualifying nonpow-
ered dam.

“(3) QUALIFYING FACILITY.—The term ‘quali-
fyng facility’ means a facility that is determined or
deemed under this section to meet the qualifying cri-
teria.

“(4) QUALIFYING NONPOWERED DAM.—The
term ‘qualifying nonpowered dam’ means any dam,
dike, embankment, or other barrier—
“(A) the construction of which was completed on or before the date of enactment of this section;

“(B) that is operated for the control, release, or distribution of water for agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, or flood control purposes; and

“(C) that, as of the date of enactment of this section, is not equipped with hydropower generating works that are licensed under, or exempted from the license requirements contained in, this part.”.

SEC. 1303. PROMOTING ACCOUNTABILITY, REQUIRING BALANCED AND EFFICIENT DECISIONMAKING, AND REDUCING DUPLICATIVE OVERSIGHT.

(a) ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.—Section 33 of the Federal Power Act (16 U.S.C. 823d) is amended—

(1) in subsection (a)—

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

(B) in paragraph (2)—
(i) by striking “in paragraph (1), and” and inserting “in paragraph (1), as submitted and without modification, and’’;

(ii) by striking “if the Secretary determines,” and inserting “if the Commission determines,”;

(iii) by striking “otherwise available to the Secretary” and inserting “otherwise available to the Commission”;

(iv) in subparagraph (A), by striking “provides for the adequate protection and utilization of the reservation” and inserting “adequately protects the reservation from project effects”; and

(v) in subparagraph (B), by inserting “determined necessary” before “the Secretary”;

(C) in paragraph (3)—

(i) by striking “Secretary” each place it appears and inserting “Commission”;

and

(ii) by striking “evidence provided by the Commission” and inserting “evidence provided by the Secretary”;
(E) by striking paragraph (5); and

(2) in subsection (b)—

(A) in paragraph (2)—

(i) by striking “referred to in para-

graph (1), if the Secretary of the appro-

priate department” and inserting “referred
to in paragraph (1), as submitted and
without modification, if the Commission”; and

(ii) by striking “otherwise available to
the Secretary” and inserting “otherwise
available to the Commission”;

(B) in paragraph (3)—

(i) by striking “the Secretary shall
consider” and inserting “the Commission
shall consider”; and

(ii) by striking “otherwise available to
the Secretary” and inserting “otherwise
available to the Commission”; and

(iii) by striking “evidence provided by
the Commission” and inserting “evidence
provided by the Secretary concerned”;

(C) by striking paragraph (4); and

(D) by striking paragraph (5).
(b) **COORDINATING SUBMITTAL AND ADOPTION OF CONDITIONS AND PRESCRIPTIONS.**—The Federal Power Act (16 U.S.C. 791a et seq.) is amended by adding after section 34 (as added by section 1301 of this Act) the following new section:

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“SEC. 35. PROCEDURES FOR CERTAIN CONDITIONS AND PRESCRIPTIONS.

“(a) **SUBMITTAL OF CONDITIONS AND FISHWAY PRESCRIPTIONS.**—For any condition determined necessary by a Secretary under section 4(e), or fishway prescribed by a Secretary under section 18, the Secretary concerned shall submit into the public record of the Commission proceeding—

“(1) a written statement explaining the basis for the condition or prescription that demonstrates, based on such information as may be available to the Secretary, that the Secretary gave equal consideration to the effects of the condition or prescription on—

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

“(B) flood control;

“(C) navigation;

“(D) water supply;

“(E) air quality; and
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“(F) the preservation of other aspects of environmental quality; and
“(2) all studies, data, and other factual information available to the Secretary and relevant to the condition or prescription.

“(b) PROCEDURES FOR CERTAIN APPLICABLE CONDITIONS.—

“(1) TRIAL-TYPE HEARING.—For any applicable condition, the license applicant and any other party to the license proceeding shall be entitled to a determination on the record, after opportunity for a trial-type hearing before the Commission, on any disputed issues of material fact with respect to such applicable condition.

“(2) PROCEDURES RELATED TO TRIAL-TYPE HEARINGS.—Not later than 180 days after the date of enactment of this subsection, the Commission shall establish, by rule, procedures related to trial-type hearings under this subsection. Such procedures shall—

“(A) provide the opportunity for participants in the trial-type hearing to undertake discovery and cross-examine witnesses;

“(B) establish that the proponent of an applicable condition bears the burden of proof
with respect to such applicable condition during the trial-type hearing;

“(C) provide for any such trial-type hearing to extend for a period of not more than 90 days, and also provide for additional reasonable periods—

“(i) prior to the trial-type hearing for discovery, motions, and other pre-trial-type hearing activities; and

“(ii) following the trial-type hearing for briefing, motions, decisionmaking, and other post-trial-type hearing activities;

“(D) ensure the integration of all applicable conditions in the trial-type hearing such that the findings of fact resulting from the trial-type hearing are accounted for in any determination that is related to—

“(i) such an applicable condition; and

“(ii) any—

“(I) modified condition or modified prescription, submitted pursuant to subparagraph (E)(i); or

“(II) alternative to such a modified condition or modified prescrip-
tion, submitted pursuant to subparagraph (E)(ii);

“(E) authorize and establish standards and deadlines for—

“(i) in accordance with subsection (a), the submittal, by the Secretary concerned, following the trial-type hearing—

“(I) in accordance with section 4(e), of a modification, as appropriate, to a condition determined necessary by a Secretary previously in the proceeding under such section; and

“(II) in accordance with section 18, of a modification, as appropriate, to a fishway prescribed by a Secretary previously in the proceeding under such section; and

“(ii) the submittal, in accordance with section 33, by the license applicant or any other party to the license proceeding, following submittal of a modified condition or modified prescription pursuant to clause (i), of an alternative to such modified condition or modified prescription; and
“(iii) a determination, by the Commission, in accordance with the standards of section 33, with respect to an alternative to a modified condition or modified prescription submitted pursuant to clause (ii); and

“(F) with respect to a license proceeding, prohibit a Secretary, following a trial-type hearing, from determining any other condition necessary under section 4(e) or prescribing any other fishway under section 18 (not including the submittal of a modification to the initial condition or initial prescription pursuant to subparagraph (E)) that addresses any impact or resource related to a fact established with respect to the trial-type hearing.

“(c) NO REQUIREMENT TO EXHAUST.—By electing not to request a trial-type hearing under subsection (a), a license applicant and any other party to a license proceeding shall not be considered to have waived its right to raise any issue of fact or law on rehearing or judicial review of the Commission’s license decision.

“(d) COORDINATION OF FEDERAL AUTHORIZATIONS.—
“(1) REQUIREMENT TO IMPLEMENT OR COMPLY WITH CERTAIN FEDERAL AUTHORIZATIONS.—Notwithstanding any other provision of Federal law, a licensee shall be required to implement or comply with a condition or other requirement of a Federal authorization that applies to any portion of a reservation occupied by a project, or concerns the construction, maintenance, or operation of a fishway, only if such condition or other requirement has been—

“(A) determined necessary or prescribed by a Secretary under section 4(e) or 18, as appropriate; and

“(B) included in the license issued by the Commission.

“(2) COORDINATION.—Federal and State agencies issuing Federal authorizations concerning reservations and fishways shall coordinate with the Secretary concerned, in accordance with the schedule issued by the Commission under section 308(e).

“(e) DEFINITIONS.—In this section:

“(1) APPLICABLE CONDITION.—The term ‘applicable condition’ means—

“(A) a condition determined necessary by a Secretary under section 4(e);
“(B) a fishway prescribed by a Secretary under section 18;

“(C) an alternative condition proposed by a license applicant or any other party to the license proceeding under section 33(a); and

“(D) an alternative prescription proposed by a license applicant or any other party to the license proceeding under section 33(b).

“(2) Federal authorization.—The term ‘Federal authorization’ has the meaning given such term in section 308(a).”.

(c) Conforming and clarifying amendments.—

(1) Conditions.—Subsection (e) of section 4 of the Federal Power Act (16 U.S.C. 797(e)) is amended to read as follows:

“(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bod-
ies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: Provided, That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls determines are necessary for the adequate protection and utilization of the portion of such reservation occupied by the project and will mitigate adverse effects of the project, if any, except that no such condition may impose a requirement that impairs project operations, management, or utilization of lands or resources outside such portion of the reservation occupied by the project: Provided further, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of the Army. Whenever the contemplated improvement is, in the
20 judgment of the Commission, desirable and justified in the
21 public interest for the purpose of improving or developing
22 a waterway or waterways for the use or benefit of inter-
23 state or foreign commerce, a finding to that effect shall
24 be made by the Commission and shall become a part of
25 the records of the Commission: Provided further, That in
26 case the Commission shall find that any Government dam
27 may be advantageously used by the United States for pub-
28 lic purposes in addition to navigation, no license therefor
29 shall be issued until two years after it shall have reported
30 to Congress the facts and conditions relating thereto, ex-
31 cept that this provision shall not apply to any Government
32 dam constructed prior to June 10, 1920: And provided
33 further, That upon the filing of any application for a li-
34 cense which has not been preceded by a preliminary permit
35 under subsection (f) of this section, notice shall be given
36 and published as required by the proviso of said sub-
37 section. In deciding whether to issue any license under this
38 Part for any project, the Commission, in addition to the
39 power and development purposes for which licenses are
40 issued, shall give equal consideration to the purposes of
41 energy conservation, the protection, mitigation of damage
42 to, and enhancement of, fish and wildlife (including re-
43 lated spawning grounds and habitat), the protection of
recreational opportunities, and the preservation of other aspects of environmental quality.”

(2) Fishways.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended to read as follows:

“Sec. 18. The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of the Department in which the Coast Guard is operating, and such fishways as are necessary to mitigate effects of the project on fish populations as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of the Army, and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction
thereof shall be punished as provided in section 316 here-
of.”.

SEC. 1304. PROMOTING EFFICIENT AND TIMELY DECISION-
MAKING.

(a) PROCESS COORDINATION.—Section 308 of the
 Federal Power Act (16 U.S.C. 825g) is amended—

(1) in the section heading, by striking “HEAR-
INGS” and inserting “PROCESS COORDINATION;
HEARINGS”;

(2) by redesignating subsections (a) and (b) as
 subsections (e) and (f), respectively; and

(3) by inserting, before subsection (e), as redes-
ignated by paragraph (2), the following subsections:
“(a) FEDERAL AUTHORIZATION.—In this section, the
 term ‘Federal authorization’—

“(1) means any authorization required under
 Federal law with respect to a project licensed or ex-
empted under part I or section 405(d) of the Public
Utility Regulatory Policies Act of 1978; and

“(2) includes any permits, special use author-
izations, certifications, opinions, consultations, deter-
minations, or other approvals as may be required
under Federal law with respect to a project licensed
or exempted under part I or section 405(d) of the
“(b) Designation as Lead Agency.—

“(1) In general.—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 and any applicable environmental review under State law.

“(2) Other agencies.—Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.

“(c) Schedule.—

“(1) Commission authority to set schedule.—For the proceeding for each project, the Commission shall, in consultation with appropriate Federal and State agencies, establish a schedule for all Federal authorizations. In establishing the schedule, the Commission shall—

“(A) ensure expeditious completion of all Federal authorizations; and

“(B) comply with applicable schedules established by Federal law.

“(2) Failure to meet schedule.—
“(A) IN GENERAL.—If an agency does not comply with the schedule established by the Commission with respect to a Federal authorization, the licensee or applicant may pursue remedies under section 313(d).

“(B) AGENCY DELAY.—The failure of an agency to comply with the Commission schedule with respect to a Federal authorization shall be considered inconsistent with Federal law for the purposes of section 313(d)(2).

“(d) CONSOLIDATED RECORD.—The Commission shall, with the cooperation of Federal and State agencies, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal agency (or State agency acting under delegated Federal authority) with respect to any Federal authorization. Such record shall be the record for judicial review under section 313(d) of decisions made or actions taken of Federal and State agencies, except that, if the Court determines that the record does not contain sufficient information, the Court may remand the proceeding to the Commission for further development of the consolidated record.”.

(b) JUDICIAL REVIEW OF ACTIONS RELATED TO HYDROPOWER PROJECTS.—Section 313 of the Federal
Power Act (16 U.S.C. 825l) is amended by adding at the
end the following new subsection:

“(d) **Judicial Review of Federal and State Agency Actions Related to Hydropower Projects.**—

“(1) **In general.**—For any project subject to licensing or exemption under part I, the United States Court of Appeals for the District of Columbia Circuit or the United States court of appeals for any circuit wherein the licensee or applicant has its principal place of business shall have original and exclusive jurisdiction over any civil action for the review of—

“(A) an order or action of a Federal agency (other than the Commission) or State agency acting pursuant to Federal law to issue, carry out, or deny any Federal authorization (as such term is defined in section 308(a)); and

“(B) an alleged failure to act by a Federal agency (other than the Commission) or State agency acting pursuant to Federal law to issue, carry out, or deny any such Federal authorization.

“(2) **Court Action.**—If the Court finds that an order, action, or failure to act described in para-
graph (1) is inconsistent with the Federal law governing such Federal authorization and would prevent the licensing, construction, expansion, or operation of the project subject to licensing or exemption under part I, the Court shall remand the proceeding to the agency to take appropriate action consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable schedule and deadline for the agency to act on remand.

“(3) COMMISSION ACTION.—For any civil action described in this subsection, the Commission shall file with the Court the consolidated record of such order or action to which the appeal hereunder relates.

“(4) EXPEDITED REVIEW.—The Court shall set any action brought under this subsection for expedited consideration.”.