

**AMENDMENT TO DIVISION D OF RULES**  
**COMMITTEE PRINT 117-57**  
**OFFERED BY MR. CALVERT OF CALIFORNIA**

At the end of division D, add the following:

1 **SEC. 120. ASSIGNMENT TO STATES OF FEDERAL ENVIRON-**  
2 **MENTAL REVIEW RESPONSIBILITIES.**

3 Title I of the National Environmental Policy Act of  
4 1969 (42 U.S.C. 4331 et seq.) is amended by adding at  
5 the end the following new section:

6 **“SEC. 106. ASSIGNMENT TO STATES OF ENVIRONMENTAL**  
7 **REVIEW RESPONSIBILITIES WITH RESPECT**  
8 **TO CERTAIN PROJECTS IN THE STATE.**

9 “(a) ASSUMPTION OF RESPONSIBILITY.—

10 “(1) IN GENERAL.—Subject to the other provi-  
11 sions of this section, with the written agreement of  
12 the responsible Federal official and a State, which  
13 may be in the form of a memorandum of under-  
14 standing, the responsible Federal official may assign,  
15 and the State may assume, the responsibilities of the  
16 responsible Federal official under this Act with re-  
17 spect to one or more covered Federal projects of the  
18 responsible Federal official within the State.

1           “(2) ADDITIONAL RESPONSIBILITY.—If a State  
2           assumes responsibility under paragraph (1) the re-  
3           sponsible Federal official may assign to the State,  
4           and the State may assume, all or part of the respon-  
5           sibilities of the responsible Federal official for envi-  
6           ronmental review, consultation, or other action re-  
7           quired under any Federal environmental law per-  
8           taining to the review or approval of covered projects  
9           of the responsible Federal official.

10           “(3) PROCEDURAL AND SUBSTANTIVE RE-  
11           QUIREMENTS.—A State shall assume responsibility  
12           under this section subject to the same procedural  
13           and substantive requirements as would apply if that  
14           responsibility were carried out by the responsible  
15           Federal official.

16           “(4) FEDERAL RESPONSIBILITY.—Any respon-  
17           sibility of the responsible Federal official not explic-  
18           itly assumed by the State by written agreement  
19           under this section shall remain the responsibility of  
20           the responsible Federal official.

21           “(5) NO EFFECT ON AUTHORITY.—Nothing in  
22           this section preempts or interferes with any power,  
23           jurisdiction, responsibility, or authority of an agen-  
24           cy, other than the agency of the responsible Federal  
25           official for a covered Federal project, under applica-

1 ble law (including regulations) with respect to the  
2 project.

3 “(b) STATE PARTICIPATION.—

4 “(1) APPLICATION.—Not later than 180 days  
5 after the date of enactment of this section, each re-  
6 sponsible Federal official shall promulgate regula-  
7 tions that establish requirements relating to infor-  
8 mation required to be contained in any application  
9 of a State to assume responsibility under this section  
10 with respect to covered Federal projects of the re-  
11 sponsible Federal official, including, at a min-  
12 imum—

13 “(A) the projects or classes of projects for  
14 which the State anticipates exercising the au-  
15 thority that may be granted under this section;

16 “(B) verification of the financial resources  
17 necessary to carry out the authority that may  
18 be assigned under this section; and

19 “(C) evidence of the notice and solicitation  
20 of public comment by the State relating to as-  
21 sumption of responsibility under this section by  
22 the State, including copies of comments re-  
23 ceived from that solicitation.

24 “(2) PUBLIC NOTICE.—

1           “(A) IN GENERAL.—Each State that sub-  
2           mits an application under this subsection shall  
3           give notice of the intent of the State to submit  
4           such application not later than 30 days before  
5           the date of submission of the application.

6           “(B) METHOD OF NOTICE AND SOLICITA-  
7           TION.—The State shall provide notice and so-  
8           licit public comment under this paragraph by  
9           publishing the complete application of the State  
10          in accordance with the appropriate public notice  
11          law of the State.

12          “(3) SELECTION CRITERIA.—A responsible Fed-  
13          eral official may approve the application of a State  
14          under this section only if—

15                 “(A) the regulatory requirements under  
16                 paragraph (2) have been met;

17                 “(B) the responsible Federal official deter-  
18                 mines that the State has the capability, includ-  
19                 ing financial and personnel, to assume the re-  
20                 sponsibility; and

21                 “(C) the head of the State agency having  
22                 primary jurisdiction over covered projects with  
23                 respect to which responsibility would be as-  
24                 signed to the State pursuant to the application  
25                 enters into a written agreement with the re-

1           sponsible Federal official described in sub-  
2           section (c).

3           “(4) OTHER FEDERAL AGENCY VIEWS.—If a  
4           State applies to assume a responsibility of a respon-  
5           sible Federal official that would have required the  
6           responsible Federal official to consult with another  
7           Federal agency, the responsible Federal official shall  
8           solicit the views of the Federal agency before ap-  
9           proving the application.

10          “(c) WRITTEN AGREEMENT.—A written agreement  
11         under this section shall—

12                 “(1) be executed by the Governor of the State  
13                 or the head of the State agency referred to in sub-  
14                 section (b)(3)(C);

15                 “(2) be in such form as the responsible Federal  
16                 official may prescribe; and

17                 “(3) provide that the State—

18                         “(A) agrees to assume all or part of the re-  
19                         sponsibilities of the responsible Federal official  
20                         described in subsection (a);

21                         “(B) expressly consents, on behalf of the  
22                         State, to accept the jurisdiction of the Federal  
23                         courts for the compliance, discharge, and en-  
24                         forcement of any responsibility of the respon-  
25                         sible Federal official assumed by the State;

1           “(C) certifies that State laws (including  
2 regulations) are in effect that—

3           “(i) authorize the State to take the  
4 actions necessary to carry out the respon-  
5 sibilities being assumed; and

6           “(ii) are comparable to section 552 of  
7 title 5, United States Code, including pro-  
8 viding that any decision regarding the pub-  
9 lic availability of a document under those  
10 State laws is reviewable by a court of com-  
11 petent jurisdiction; and

12           “(D) agrees to maintain the financial re-  
13 sources necessary to carry out the responsibil-  
14 ities being assumed.

15           “(d) JURISDICTION.—

16           “(1) IN GENERAL.—The United States district  
17 courts shall have exclusive jurisdiction over any civil  
18 action against a State for failure to carry out any  
19 responsibility of the State under this section.

20           “(2) LEGAL STANDARDS AND REQUIRE-  
21 MENTS.—A civil action under paragraph (1) shall be  
22 governed by the legal standards and requirements  
23 that would apply in such a civil action against the  
24 responsible Federal official had the responsible Fed-  
25 eral official taken the actions in question.

1           “(3) INTERVENTION.—The responsible Federal  
2           official shall have the right to intervene in any ac-  
3           tion described in paragraph (1).

4           “(e) EFFECT OF ASSUMPTION OF RESPONSI-  
5           BILITY.—A State that assumes responsibility under sub-  
6           section (a) shall be solely responsible and solely liable for  
7           carrying out, in lieu of the responsible Federal official, the  
8           responsibilities assumed under subsection (a), until the  
9           termination of such assumption of responsibility.

10          “(f) LIMITATIONS ON AGREEMENTS.—Nothing in  
11          this section permits a State to assume any rulemaking au-  
12          thority of the responsible Federal official under any Fed-  
13          eral law.

14          “(g) AUDITS.—

15                 “(1) IN GENERAL.—To ensure compliance by a  
16                 State with any agreement of the State under sub-  
17                 section (e) (including compliance by the State with  
18                 all Federal laws for which responsibility is assumed  
19                 under subsection (a)), for each State participating in  
20                 the program under this section, the responsible Fed-  
21                 eral official shall conduct—

22                         “(A) semiannual audits during each of the  
23                         first 2 years of the effective period of the agree-  
24                         ment; and

1           “(B) annual audits during each subsequent  
2           year of such effective period.

3           “(2) PUBLIC AVAILABILITY AND COMMENT.—

4           “(A) IN GENERAL.—An audit conducted  
5           under paragraph (1) shall be provided to the  
6           public for comment for a 30-day period.

7           “(B) RESPONSE.—Not later than 60 days  
8           after the date on which the period for public  
9           comment ends, the responsible Federal official  
10          shall respond to public comments received  
11          under subparagraph (A).

12          “(h) REPORT TO CONGRESS.—Each responsible Fed-  
13          eral official shall submit to Congress an annual report that  
14          describes the administration of this section by such offi-  
15          cial.

16          “(i) TERMINATION BY RESPONSIBLE FEDERAL OFFI-  
17          CIAL.—The responsible Federal official with respect to an  
18          agreement with a State under this section may terminate  
19          the agreement, and any responsibility or authority of the  
20          State under this section with respect to such agreement,  
21          if—

22                 “(1) the responsible Federal official determines  
23                 that the State is not adequately carrying out the re-  
24                 sponsibilities assumed by the State under this sec-  
25                 tion;



1           “(2) the responsible Federal official provides to  
2 the State—

3           “(A) notification of the determination of  
4 noncompliance; and

5           “(B) a period of at least 30 days during  
6 which to take such corrective action as the re-  
7 sponsible Federal official determines is nec-  
8 essary to comply with the applicable agreement;  
9 and

10          “(3) the State, after the notification and period  
11 provided under subparagraph (B), fails to take satis-  
12 factory corrective action, as determined by the re-  
13 sponsible Federal official.

14          “(j) DEFINITIONS.—In this section:

15           “(1) COVERED FEDERAL PROJECT.—The term  
16 ‘covered Federal project’ means—

17           “(A)(i) except as provided in clause (ii)  
18 and subparagraph (B), any project that is fund-  
19 ed by, carried out by, or subject to approval or  
20 disapproval by a responsible official, including  
21 any project for which a permit or other author-  
22 ization by a responsible Federal official is re-  
23 quired; and

24           “(ii) in the case of projects funded, carried  
25 out by, or subject to review, approval, or dis-

1 approval by the Secretary of the Army, and ex-  
2 cept as provided in subparagraph (B), includes  
3 only such projects of the Corps of Engineers;  
4 and

5 “(B) the preparation of any statement re-  
6 quired by section 102(2)(C).

7 “(2) RESPONSIBLE FEDERAL OFFICIAL.—The  
8 term ‘responsible Federal official’ means—

9 “(A) the Secretary of the Interior;

10 “(B) the Secretary of Transportation;

11 “(C) the Administrator of the Environ-  
12 mental Protection Agency;

13 “(D) the Secretary of the Army; and

14 “(E) the head of a Federal agency, with  
15 respect to the preparation of statements under  
16 section 102(2)(C) for major Federal actions (as  
17 that term is used in that section) of the agen-  
18 cy.”.

