

**AMENDMENT TO**  
**RULES COMMITTEE PRINT 119-33**  
**OFFERED BY MR. COURTNEY OF CONNECTICUT**

At the end of subtitle E of title III, add the following new section:

1 **SEC. 3\_\_\_ . IMPROVEMENTS TO REVIEW PROCESS OF MILI-**  
2 **TARY AVIATION AND INSTALLATION ASSUR-**  
3 **ANCE CLEARINGHOUSE.**

4 (a) IMPROVEMENTS.—Section 183a of title 10,  
5 United States Code, is amended—

6 (1) in subsection (c)(4), by striking “If,” and  
7 inserting “Subject to the deadline for a final deter-  
8 mination in subsection (h)(1), if,”;

9 (2) in subsection (e)(2)(A)—

10 (A) by striking “30 days” and inserting  
11 “five days”;

12 (B) by inserting “, including a specific  
13 identification of any military installation, sys-  
14 tem, or operational mission affected and a de-  
15 scription of the nature and magnitude of such  
16 operational impact based on documented tech-  
17 nical analysis” after “operational impact that  
18 led to the finding”; and

1 (C) by striking “were not feasible or did  
2 not resolve the conflict.” and inserting “were  
3 not feasible, did not resolve the conflict, or were  
4 otherwise insufficient to reduce the operational  
5 impact to an acceptable level, and shall be ac-  
6 companied by a written certification by the  
7 Commander of United States Northern Com-  
8 mand, or a designated designee thereof, that  
9 such operational impact represents a specific  
10 and material degradation to the affected mili-  
11 tary installation, system, or operational mission  
12 that cannot be adequately addressed through  
13 such mitigation options.”;

14 (3) by redesignating subsections (g) and (h) as  
15 subsections (m) and (n), respectively; and

16 (4) by inserting after subsection (f) the fol-  
17 lowing new subsections:

18 “(g) CONSIDERATION OF POTENTIAL BENEFITS.—In  
19 conducting any review for a proposed energy project or  
20 antenna structure project under this section, the Secretary  
21 of Defense and the Clearinghouse shall consider, in addi-  
22 tion to any potential adverse impact on military operations  
23 and readiness or unacceptable risk to the national security  
24 of the United States, the potential benefits of the proposed  
25 project to the Department of Defense, including—

1           “(1) potential opportunities for enhanced use-  
2 leases of affected military installations;

3           “(2) potential training value, including the po-  
4 tential use of any structure or associated infrastruc-  
5 ture to be constructed under the proposed project  
6 for military exercises, low-observable operations  
7 training, or radar signature characterization and  
8 analysis;

9           “(3) potential benefits to the security and resil-  
10 ience of energy supply chains for affected military  
11 installations, including with respect to grid security  
12 for such military installations hosting critical de-  
13 fense infrastructure; and

14           “(4) potential economic benefits to local com-  
15 munities surrounding affected military installations.

16       “(h) FINAL DETERMINATION; TIMELINES.—(1)(A)  
17 For any energy project or antenna structure project that  
18 the Clearinghouse finds may have an adverse impact on  
19 military operations and readiness as a result of the pre-  
20 liminary review under subsection (c), the Secretary of De-  
21 fense shall ensure the review is complete and any mitiga-  
22 tion discussions the Secretary determines appropriate are  
23 concluded, and shall issue the final determination de-  
24 scribed in paragraph (2), by not later than 9 months after

1 the date on which the Clearinghouse received the applica-  
2 tion for such project.

3 “(B) For any energy project or antenna structure  
4 project that the Clearinghouse finds does not have an ad-  
5 verse impact on military operations and readiness as a re-  
6 sult of the preliminary review under subsection (c), the  
7 Secretary of Defense shall issue the final determination  
8 described in paragraph (2) by not later than five days  
9 after the date on which the Clearinghouse completed such  
10 preliminary review.

11 “(C) For purposes of subparagraph (A), an applica-  
12 tion shall be deemed to received on the earlier of the fol-  
13 lowing:

14 “(i) The actual date on which the Clearing-  
15 house received the application from the Secretary of  
16 Transportation.

17 “(ii) The date that is 60 days after the date on  
18 which the applicant provides notice to the Clearing-  
19 house that the applicant has submitted information  
20 sufficient to initiate a preliminary review under sub-  
21 section (c).

22 “(2) The final determination described in this para-  
23 graph is, with respect to an application for an energy  
24 project or antenna structure project, a determination as  
25 to—

1           “(A) whether the project will have an adverse  
2           impact on military operations and readiness, con-  
3           sistent with subsection (c); and

4           “(B) whether the project presents an unaccept-  
5           able risk to the national security of the United  
6           States, as required under subsection (e).

7           “(3)(A) If the Secretary fails to issue a final deter-  
8           mination described in paragraph (2) with respect to an  
9           application for an energy project or antenna structure  
10          project by the applicable deadline under paragraph (1) (or,  
11          in the case of an application that has been extended con-  
12          sistent with subsection (i), by such extended deadline)—

13           “(i) not later than five days after the date of  
14          such lapsed deadline, the matter shall be referred  
15          automatically to the Deputy Secretary of Defense;

16           “(ii) not later than five days after the date of  
17          such automatic referral, the Secretary of Defense  
18          shall submit to the Committees on Armed Services  
19          of the Senate and House of Representatives a writ-  
20          ten notification that includes—

21           “(I) an identification of the project and the  
22          applicant;

23           “(II) an identification of the date on which  
24          the Clearinghouse commenced the preliminary  
25          review of the application; and

1           “(III) a description of any reason the Sec-  
2           retary of Defense failed to issue a final deter-  
3           mination by the prescribed deadline; and

4           “(iii) not later than 30 days after the date of  
5           such automatic referral under subparagraph (A), the  
6           Deputy Secretary of Defense shall issue a final de-  
7           termination described in paragraph (2) in lieu of  
8           such a final determination by the Secretary of De-  
9           fense.

10          “(B) If the Deputy Secretary of Defense fails to issue  
11          a final determination required under subparagraph (A)(iii)  
12          with respect to an application for an energy project or an-  
13          tenna structure project by the prescribed deadline—

14                 “(i) the Department of Defense shall be deemed  
15                 to have completed and concluded each review re-  
16                 quired under this section without recommendation;  
17                 and

18                 “(ii) not later than 5 days after such lapsed  
19                 deadline, the Secretary of Defense shall submit to  
20                 the Committees on Armed Services of the Senate  
21                 and House of Representatives, and transmit to rel-  
22                 evant Federal departments and agencies, a written  
23                 notification stating that—

24                         “(I) the Department failed to issue a final  
25                         determination by the prescribed deadline; and

1                   “(II) the Department has concluded the  
2                   reviews required under this section without rec-  
3                   ommendation.

4                   “(i) EXCEPTIONS TO TIMELINES.—(1) The Secretary  
5 of Defense may extend a deadline under subsection (h)(1)  
6 with respect to a given application for an energy project  
7 or antenna structure project only if the Secretary proposes  
8 a new deadline and the applicant agrees in writing to such  
9 extension.

10                  “(2)(A) A deadline under subsection (h)(1) may be  
11 tolled with respect to an application for an energy project  
12 or antenna structure project only if the Clearinghouse, the  
13 Secretary of Defense, or the Deputy Secretary of De-  
14 fense—

15                   “(i) identifies one or more material deficiencies  
16                   in such application that materially prevent the  
17                   issuance of a final determination described under  
18                   subsection (h)(1) and are not the result of informa-  
19                   tion previously requested by and submitted to, or  
20                   otherwise reasonably available to, the Department of  
21                   Defense;

22                   “(ii) determines that the Department of De-  
23                   fense and the applicant are actively engaged in miti-  
24                   gation discussions but have not yet reached agree-  
25                   ment on mitigation measures; or

1           “(iii) identifies a specific, articulated, and mate-  
2           rial degradation to an identified military system or  
3           mission posed by the project for which mitigation  
4           measures are not yet available or validated; and

5           “(iv) not later than 90 days after the date on  
6           which the Clearinghouse received the application for  
7           such project, identifies the basis for tolling under  
8           clause (i), (ii), or (iii) in writing to the applicant.

9           “(B) Any tolling under subparagraph (A)—

10           “(i) shall be limited to the period reasonably  
11           necessary to cure the identified deficiency, conclude  
12           mitigation discussions, or develop and validate miti-  
13           gation measures, as applicable;

14           “(ii) shall terminate immediately upon submis-  
15           sion by the applicant of information curing the iden-  
16           tified deficiency, agreement on mitigation measures,  
17           or validation of mitigation measures, as applicable;

18           “(iii) may not restart or otherwise extend any  
19           deadline under this subsection beyond the period re-  
20           ferred to in clause (i); and

21           “(iv) may not apply with respect to any dead-  
22           line relating to escalation, congressional notification,  
23           the legal effect of a failure to issue a final deter-  
24           mination described in subsection (h)(2), or the com-

1           pletion and conclusion of a review under subsection  
2           (h)(3)(B).

3           “(C) In the case of a deadline tolled on the basis of  
4 an identification under subparagraph (A)(iii), the Clear-  
5 inghouse shall (on an expedited basis and in coordination  
6 with the Secretary concerned and relevant technical ex-  
7 perts and other entities from private industry and aca-  
8 demia) initiate the development and validation of mitiga-  
9 tion measures reasonably capable of addressing the deg-  
10 radation so identified.

11           “(D) Following the conclusion of the 90-day period  
12 under clause (iv)of subparagraph (A) with respect to a  
13 tolled deadline, such deadline may not be further tolled  
14 on the basis of a subsequently identified deficiency or deg-  
15 radation pursuant to clause (i) or (iii) of such subpara-  
16 graph, respectively, unless such deficiency arises directly  
17 from new information submitted by the applicant following  
18 such period.

19           “(j) REOPENING OF EXECUTED MITIGATION AGREE-  
20 MENTS.—(1) The Secretary of Defense may not reopen,  
21 modify, suspend, terminate, or require the renegotiation  
22 of an executed mitigation agreement relating to an energy  
23 project or antenna structure project unless the Sec-  
24 retary—

1           “(A) issues a project-specific determination,  
2 supported by clear and convincing evidence (rather  
3 than generalized or conclusory assertions), that—

4                   “(i) the project has been materially modi-  
5 fied in a manner directly relevant to national  
6 security considerations; or

7                   “(ii) specific and material national security  
8 information not reasonably available to the De-  
9 partment as of the date on which the mitigation  
10 agreement was executed demonstrates that con-  
11 tinued operation of the project under the exe-  
12 cuted mitigation agreement would result in an  
13 unacceptable risk to military operations or na-  
14 tional security that cannot reasonably be ad-  
15 dressed through existing mitigation measures or  
16 less restrictive means; and

17           “(B) not later than five days after issuing such  
18 determination, submits to the project applicant and  
19 the Committees on Armed Services of the Senate  
20 and House of Representatives such determination in  
21 writing.

22           “(2) A determination under paragraph (1) shall in-  
23 clude the following:

24                   “(A) A specific identification of the military  
25 system, installation, or operational mission affected.

1           “(B) A description of the nature and magnitude  
2           of the projected effect, based on documented tech-  
3           nical analysis.

4           “(C) An explanation as to why existing mitiga-  
5           tion measures are insufficient to address the identi-  
6           fied concern.

7           “(k) PUBLIC TRANSPARENCY.—The Secretary shall  
8           maintain, and update on a basis that is not less frequently  
9           than monthly, a publicly accessible website that provides,  
10          for each application for an energy project or antenna  
11          structure project received under this section, the following  
12          information:

13           “(1) The identity of the project.

14           “(2) The date on which the Clearinghouse re-  
15          ceived such application for a preliminary review.

16           “(3) The applicable deadline for a final deter-  
17          mination under subsection (h).

18           “(4) The current status of the review of such  
19          application.

20           “(5) If a final determination has been issued  
21          with respect to the application, the date of issuance  
22          and a summary of the determination.

23           “(l) CLARIFICATION OF ADVERSE IMPACT DETER-  
24          MINATIONS.—No determination or finding of adverse im-  
25          pact on military operations and readiness under this sec-

1 tion may be based solely on general, speculative, or hypo-  
2 thetical operational requirements or threats, or on capa-  
3 bilities not budgeted and programmed in the future-years  
4 defense program as of the date of such determination or  
5 finding.”.

6 (b) APPLICABILITY.—The amendments made by sub-  
7 section (a) shall apply with respect to applications for en-  
8 ergy projects or antenna structure projects received by the  
9 Secretary of Defense—

10 (1) on or after the date of the enactment of this  
11 Act; or

12 (2) prior to such date, if such application is  
13 pending as of the date that is 180 days after the  
14 date of the enactment of this Act.

15 (c) DEADLINE FOR WEBSITE ESTABLISHMENT.—  
16 The Secretary of Defense shall establish the website re-  
17 quired under section 183a(k) of title 10, United States  
18 Code, as amended by subsection (a), by not later than 90  
19 days after the date of the enactment of this Act.

