

AMENDMENT TO RULES COMMITTEE PRINT 117-

8

OFFERED BY MR. GRAVES OF LOUISIANA

Page 705, after line 3, insert the following:

1 **SEC. 1640. NATIONAL ENVIRONMENTAL POLICY ACT OF**

2 **1969.**

3 (a) PARAGRAPH (2) OF SECTION 102.—Section
4 102(2) of the National Environmental Policy Act of 1969
5 (42 U.S.C. 4332(2)) is amended—

6 (1) in subparagraph (A), by striking “insure”
7 and inserting “ensure”;

8 (2) in subparagraph (B), by striking “insure”
9 and inserting “ensure”;

10 (3) in subparagraph (C)—

11 (A) by inserting “consistent with the provi-
12 sions of this Act and except as provided by
13 other provisions of law,” before “include in
14 every”;

15 (B) by striking clauses (i) through (v) and
16 inserting the following:

17 “(i) reasonably foreseeable environmental
18 effects with a reasonably close causal relation-
19 ship to the proposed agency action;

1 “(ii) any reasonably foreseeable adverse en-
2 vironmental effects which cannot be avoided
3 should the proposal be implemented;

4 “(iii) a reasonable number of alternatives
5 to the proposed agency action that are tech-
6 nically and economically feasible, are within the
7 jurisdiction of the agency, meet the purpose and
8 need of the proposed agency action, and, where
9 applicable, meet the goals of the applicant;

10 “(iv) the relationship between local short-
11 term uses of man’s environment and the main-
12 tenance and enhancement of long-term produc-
13 tivity; and

14 “(v) any irreversible and irretrievable com-
15 mitments of Federal resources which would be
16 involved in the proposed agency action should it
17 be implemented.”; and

18 (C) by striking “the responsible Federal
19 official” and inserting “the head of the lead
20 agency”;

21 (4) in subparagraph (D), by striking “Any”
22 and inserting “any”;

23 (5) by redesignating subparagraphs (D)
24 through (I) as subparagraphs (F) through (K), re-
25 spectively;

1 (6) by inserting after subparagraph (C) the fol-
2 lowing:

3 “(D) ensure the professional integrity, including
4 scientific integrity, of the discussion and analysis in
5 an environmental document;

6 “(E) make use of reliable existing data and re-
7 sources in carrying out this Act;”;

8 (7) in subparagraph (G), as amended, by in-
9 serting “consistent with the provisions of this Act,”
10 before “study;” and

11 (8) in subparagraph (H), as amended, by in-
12 serting “consistent with the provisions of this Act,”
13 before “recognize”.

14 (b) NEW SECTIONS.—Title I of the National Envi-
15 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
16 is amended by adding at the end the following:

17 **“SEC. 106. PROCEDURE FOR DETERMINATION OF LEVEL OF**
18 **REVIEW.**

19 “(a) THRESHOLD DETERMINATIONS.—An agency is
20 not required to prepare an environmental document with
21 respect to a proposed agency action if—

22 “(1) such action is not a final agency action
23 within the meaning of such term in chapter 5 of title
24 5, United States Code;

1 “(2) such proposed agency action is covered by
2 a categorical exclusion established by a Federal
3 agency;

4 “(3) the preparation of such document would
5 clearly and fundamentally conflict with the require-
6 ments of another provision of law;

7 “(4) the proposed agency action is, in whole or
8 in part, a nondiscretionary action with respect to
9 which such agency does not have authority to take
10 environmental factors into consideration in deter-
11 mining whether to take the proposed action; or

12 “(5) the proposed agency action is an action for
13 which such agency’s compliance with another stat-
14 ute’s requirements serve the same function as the
15 requirements of this Act with respect to such action.

16 “(b) LEVELS OF REVIEW.—

17 “(1) ENVIRONMENTAL IMPACT STATEMENT.—
18 An agency shall issue an environmental impact
19 statement with respect to a proposed agency action
20 that has a significant effect on the quality of the
21 human environment.

22 “(2) ENVIRONMENTAL ASSESSMENT.—An agen-
23 cy shall issue an environmental assessment with re-
24 spect to a proposed agency action that is not likely
25 to have a significant effect on the quality of the

1 human environment, or if the significance of such ef-
2 fect is unknown. Such environmental assessment
3 shall be a concise public document prepared by a
4 Federal agency to provide notice to the public for
5 the basis of such agency's finding of no significant
6 impact.

7 “(3) SOURCES OF INFORMATION.—In making a
8 determination under this subsection, an agency—

9 “(A) may make use of any reliable data
10 source; and

11 “(B) is not required to undertake new sci-
12 entific or technical research.

13 **“SEC. 107. TIMELY AND UNIFIED FEDERAL REVIEWS.**

14 “(a) LEAD AGENCY.—

15 “(1) DESIGNATION.—If there are two or more
16 involved Federal agencies, such agencies shall deter-
17 mine, by letter or memorandum, which agency shall
18 be the lead agency based on consideration of the fol-
19 lowing factors:

20 “(A) Magnitude of agency's involvement.

21 “(B) Project approval or disapproval au-
22 thority.

23 “(C) Expertise concerning the action's en-
24 vironmental effects.

25 “(D) Duration of agency's involvement.

1 “(E) Sequence of agency’s involvement.

2 “(2) JOINT LEAD AGENCIES.—In making a de-
3 termination under paragraph (1), the involved Fed-
4 eral agencies may, in addition to a Federal agency,
5 appoint such Federal, State, Tribal, or local agencies
6 as joint lead agencies as the involved Federal agen-
7 cies shall determine appropriate. Joint lead agencies
8 shall jointly fulfill the role described in paragraph
9 (3).

10 “(3) ROLE.—A lead agency shall, with respect
11 to a proposed agency action—

12 “(A) supervise the preparation of an envi-
13 ronmental document if, with respect to such
14 proposed agency action, there is more than one
15 involved Federal agency;

16 “(B) request the participation of each co-
17 operating agency;

18 “(C) in preparing an environmental docu-
19 ment, give consideration to any analysis or pro-
20 posal created by a cooperating agency with ju-
21 risdiction by law or special expertise;

22 “(D) develop a schedule, in consultation
23 with each involved cooperating agency and such
24 other entities as the lead agency determines ap-
25 propriate, for completion of any environmental

1 review, permit, or authorization required to
2 carry out the proposed agency action;

3 “(E) if the lead agency determines that a
4 review, permit, or authorization will not be com-
5 pleted in accordance with the schedule devel-
6 oped under subparagraph (D), notify the agen-
7 cy responsible for issuing such review, permit,
8 or authorization of the discrepancy and request
9 that such agency take such measures as such
10 agency determines appropriate to comply with
11 such schedule; and

12 “(F) meet with a cooperating agency that
13 requests such a meeting.

14 “(4) COOPERATING AGENCY.—The lead agency
15 may, with respect to a proposed agency action, des-
16 ignate any involved Federal agency or a State, Trib-
17 al, or local agency as a cooperating agency. A co-
18 operating agency may, not later than a date speci-
19 fied by the lead agency, submit comments to the
20 lead agency. Such comments shall be limited to mat-
21 ters relating to the proposed agency action with re-
22 spect to which such agency has special expertise or
23 jurisdiction by law with respect to an environmental
24 issue.

1 “(5) REQUEST FOR DESIGNATION.—Any Fed-
2 eral, State, Tribal, or local agency or person that is
3 substantially affected by the lack of a designation of
4 a lead agency with respect to a proposed agency ac-
5 tion under paragraph (1) may submit a written re-
6 quest for such a designation to an involved Federal
7 agency. An agency that receives a request under this
8 paragraph shall transmit such request to each in-
9 volved Federal agency and to the Council.

10 “(6) COUNCIL DESIGNATION.—

11 “(A) REQUEST.—Not earlier than 45 days
12 after the date on which a request is submitted
13 under paragraph (5), if no designation has been
14 made under paragraph (1), a Federal, State,
15 Tribal, or local agency or person that is sub-
16 stantially affected by the lack of a designation
17 of a lead agency may request that the Council
18 designate a lead agency. Such request shall con-
19 sist of—

20 “(i) a precise description of the nature
21 and extent of the proposed agency action;
22 and

23 “(ii) a detailed statement with respect
24 to each involved Federal agency and each

1 factor listed in paragraph (1) regarding
2 which agency should serve as lead agency.

3 “(B) TRANSMISSION.—The Council shall
4 transmit a request received under subparagraph
5 (A) to each involved Federal agency.

6 “(C) RESPONSE.—An involved Federal
7 agency may, not later than 20 days after the
8 date of the submission of a request under sub-
9 paragraph (A), submit to the Council a re-
10 sponse to such request.

11 “(D) DESIGNATION.—Not later than 40
12 days after the date of the submission of a re-
13 quest under subparagraph (A), the Council
14 shall designate the lead agency with respect to
15 the relevant proposed agency action.

16 “(b) ONE DOCUMENT.—To the extent practicable, if
17 there are 2 or more involved Federal agencies with respect
18 to a proposed agency action and the lead agency has deter-
19 mined that section 102(2)(C) requires the issuance of an
20 environmental document, such requirement shall be
21 deemed satisfied with respect to all involved Federal agen-
22 cies if the lead agency issues such an environmental docu-
23 ment.

24 “(c) REQUEST FOR PUBLIC COMMENT.—Each notice
25 of intent to prepare an environmental impact statement

1 under section 102 shall include a request for public com-
2 ment on potential alternatives or impacts and on relevant
3 information, studies, or analyses with respect to the pro-
4 posed agency action.

5 “(d) STATEMENT OF PURPOSE AND NEED.—Each
6 environmental impact statement shall include a statement
7 of purpose and need that briefly summarizes the under-
8 lying purpose and need for the proposed agency action.

9 “(e) ESTIMATED TOTAL COST.—The cover sheet for
10 each environmental impact statement shall include a state-
11 ment of the estimated total cost of preparing such environ-
12 mental impact statement, including the costs of agency
13 full-time equivalent personnel hours, contractor costs, and
14 other direct costs.

15 “(f) SPONSOR PREPARATION.—A lead agency may
16 allow a project sponsor to prepare an environmental as-
17 sessment or an environmental impact statement, if such
18 agency provides such sponsor with appropriate guidance
19 and assists in the preparation. The lead agency shall inde-
20 pendently evaluate the environmental document and shall
21 take responsibility for the contents upon adoption.

22 “(g) DEADLINES.—

23 “(1) ISSUANCE OF ENVIRONMENTAL IMPACT
24 STATEMENT.—Except as provided in paragraph (2),

1 with respect to a proposed agency action, a lead
2 agency shall complete—

3 “(A) the environmental impact statement
4 not later than the date that is 2 years after the
5 date on which such agency determines that sec-
6 tion 102(2)(C) requires the issuance of an envi-
7 ronmental impact statement with respect to
8 such action; or

9 “(B) the environmental assessment not
10 later than the date that is 1 year after the date
11 on which such agency determines that such
12 102(2)(C) requires the issuance of an environ-
13 mental assessment with respect to such action.

14 “(2) DELAY.—A lead agency that determines it
15 is not able to meet the deadline described in para-
16 graph (1) may approve a delay of such deadline in
17 writing and establish a new timeline that provides
18 only so much additional time as is necessary to com-
19 plete such environmental impact statement or envi-
20 ronmental assessment.

21 **“SEC. 108. JUDICIAL REVIEW.**

22 “(a) LIMITATIONS ON CLAIMS.—Notwithstanding
23 any other provision of law, a claim arising under Federal
24 law seeking judicial review of compliance with this Act,
25 of a determination made under this Act, or of Federal ac-

1 tion resulting from a determination made under this Act,
2 shall be barred unless—

3 “(1) in the case of a claim pertaining to a pro-
4 posed agency action for which—

5 “(A) an environmental document was pre-
6 pared and an opportunity for comment was pro-
7 vided;

8 “(B) the claim is filed by a party that par-
9 ticipated in the administrative proceedings re-
10 garding such environmental document; or

11 “(C) the claim is filed by a party that sub-
12 mitted a comment during the public comment
13 period for such administrative proceedings and
14 such comment was sufficiently detailed to put
15 the lead agency on notice of the issue upon
16 which the party seeks judicial review;

17 “(2) except as provided in subsection (b), such
18 claim is filed not later than 120 days after the date
19 of publication of a notice in the Federal Register of
20 agency intent to carry out the proposed agency ac-
21 tion;

22 “(3) such claim is filed after the issuance of a
23 record of decision or other final agency action with
24 respect to the relevant proposed agency action; and

1 “(4) such claim does not challenge the estab-
2 lishment of a categorical exclusion under section
3 102.

4 “(b) SUPPLEMENTAL ENVIRONMENTAL IMPACT
5 STATEMENT.—

6 “(1) SEPARATE FINAL AGENCY ACTION.—The
7 issuance of a supplemental environmental impact
8 statement shall be considered a final agency action
9 for the purposes of chapter 5 of title 5, United
10 States Code, separate from the issuance of any pre-
11 vious environmental impact statement with respect
12 to the same proposed agency action.

13 “(2) DEADLINE FOR FILING A CLAIM.—A claim
14 seeking judicial review of a supplemental environ-
15 mental review issued under section 102(2)(C) shall
16 be barred unless—

17 “(A) such claim is filed within 120 days of
18 the date on which such supplemental environ-
19 mental impact statement is issued; and

20 “(B) such claim is based on information
21 contained in such supplemental environmental
22 impact statement that was not contained in a
23 previous environmental document pertaining to
24 the same proposed agency action.

1 “(c) PROHIBITION ON INJUNCTIVE RELIEF.—Not-
2 withstanding any other provision of law, a violation of this
3 Act shall not constitute the basis for injunctive relief.

4 “(d) RULE OF CONSTRUCTION.—Nothing in this sub-
5 section shall be construed to create a right of judicial re-
6 view or place any limit on filing a claim with respect to
7 the violation of the terms of a permit, license, or approval.

8 **“SEC. 109. DEFINITIONS.**

9 “In this title:

10 “(1) CATEGORICAL EXCLUSION.—The term
11 ‘categorical exclusion’ means a category of actions
12 that a Federal agency has determined normally does
13 not significantly affect the quality of the human en-
14 vironment within the meaning of section 102(2)(C).

15 “(2) COOPERATING AGENCY.—The term ‘co-
16 operating agency’ means any Federal, State, Tribal,
17 or local agency that has been designated as a co-
18 operating agency under section 107(a)(4).

19 “(3) COUNCIL.—The term ‘Council’ means the
20 Council on Environmental Quality established in
21 title II.

22 “(4) ENVIRONMENTAL ASSESSMENT.—The
23 term ‘environmental assessment’ means an environ-
24 mental assessment prepared under section
25 106(b)(2).

1 “(5) ENVIRONMENTAL DOCUMENT.—The term
2 ‘environmental document’ means an environmental
3 impact statement, an environmental assessment, or
4 a finding of no significant impact.

5 “(6) ENVIRONMENTAL IMPACT STATEMENT.—
6 The term ‘environmental impact statement’ means a
7 detailed written statement that is required by section
8 102(2)(C) of this Act.

9 “(7) FINDING OF NO SIGNIFICANT IMPACT.—
10 The term ‘finding of no significant impact’ means a
11 determination by a Federal agency that a proposed
12 agency action does not require the issuance of an en-
13 vironmental impact statement.

14 “(8) INVOLVED FEDERAL AGENCY.—The term
15 ‘involved Federal agency’ means an agency that,
16 with respect to a proposed agency action—

17 “(A) proposed such action; or

18 “(B) is involved in such action because
19 such action is directly related, through func-
20 tional interdependence or geographic proximity,
21 to an action such agency has taken or has pro-
22 posed to take.

23 “(9) LEAD AGENCY.—The term ‘lead agency’
24 means, with respect to a proposed agency action—

1 “(A) the agency that proposed such action;

2 or

3 “(B) if there are 2 or more involved Fed-
4 eral agencies with respect to such action, the
5 agency designated under section 107(a).

6 “(10) MAJOR FEDERAL ACTION.—

7 “(A) IN GENERAL.—The term ‘major Fed-
8 eral action’ means an action that the agency
9 carrying out such action determines is subject
10 to Federal control and responsibility.

11 “(B) EXCLUSION.—The term ‘major Fed-
12 eral action’ does not include—

13 “(i) a non-Federal action with mini-
14 mal Federal funding or minimal Federal
15 involvement where a Federal agency can-
16 not control the outcome of the project;

17 “(ii) funding assistance solely in the
18 form of general revenue sharing funds with
19 no Federal agency control over the subse-
20 quent use of such funds;

21 “(iii) loans, loan guarantees, or other
22 forms of financial assistance where a Fed-
23 eral agency does not exercise sufficient
24 control and responsibility over the effect of
25 the action;

1 “(iv) farm ownership and operating
2 loan guarantees by the Farm Service
3 Agency pursuant to sections 305 and 311
4 through 319 of the Consolidated Farmers
5 Home Administration Act of 1961 (7
6 U.S.C. 1925 and 1941 through 1949);

7 “(v) business loan guarantees pro-
8 vided by the Small Business Administra-
9 tion pursuant to section 7(a) or (b) and of
10 the Small Business Act (15 U.S.C.
11 636(a)), or title V of the Small Business
12 Investment Act of 1958 (15 U.S.C. 695 et
13 seq.); or

14 “(vi) bringing judicial or administra-
15 tive civil or criminal enforcement actions.

16 “(11) REASONABLY FORESEEABLE.—The term
17 ‘reasonably foreseeable’ means sufficiently likely to
18 occur such that an individual of ordinary prudence
19 would take such occurrence into account in reaching
20 a decision.”.

