

.....

(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R. ____

To amend the National Environmental Policy Act of 1969, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Westerman introduced the following bill; which was referred to the Committee on

A BILL

To amend the National Environmental Policy Act of 1969, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ____.

(a) PURPOSE.—Section 2 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) is amended—

(1) by striking “The purposes” and inserting the following:

“(a) The purposes”; and

(2) by adding at the end the following:

“(b) This Act is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions during the decisionmaking process. This Act does not mandate particular results, but simply prescribes the necessary process.”.

(b) COOPERATION OF AGENCIES; REPORTS; AVAILABILITY OF INFORMATION; RECOMMENDATIONS; INTERNATIONAL AND NATIONAL COORDINATION OF EFFORTS.—Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is amended in clause (iii)—

(1) by striking “, and” and inserting “, are within the jurisdiction of the lead agency or joint lead agency,”; and

(2) by inserting “and, to the greatest extent practicable, the goals of the applicant” after “need of the proposal”.

(c) PROCEDURE FOR DETERMINATION OF LEVEL OF REVIEW.—Section 106 of the National Environmental Policy Act of 1969 (42 U.S.C. 4336) is amended—

(1) in the heading, by inserting “; **SCOPE OF REVIEW**” after “**LEVEL OF REVIEW**”;

(2) in subsection (a)—

(A) in paragraph (3), by striking “or”;

(B) in paragraph (4), by striking “action.” and inserting “action; or”; and

(C) by adding at the end the following:

“(5) the proposed agency action is an action for which such agency’s compliance with another statute’s requirements serve a similar function as the requirements of this Act with respect to such action.”;

(3) in subsection (b)—

(A) in paragraph (2), by striking “does not” and inserting “is not likely to”; and

(B) in paragraph (3), by amending subparagraph (B) to read as follows:

“(B) is not required to—

“(i) undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable; or

“(ii) undertake new scientific and technical research after the receipt of a complete application with respect to such proposed agency action.”; and

(4) by adding at the end the following:

“(c) SCOPE OF REVIEW.—In developing an environmental document for a proposed agency action, a Federal agency shall only consider the effects of the proposed agency action that are subject to the Federal agency’s jurisdiction or control and responsibility.”.

(d) TIMELY AND UNIFIED FEDERAL REVIEWS.—Section 107 of the National Environmental Policy Act of 1969 (42 U.S.C. 4336a) is amended—

(1) in subsection (a)(3), by adding at the end “Such comments shall be limited to matters relating to the proposed agency action with respect to which such cooperating agency has jurisdiction by law or special expertise.”;

(2) in subsection (b)—

(A) by striking “To the extent practicable,” and inserting the following:

“(1) DOCUMENT.—To the extent practicable,”; and

(B) by adding at the end the following:

“(2) CONSIDERATION TIMING.—

“(A) IN GENERAL.—In developing an environmental document for a proposed agency action, no Federal agency shall be required to consider any scientific or technical research that becomes publicly available after the sooner of, as applicable—

“(i) receipt of a complete application with respect to such proposed agency action; and

“(ii) publication of a notice of intent or decision to prepare such environmental document for such proposed agency action.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), a Federal agency may consider relevant scientific or technical research made available after the dates described in clauses (i) and (ii) of subparagraph (A), but not after the final agency action, if the information is—

“(i) peer reviewed; and

“(ii) as determined by the Federal agency, essential in determining the reasonably foreseeable environmental effects of the proposed agency action.

“(C) APPLICABILITY TO OTHER LAW.—This paragraph does not affect any review of information required under subchapter II of chapter 5 of title 5, United States Code, with respect to comments received during the public comment period as applicable.

“(D) UNNECESSARY DELAY.—A Federal agency shall not delay the issuance of a final agency action, decision, or determination on the basis of awaiting new scientific or technical research or information that was not available as of the deadlines specified in subparagraph (A).

(3) in subsection (g)—

(A) in paragraph (2), by striking “, in consultation with the applicant, to” and inserting “if the applicant approves such extension. If the applicant approves such extension, the lead agency shall”;

(B) in paragraph (3)(A), by striking “A project sponsor may” and inserting “Except as provided in subparagraph (C), a project sponsor may”; and

(C) by adding at the end the following: adding at the end:

“(C) EXCEPTION.—A project sponsor that approved an extension of a deadline under paragraph (2) may not obtain review of a failure to act in accordance with such deadline under subparagraph (A) unless the lead agency is delaying for reasons other than those necessary to complete their review.”.

(e) ADOPTION OF CATEGORICAL EXCLUSIONS.—Section 109 of the National Environmental Policy Act of 1969 (42 U.S.C. 4336c) is amended—

(1) in the text preceding paragraph (1), by inserting “, or that was legislatively enacted by Congress,” after “procedures”; and

(2) in paragraph (2), by inserting “, if applicable,” after “established the categorical exclusion”.

(f) DEFINITIONS.—Section 111 of the National Environmental Policy Act of 1969 (42 U.S.C. 4336e) is amended—

(1) in paragraph (10)—

(A) in subparagraph (B)—

(i) in clause (iii)—

(I) by inserting “, grants” after “loan guarantees”; and

(II) by striking “subsequent use of such financial assistance or the”;

(ii) by redesignating clauses (iv) through (vii) as clauses (v) through (viii), respectively; and

(iii) by inserting after clause (iii) the following:

“(iv) farm ownership and operating loan guarantees by the Farm Service Agency pursuant to sections 305 and 311 through 319 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1925 and 1941 through 1949);”;

(B) by adding at the end the following:

“(C) **ADDITIONAL EXCLUSIONS.**—An agency action may not be determined to be a major Federal action solely on the basis of—

“(i) an interstate effect of the action or related project; or

“(ii) the provision of Federal funds, including a grant, loan, loan guarantee, and funding assistance, for the action or related project.”;

(2) by adding at the end the following:

“(14) **REASONABLY FORESEEABLE.**—The term ‘reasonably foreseeable’ means—

“(A) likely to occur in area directly affected by the major Federal action;

“(B) directly under the control or jurisdiction of the agency; and

“(C) has a reasonably close causal relationship between a change in the environment and the major Federal action.”.

SEC. 2. JUDICIAL REVIEW.

Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is amended by adding at the end the following:

“SEC. 112. JUDICIAL REVIEW.

“(a) LIMITATIONS ON CIVIL ACTIONS.—Notwithstanding any other provision of law, a civil action under chapter 7 of title 5, United States Code, for review of an agency action under this Act shall be barred unless—

“(1) such civil action is filed not later than 120 days after the agency action becomes final, unless a shorter timeline is specified under Federal law;

“(2) in the case of a final agency action for which there was a public comment period on an environmental document, such civil action—

“(A) is filed by a party that—

“(i) participated in the administrative proceedings regarding the preparation of such environmental document; and

“(ii) submitted a comment during such public comment period by the noticed comment deadline and such comment was sufficiently detailed to put the applicable Federal agency on notice of the issue upon which the party seeks review; and

“(B) is related to such comment and concerns the same subject matter raised in the comment submitted during the public comment period;

“(3) such civil action concerns—

“(A) an alternative considered in the environmental document; or

“(B) an environmental effect considered in the environmental document; and

“(4) such civil action does not challenge the establishment of a categorical exclusion.

“(b) SUPPLEMENTAL ENVIRONMENTAL DOCUMENTS.—If an agency issues a supplemental environmental document, the deadline described in subsection (a)(1) shall be the date on which the agency finalizes the agency action that is informed by such supplemental environmental document. A civil action under chapter 7 of title 5, United States Code, for review of such final agency action shall be based on information contained in the final supplemental environmental document that was not contained in a previous environmental document for the major Federal action.

“(c) LIMITATIONS FOR INJUNCTIVE RELIEF AND REMAND.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, no environmental document, final agency action, or subsequent permit, license, or authorization for a major Federal action shall be vacated or otherwise limited, delayed, stayed, or enjoined by a court unless the court determines that—

“(A) the major Federal action for which the environmental document or final agency action is prepared will pose a risk of a proximate and substantial environmental harm; and

“(B) there is no other equitable remedy available as a matter of law.

“(2) REMAND.—Notwithstanding any other provision of law, if a court determines there are errors or deficiencies with an environmental document or final agency action that need to be corrected, but the major Federal agency action will not pose a risk of a proximate and substantial environmental harm—

“(A) the court may remand the environmental document to the applicable Federal agency with specific instruction to correct such errors or deficiencies within 180 days from the date on which the order of the court was issued to the applicable Federal agency; and

“(B) the major Federal action may be carried out pursuant to the final agency action notwithstanding the remand of the environmental document or final agency action under subparagraph (A), including during the time prescribed by the court to the Federal agency to correct such errors or deficiencies, so long as such activity does not directly affect such errors or deficiencies.

“(3) CLARIFICATION.—This subsection shall not affect the right to obtain review under section 107(g)(3).

“(d) STANDARD OF REVIEW.—Notwithstanding chapter 7 of title 5, United States Code, an environmental document or final agency action shall be upheld by a court if the environmental document or final agency action is supported by substantial evidence in the record taken as a whole, whether or not such evidence is cited or specifically referenced by the agency in the agency action. The reviewing court shall consider the record as a whole, weighing both evidence in the record that supports and that detracts from the environmental document or final agency action. The court shall uphold the environmental document or final agency action if there is enough relevant evidence for reasonable minds to accept the environmental document or final agency action even if it is possible to draw contrary conclusions from the evidence, whether or not such evidence is cited by the agency or specifically referenced by the agency in the environmental document or final agency action.

“(e) EVIDENTIARY STANDARD.—An environmental document or final agency action shall be upheld by the court if a claim challenging the environmental document or final agency action is not substantiated by clear and convincing evidence.

“(f) DEADLINE FOR RESOLUTION.—A court shall issue a final judgment on a civil action under chapter 7 of title 5, United States Code, for review of an agency action under this Act—

“(1) as expeditiously as practicable; and

“(2) not later than the date that is 180 days after the date on which the civil action is filed.

“(g) APPEALS.—

“(1) FILING.—An appeal of a final judgement described in subsection (f) shall be filed not later than 60 days after such final judgement is issued.

“(2) DEADLINE FOR REVIEW.—A court shall issue a final decision on an appeal filed under paragraph (1)—

“(A) as expeditiously as practicable; and

“(B) not later than the date that is 180 days after the date on which the appeal is filed.

“(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create a right of judicial review or place any limit on filing a claim with respect to the violation of the terms of a permit, license, or approval.

“(i) FINAL AGENCY ACTIONS.—The completion of an environmental assessment or an environmental impact statement shall not be considered a final agency action for the purposes of chapter 7 of title 5, United States Code.

“(j) AGENCY ACTION DEFINED.—In this section, the term ‘agency action’ has the meaning given such term in section 551 of title 5, United States Code.”.

SEC. 3. RULEMAKING.

Not later than 180 days after the date of enactment of this Act, the Council on Environmental Quality shall issue a proposed rule to

implement section 1 of this Act and the amendments made by this Act.
