

116TH CONGRESS  
2D SESSION

# H. R. 8333

To amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions, align the Act with relevant case law, reflect modern technologies, optimize interagency coordination, and facilitate a more efficient, effective, and timely environmental review process.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2020

Mr. GRAVES of Louisiana (for himself, Mr. McCARTHY, Mr. SCALISE, Mr. WALDEN, Mr. BISHOP of Utah, Mr. GRAVES of Missouri, Mr. LUCAS, Ms. GRANGER, Mr. COLE, Mr. COMER, Mr. YOUNG, Ms. CHENEY, Mr. LAMBORN, Mr. JOHNSON of Louisiana, Mr. STAUBER, Mr. CURTIS, Mr. GOSAR, Mr. KEVIN HERN of Oklahoma, Mr. COOK, Mr. McCLINTOCK, Mr. WESTERMAN, Mr. RODNEY DAVIS of Illinois, Mr. NEWHOUSE, Mr. CARTER of Georgia, Mrs. RADEWAGEN, Mr. FULCHER, and Mr. HICE of Georgia) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions, align the Act with relevant case law, reflect modern technologies, optimize interagency coordination, and facilitate a more efficient, effective, and timely environmental review process.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “BUILDER Act of  
3 2020” or the “Building United States Infrastructure  
4 through Limited Delays and Efficient Reviews Act of  
5 2020”.

6 **SEC. 2. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.**

7 (a) PARAGRAPH (2) OF SECTION 102.—Section  
8 102(2) of the National Environmental Policy Act of 1969  
9 (42 U.S.C. 4332(2)) is amended—

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

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

14 (3) in subparagraph (C)—

15 (A) by inserting “consistent with the provi-  
16 sions of this Act and except as provided by  
17 other provisions of law,” before “include in  
18 every”;

19 (B) by striking clauses (i) through (v) and  
20 inserting the following:

21 “(i) reasonably foreseeable environmental  
22 effects with a reasonably close causal relation-  
23 ship to the proposed agency action;

24 “(ii) any reasonably foreseeable adverse en-  
25 vironmental effects which cannot be avoided  
26 should the proposal be implemented;

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

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

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

15          (C) by striking “the responsible Federal  
16          official” and inserting “the head of the lead  
17          agency”;

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

20          (5) by redesignating subparagraphs (D)  
21          through (I) as subparagraphs (F) through (K), re-  
22          spectively;

23          (6) by inserting after subparagraph (C) the fol-  
24          lowing:

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

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

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

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

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

15      **“SEC. 106. PROCEDURE FOR DETERMINATION OF LEVEL OF**  
16                                      **REVIEW.**

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

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

23           “(2) such proposed agency action is covered by  
24      a categorical exclusion established by a Federal  
25      agency;

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

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

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

13           “(b) LEVELS OF REVIEW.—

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

19           “(2) ENVIRONMENTAL ASSESSMENT.—An agen-  
20 cy shall issue an environmental assessment with re-  
21 spect to a proposed agency action that is not likely  
22 to have a significant effect on the quality of the  
23 human environment, or if the significance of such ef-  
24 fect is unknown. Such environmental assessment  
25 shall be a concise public document prepared by a

1 Federal agency to provide notice to the public for  
2 the basis of such agency's finding of no significant  
3 impact.

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

6 “(A) may make use of any reliable data  
7 source; and

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

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

11 “(a) LEAD AGENCY.—

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

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

18 “(B) Project approval or disapproval au-  
19 thority.

20 “(C) Expertise concerning the action's en-  
21 vironmental effects.

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

23 “(E) Sequence of agency's involvement.

24 “(2) JOINT LEAD AGENCIES.—In making a de-  
25 termination under paragraph (1), the involved Fed-

1       eral agencies may, in addition to a Federal agency,  
2       appoint such Federal, State, Tribal, or local agencies  
3       as joint lead agencies as the involved Federal agen-  
4       cies shall determine appropriate. Joint lead agencies  
5       shall jointly fulfill the role described in paragraph  
6       (3).

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

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

13              “(B) request the participation of each co-  
14       operating agency;

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

19              “(D) develop a schedule, in consultation  
20       with each involved cooperating agency and such  
21       other entities as the lead agency determines ap-  
22       propriate, for completion of any environmental  
23       review, permit, or authorization required to  
24       carry out the proposed agency action;

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

10           “(F) meet with a cooperating agency that  
11           requests such a meeting.

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

23           “(5) REQUEST FOR DESIGNATION.—Any Fed-  
24           eral, State, Tribal, or local agency or person that is  
25           substantially affected by the lack of a designation of



1 a lead agency with respect to a proposed agency ac-  
2 tion under paragraph (1) may submit a written re-  
3 quest for such a designation to an involved Federal  
4 agency. An agency that receives a request under this  
5 paragraph shall transmit such request to each in-  
6 volved Federal agency and to the Council.

7 “(6) COUNCIL DESIGNATION.—

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

17 “(i) a precise description of the nature  
18 and extent of the proposed agency action;  
19 and

20 “(ii) a detailed statement with respect  
21 to each involved Federal agency and each  
22 factor listed in paragraph (1) regarding  
23 which agency should serve as lead agency.

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

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

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

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

22          “(c) REQUEST FOR PUBLIC COMMENT.—Each notice  
23          of intent to prepare an environmental impact statement  
24          under section 102 shall include a request for public com-  
25          ment on potential alternatives or impacts and on relevant

1 information, studies, or analyses with respect to the pro-  
2 posed agency action.

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

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

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

20 “(g) DEADLINES.—

21 “(1) ISSUANCE OF ENVIRONMENTAL IMPACT  
22 STATEMENT.—Except as provided in paragraph (2),  
23 with respect to a proposed agency action, a lead  
24 agency shall complete—

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

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

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

19          **“SEC. 108. JUDICIAL REVIEW.**

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

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

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

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

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

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

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

23          “(4) such claim does not challenge the estab-  
24      lishment of a categorical exclusion under section  
25      102.

1       “(b) SUPPLEMENTAL ENVIRONMENTAL IMPACT  
2 STATEMENT.—

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

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

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

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

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

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

5 **“SEC. 109. DEFINITIONS.**

6       “**In this title:**

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

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

16           “(3) **COUNCIL.**—The term ‘Council’ means the  
17 Council on Environmental Quality established in  
18 title II.

19           “(4) **ENVIRONMENTAL ASSESSMENT.**—The  
20 term ‘environmental assessment’ means an environ-  
21 mental assessment prepared under section  
22 106(b)(2).

23           “(5) **ENVIRONMENTAL DOCUMENT.**—The term  
24 ‘environmental document’ means an environmental

1 impact statement, an environmental assessment, or  
2 a finding of no significant impact.

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

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

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

15 “(A) proposed such action; or

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

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

23 “(A) the agency that proposed such action;  
24 or



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

4           “(10) MAJOR FEDERAL ACTION.—

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

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

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

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

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

24           “(iv) farm ownership and operating  
25          loan guarantees by the Farm Service

1 Agency pursuant to sections 305 and 311  
2 through 319 of the Consolidated Farmers  
3 Home Administration Act of 1961 (7  
4 U.S.C. 1925 and 1941 through 1949);

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

12 “(vi) bringing judicial or administra-  
13 tive civil or criminal enforcement actions.

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

○