

117TH CONGRESS
2D SESSION

S. _____

To clarify regulatory certainty, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. CAPITO (for herself, Mr. McCONNELL, Mr. THUNE, Mr. GRASSLEY, Mr. CRAMER, Mr. INHOFE, Mrs. HYDE-SMITH, Mr. CASSIDY, Mr. HAGERTY, Mr. RISCH, Mrs. FISCHER, Mr. JOHNSON, Mr. BRAUN, Mr. GRAHAM, Mr. BLUNT, Mr. BARRASSO, Mr. SASSE, Mr. TILLIS, Mr. TOOMEY, Mr. ROUNDS, Ms. ERNST, Mr. WICKER, Ms. LUMMIS, Mr. CRAPO, Mr. YOUNG, Mr. CRUZ, Mr. HOEVEN, Mr. MORAN, Mrs. BLACKBURN, Ms. MURKOWSKI, Mr. SCOTT of Florida, Mr. COTTON, Mr. MARSHALL, Mr. BURR, Mr. DAINES, Mr. SHELBY, Mr. SULLIVAN, Mr. TUBERVILLE, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To clarify regulatory certainty, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Simplify Timelines and
5 Assure Regulatory Transparency Act” or the “START
6 Act”.

1 **SEC. 2. CODIFICATION OF NEPA REGULATIONS.**

2 The revisions to the Code of Federal Regulations
3 made pursuant to the final rule of the Council on Environ-
4 mental Quality titled “Update to the Regulations Imple-
5 menting the Procedural Provisions of the National Envi-
6 ronmental Policy Act” and published on July 16, 2020
7 (85 Fed. Reg. 43304), shall have the same force and effect
8 of law as if enacted by an Act of Congress.

9 **SEC. 3. PROVIDING REGULATORY CERTAINTY UNDER THE**
10 **FEDERAL WATER POLLUTION CONTROL ACT.**

11 (a) WATERS OF THE UNITED STATES.—The defini-
12 tions of the term “waters of the United States” and the
13 other terms defined in section 328.3 of title 33, Code of
14 Federal Regulations (as in effect on January 1, 2021),
15 are enacted into law.

16 (b) CODIFICATION OF SECTION 401 CERTIFICATION
17 RULE.—The final rule of the Environmental Protection
18 Agency entitled “Clean Water Act Section 401 Certifi-
19 cation Rule” (85 Fed. Reg. 42210 (July 13, 2020)) is en-
20 acted into law.

21 (c) CODIFICATION OF NATIONWIDE PERMITS.—The
22 Nationwide Permits issued, reissued, or modified, as appli-
23 cable, in the following final rules of the Corps of Engineers
24 are enacted into law:

1 of the Interagency Working Group on the Social Cost of
2 Greenhouse Gases entitled “Technical Support Document:
3 Social Cost of Carbon, Methane, and Nitrous Oxide In-
4 terim Estimates under Executive Order 13990” and dated
5 February 2021.

6 **SEC. 5. EXPEDITING PERMITTING AND REVIEW PROC-**
7 **ESSES.**

8 (a) DEFINITIONS.—In this section:

9 (1) AUTHORIZATION.—The term “authoriza-
10 tion” means any license, permit, approval, finding,
11 determination, or other administrative decision
12 issued by a Federal department or agency that is re-
13 quired or authorized under Federal law in order to
14 site, construct, reconstruct, or commence operations
15 of an energy project, including any authorization de-
16 scribed in section 41001(3) of the FAST Act (42
17 U.S.C. 4370m(3)).

18 (2) ENERGY PROJECT.—The term “energy
19 project” means any project involving the exploration,
20 development, production, transportation, combus-
21 tion, transmission, or distribution of an energy re-
22 source or electricity for which—

23 (A) an authorization is required under a
24 Federal law other than the National Environ-

1 mental Policy Act of 1969 (42 U.S.C. 4321 et
2 seq.); and

3 (B)(i) the head of the lead agency has de-
4 termined that an environmental impact state-
5 ment is required; or

6 (ii) the head of the lead agency has deter-
7 mined that an environmental assessment is re-
8 quired, and the project sponsor requests that
9 the project be treated as an energy project.

10 (3) ENVIRONMENTAL IMPACT STATEMENT.—

11 The term “environmental impact statement” means
12 the detailed statement of environmental impacts re-
13 quired to be prepared under the National Environ-
14 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

15 (4) ENVIRONMENTAL REVIEW AND AUTHORIZA-
16 TION PROCESS.—The term “environmental review
17 and authorization process” means—

18 (A) the process for preparing for an energy
19 project an environmental impact statement, en-
20 vironmental assessment, categorical exclusion,
21 or other document prepared under the National
22 Environmental Policy Act of 1969 (42 U.S.C.
23 4321 et seq.); and

24 (B) the completion of any authorization
25 decision required for an energy project under

1 any Federal law other than the National Envi-
2 ronmental Policy Act of 1969 (42 U.S.C. 4321
3 et seq.).

4 (5) LEAD AGENCY.—The term “lead agency”
5 means—

6 (A) the Department of Energy;

7 (B) the Department of the Interior;

8 (C) the Department of Agriculture;

9 (D) the Federal Energy Regulatory Com-
10 mission;

11 (E) the Nuclear Regulatory Commission;

12 or

13 (F) any other appropriate Federal agency,
14 as applicable, that may be responsible for navi-
15 gating the energy project through the environ-
16 mental review and authorization process.

17 (6) PROJECT SPONSOR.—The term “project
18 sponsor” means an agency or other entity, including
19 any private or public-private entity, that seeks ap-
20 proval from a lead agency for an energy project.

21 (b) TIMELY AUTHORIZATIONS FOR ENERGY
22 PROJECTS.—

23 (1) IN GENERAL.—

24 (A) DEADLINE.—Except as provided in
25 subparagraph (C), all authorization decisions

1 necessary for the construction of an energy
2 project shall be completed by not later than 90
3 days after the date of the issuance of a record
4 of decision for the energy project by the lead
5 agency.

6 (B) **DETAIL.**—The final environmental im-
7 pact statement for an energy project shall in-
8 clude an adequate level of detail to inform deci-
9 sions necessary for the role of any Federal
10 agency involved in the environmental review and
11 authorization process for the energy project.

12 (C) **EXTENSION OF DEADLINE.**—The head
13 of a lead agency may extend the deadline under
14 subparagraph (A) if—

15 (i) Federal law prohibits the lead
16 agency or another agency from issuing an
17 approval or permit within the period de-
18 scribed in that subparagraph;

19 (ii) the project sponsor requests that
20 the permit or approval follow a different
21 timeline; or

22 (iii) an extension would facilitate com-
23 pletion of the environmental review and
24 authorization process of the energy project.

1 (2) ENERGY PROJECT SCHEDULE.—To the
2 maximum extent practicable and consistent with ap-
3 plicable Federal law, for an energy project, the lead
4 agency shall develop, in concurrence with the project
5 sponsor, a schedule for the energy project that is
6 consistent with a time period of not more than 2
7 years for the completion of the environmental review
8 and authorization process for an energy project, as
9 measured from, as applicable—

10 (A) the date of publication of a notice of
11 intent to prepare an environmental impact
12 statement to the record of decision; or

13 (B) the date on which the head of the lead
14 agency determines that an environmental as-
15 sessment is required to a finding of no signifi-
16 cant impact.

17 (3) LENGTH OF ENVIRONMENTAL IMPACT
18 STATEMENT.—

19 (A) IN GENERAL.—Notwithstanding any
20 other provision of law and except as provided in
21 subparagraph (B), to the maximum extent
22 practicable, the text of the items described in
23 paragraphs (4) through (6) of section
24 1502.10(a) of title 40, Code of Federal Regula-
25 tions (or successor regulations), of an environ-

1 mental impact statement for an energy project
2 shall be 200 pages or fewer.

3 (B) EXEMPTION.—The text referred to in
4 subparagraph (A) of an environmental impact
5 statement for an energy project may exceed 200
6 pages if the lead agency establishes a new page
7 limit for the environmental impact statement
8 for that energy project.

9 (c) DEADLINE FOR FILING ENERGY-RELATED
10 CAUSES OF ACTION.—

11 (1) DEFINITIONS.—In this subsection:

12 (A) AGENCY ACTION.—The term “agency
13 action” has the meaning given the term in sec-
14 tion 551 of title 5, United States Code.

15 (B) ENERGY-RELATED CAUSE OF AC-
16 TION.—The term “energy-related cause of ac-
17 tion” means a cause of action that—

18 (i) is filed on or after the date of en-
19 actment of this Act; and

20 (ii) seeks judicial review of a final
21 agency action to issue a permit, license, or
22 other form of agency permission for an en-
23 ergy project.

24 (2) DEADLINE FOR FILING.—

1 (A) IN GENERAL.—Notwithstanding any
2 other provision of Federal law, an energy-re-
3 lated cause of action shall be filed by—

4 (i) not later than 60 days after the
5 date of publication of the applicable final
6 agency action; or

7 (ii) if another Federal law provides for
8 an earlier deadline than the deadline de-
9 scribed in clause (i), the earlier deadline.

10 (B) PROHIBITION.—An energy-related
11 cause of action that is not filed within the ap-
12 plicable time period described in subparagraph
13 (A) shall be barred.

14 (d) APPLICATION OF CATEGORICAL EXCLUSIONS FOR
15 ENERGY PROJECTS.—In carrying out requirements under
16 the National Environmental Policy Act of 1969 (42 U.S.C.
17 4321 et seq.) for an energy project, a Federal agency may
18 use categorical exclusions designated under that Act in the
19 implementing regulations of any other agency, subject to
20 the conditions that—

21 (1) the agency makes a determination, in con-
22 sultation with the lead agency, that the categorical
23 exclusion applies to the energy project;

24 (2) the energy project satisfies the conditions
25 for a categorical exclusion under the National Envi-

1 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
2 seq.); and

3 (3) the use of the categorical exclusion does not
4 otherwise conflict with the implementing regulations
5 of the agency, except any list of the agency that des-
6 ignates categorical exclusions.

7 **SEC. 6. FRACTURING AUTHORITY WITHIN STATES.**

8 (a) DEFINITION OF FEDERAL LAND.—In this sec-
9 tion, the term “Federal land” means—

10 (1) public lands (as defined in section 103 of
11 the Federal Land Policy and Management Act of
12 1976 (43 U.S.C. 1702));

13 (2) National Forest System land;

14 (3) land under the jurisdiction of the Bureau of
15 Reclamation; and

16 (4) land under the jurisdiction of the Corps of
17 Engineers.

18 (b) STATE AUTHORITY.—

19 (1) IN GENERAL.—A State shall have the sole
20 authority to promulgate or enforce any regulation,
21 guidance, or permit requirement regarding the treat-
22 ment of a well by the application of fluids under
23 pressure to which propping agents may be added for
24 the expressly designed purpose of initiating or prop-
25 agating fractures in a target geologic formation in

1 order to enhance production of oil, natural gas, or
2 geothermal production activities on or under any
3 land within the boundaries of the State.

4 (2) FEDERAL LAND.—The treatment of a well
5 by the application of fluids under pressure to which
6 propping agents may be added for the expressly de-
7 signed purpose of initiating or propagating fractures
8 in a target geologic formation in order to enhance
9 production of oil, natural gas, or geothermal produc-
10 tion activities on Federal land shall be subject to the
11 law of the State in which the land is located.

12 **SEC. 7. FEDERAL LAND FREEDOM.**

13 (a) DEFINITIONS.—In this section:

14 (1) AVAILABLE FEDERAL LAND.—The term
15 “available Federal land” means any Federal land
16 that, as of May 31, 2013—

17 (A) is located within the boundaries of a
18 State;

19 (B) is not held by the United States in
20 trust for the benefit of a federally recognized
21 Indian Tribe;

22 (C) is not a unit of the National Park Sys-
23 tem;

24 (D) is not a unit of the National Wildlife
25 Refuge System; and

1 (E) is not a congressionally designated wil-
2 derness area.

3 (2) STATE.—The term “State” means—

4 (A) a State; and

5 (B) the District of Columbia.

6 (3) STATE LEASING, PERMITTING, AND REGU-
7 LATORY PROGRAM.—The term “State leasing, per-
8 mitting, and regulatory program” means a program
9 established pursuant to State law that regulates the
10 exploration and development of oil, natural gas, and
11 other forms of energy on land located in the State.

12 (b) STATE CONTROL OF ENERGY DEVELOPMENT
13 AND PRODUCTION ON ALL AVAILABLE FEDERAL
14 LAND.—

15 (1) STATE LEASING, PERMITTING, AND REGU-
16 LATORY PROGRAMS.—Any State that has established
17 a State leasing, permitting, and regulatory program
18 may—

19 (A) submit to the Secretaries of the Inte-
20 rior, Agriculture, and Energy a declaration that
21 a State leasing, permitting, and regulatory pro-
22 gram has been established or amended; and

23 (B) seek to transfer responsibility for leas-
24 ing, permitting, and regulating oil, natural gas,

1 and other forms of energy development from
2 the Federal Government to the State.

3 (2) STATE ACTION AUTHORIZED.—Notwith-
4 standing any other provision of law, on submission
5 of a declaration under paragraph (1)(A), the State
6 submitting the declaration may lease, permit, and
7 regulate the exploration and development of oil, nat-
8 ural gas, and other forms of energy on Federal land
9 located in the State in lieu of the Federal Govern-
10 ment.

11 (3) EFFECT OF STATE ACTION.—Any action by
12 a State to lease, permit, or regulate the exploration
13 and development of oil, natural gas, and other forms
14 of energy pursuant to paragraph (2) shall not be
15 subject to, or considered a Federal action, Federal
16 permit, or Federal license under—

17 (A) subchapter II of chapter 5, and chap-
18 ter 7, of title 5, United States Code (commonly
19 known as the “Administrative Procedure Act”);

20 (B) division A of subtitle III of title 54,
21 United States Code;

22 (C) the Endangered Species Act of 1973
23 (16 U.S.C. 1531 et seq.); or

24 (D) the National Environmental Policy Act
25 of 1969 (42 U.S.C. 4321 et seq.).

1 (c) NO EFFECT ON FEDERAL REVENUES.—

2 (1) IN GENERAL.—Any lease or permit issued
3 by a State pursuant to subsection (b) shall include
4 provisions for the collection of royalties or other rev-
5 enues in an amount equal to the amount of royalties
6 or revenues that would have been collected if the
7 lease or permit had been issued by the Federal Gov-
8 ernment.

9 (2) DISPOSITION OF REVENUES.—Any revenues
10 collected by a State from leasing or permitting on
11 Federal land pursuant to subsection (b) shall be de-
12 posited in the same Federal account in which the
13 revenues would have been deposited if the lease or
14 permit had been issued by the Federal Government.

15 (3) EFFECT ON STATE PROCESSING FEES.—
16 Nothing in this section prohibits a State from col-
17 lecting and retaining a fee from an applicant to
18 cover the administrative costs of processing an appli-
19 cation for a lease or permit.

20 **SEC. 8. EXPEDITING COMPLETION OF THE MOUNTAIN VAL-**
21 **LEY PIPELINE.**

22 (a) DEFINITION OF MOUNTAIN VALLEY PIPELINE.—
23 In this section, the term “Mountain Valley Pipeline”
24 means the Mountain Valley Pipeline project, as generally

1 described and approved in Federal Energy Regulatory
2 Commission Docket Nos. CP16–10 and CP19–477.

3 (b) EXPEDITED APPROVAL.—Notwithstanding any
4 other provision of law, not later than 21 days after the
5 date of enactment of this Act and for the purpose of facili-
6 tating the completion of the Mountain Valley Pipeline—

7 (1) the Secretary of the Army shall issue all
8 permits or verifications necessary—

9 (A) to complete the construction of the
10 Mountain Valley Pipeline across the waters of
11 the United States; and

12 (B) to allow for the operation and mainte-
13 nance of the Mountain Valley Pipeline;

14 (2) the Secretary of Agriculture shall amend
15 the Land and Resource Management Plan for the
16 Jefferson National Forest in a manner that is sub-
17 stantively identical to the record of decision with re-
18 spect to the Mountain Valley Pipeline issued on Jan-
19 uary 11, 2021; and

20 (3) the Secretary of the Interior shall—

21 (A) reissue the biological opinion and inci-
22 dental take statement for the Mountain Valley
23 Pipeline in a manner that is substantively iden-
24 tical to the biological opinion and incidental

1 take statement previously issued on September
2 4, 2020; and

3 (B) grant all necessary rights-of-way and
4 temporary use permits in a manner that is sub-
5 stantively identical to the those permits ap-
6 proved in the record of decision with respect to
7 the Mountain Valley Pipeline issued on January
8 14, 2021.

9 (c) JUDICIAL REVIEW.—No action taken by the Sec-
10 retary of the Army, the Federal Energy Regulatory Com-
11 mission, the Secretary of Agriculture, or the Secretary of
12 the Interior that grants an authorization, permit,
13 verification, biological opinion, incidental take statement,
14 or any other approval related to the Mountain Valley Pipe-
15 line, including the issuance of any authorization, permit,
16 verification, authorization, biological opinion, incidental
17 take statement, or other approval described in subsection
18 (b), shall be subject to judicial review.

19 (d) EFFECT.—This section preempts any statute (in-
20 cluding any other section of this Act), regulation, judicial
21 decision, or agency guidance that is inconsistent with the
22 issuance of any authorization, permit, verification, author-
23 ization, biological opinion, incidental take statement, or
24 other approval described in subsection (b).

1 **SEC. 9. FASTER PROJECT CONSULTATION.**

2 Section 7(b)(1) of the Endangered Species Act of
3 1973 (16 U.S.C. 1536(b)(1)) is amended—

4 (1) in subparagraph (A), by striking “90-day”
5 and inserting “60-day”; and

6 (2) in subparagraph (B)—

7 (A) in the matter preceding clause (i)—

8 (i) by striking “90 days” and insert-
9 ing “60 days”; and

10 (ii) by striking “90th day” and insert-
11 ing “60th day”;

12 (B) in clause (i), in the matter preceding
13 subclause (I), by striking “150th day” and in-
14 serting “100th day”; and

15 (C) in clause (ii), by striking “150 or
16 more” and inserting “100 or more”.

17 **SEC. 10. NEW SOURCE REVIEW PERMITTING.**

18 (a) CLARIFICATION OF DEFINITION OF A MODIFICA-
19 TION FOR EMISSION RATE INCREASES, POLLUTION CON-
20 TROL, EFFICIENCY, SAFETY, AND RELIABILITY
21 PROJECTS.—Paragraph (4) of section 111(a) of the Clean
22 Air Act (42 U.S.C. 7411(a)) is amended—

23 (1) by inserting “(A)” before “The term”;

24 (2) by inserting before the period at the end the
25 following: “. For purposes of the preceding sentence,
26 a change increases the amount of any air pollutant

1 emitted by such source only if the maximum hourly
2 emission rate of an air pollutant that is achievable
3 by such source after the change is higher than the
4 maximum hourly emission rate of such air pollutant
5 that was achievable by such source during any hour
6 in the 10-year period immediately preceding the
7 change”; and

8 (3) by adding at the end the following:

9 “(B) Notwithstanding subparagraph (A), the
10 term ‘modification’ does not include a change at a
11 stationary source that is designed—

12 “(i) to reduce the amount of any air pol-
13 lutant emitted by the source per unit of produc-
14 tion; or

15 “(ii) to restore, maintain, or improve the
16 reliability of operations at, or the safety of, the
17 source,

18 except, with respect to either clause (i) or (ii), when
19 the change would be a modification as defined in
20 subparagraph (A) and the Administrator determines
21 that the increase in the maximum achievable hourly
22 emission rate of a pollutant from such change would
23 cause an adverse effect on human health or the envi-
24 ronment.”.

1 (b) CLARIFICATION OF DEFINITION OF CONSTRU-
2 TION FOR PREVENTION OF SIGNIFICANT DETERIORA-
3 TION.—Subparagraph (C) of section 169(2) of the Clean
4 Air Act (42 U.S.C. 7479(2)) is amended to read as fol-
5 lows:

6 “(C) The term ‘construction’, when used in
7 connection with a major emitting facility, in-
8 cludes a modification (as defined in section
9 111(a)) at such facility, except that for pur-
10 poses of this subparagraph a modification does
11 not include a change at a major emitting facil-
12 ity that does not result in a significant emis-
13 sions increase, or a significant net emissions in-
14 crease, in annual actual emissions at such facil-
15 ity.”.

16 (c) CLARIFICATION OF DEFINITION OF MODIFICA-
17 TIONS AND MODIFIED FOR NONATTAINMENT AREAS.—
18 Paragraph (4) of section 171 of the Clean Air Act (42
19 U.S.C. 7501) is amended to read as follows:

20 “(4) The terms ‘modifications’ and ‘modified’
21 mean a modification as defined in section 111(a)(4),
22 except that such terms do not include a change at
23 a major emitting facility that does not result in a
24 significant emissions increase, or a significant net

1 emissions increase, in annual actual emissions at
2 such facility.”.

3 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion or the amendments made by this section shall be con-
5 strued to treat any change as a modification for purposes
6 of any provision of the Clean Air Act (42 U.S.C. 7401
7 et seq.) if such change would not have been so treated
8 as of the day before the date of enactment of this Act.

9 **SEC. 11. PROHIBITION ON RETROACTIVE PERMIT VETOES.**

10 Section 404 of the Federal Water Pollution Control
11 Act (33 U.S.C. 1344) is amended by striking subsection
12 (c) and inserting the following:

13 “(c) AUTHORITY OF EPA ADMINISTRATOR.—

14 “(1) POSSIBLE PROHIBITION OF SPECIFICA-
15 TION.—Until such time as the Secretary has issued
16 a permit under this section, the Administrator may
17 prohibit the specification (including the withdrawal
18 of specification) of any defined area as a disposal
19 site, and the Administrator may deny or restrict the
20 use of any defined area for specification (including
21 the withdrawal of specification) as a disposal site,
22 whenever the Administrator determines, after notice
23 and opportunity for public hearings, that the dis-
24 charge of such materials into such area will have an
25 unacceptable adverse effect on municipal water sup-

1 plies, shellfish beds and fishery areas (including
2 spawning and breeding areas), wildlife, or rec-
3 reational areas.

4 “(2) CONSULTATION REQUIRED.—Before mak-
5 ing a determination under paragraph (1), the Ad-
6 ministrator shall consult with the Secretary.

7 “(3) WRITTEN FINDINGS REQUIRED.—The Ad-
8 ministrator shall set forth in writing and make pub-
9 lic the findings and reasons of the Administrator for
10 making any determination under this subsection.”.

11 **SEC. 12. POLICY REVIEW UNDER THE CLEAN AIR ACT.**

12 Section 309 of the Clean Air Act (42 U.S.C. 7609)
13 is amended to read as follows:

14 **“SEC. 309. POLICY REVIEW.**

15 “(a) ENVIRONMENTAL IMPACT OF PROPOSED LEGIS-
16 LATION.—

17 “(1) IN GENERAL.—The Administrator shall re-
18 view, and comment in writing, on the environmental
19 impact of any matter relating to the duties and re-
20 sponsibilities granted to the authority of the Admin-
21 istrator pursuant to this Act or any other law con-
22 tained in any legislation proposed by a Federal de-
23 partment.

1 “(2) PUBLISH.—A written comment referred to
2 in paragraph (1) shall be made public at the conclu-
3 sion of any review conducted under that paragraph.

4 “(b) UNSATISFACTORY LEGISLATION.—In the event
5 the Administrator determines that any legislation reviewed
6 under subsection (a)(1) is unsatisfactory from the stand-
7 point of public health, welfare, or environmental quality,
8 the Administrator shall publish the determination of the
9 Administrator and the matter shall be referred to the
10 Council on Environmental Quality.”.