

118TH CONGRESS
1ST SESSION

S. 1449

To improve the environmental review process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4, 2023

Mrs. CAPITO (for herself, Mr. BARRASSO, Mr. CRAMER, Ms. LUMMIS, Mr. RICKETTS, Mr. BOOZMAN, Mr. WICKER, Mr. SULLIVAN, Mr. GRAHAM, and Mr. RISCH) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To improve the environmental review process, 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 “Revitalizing the Econ-
5 omy by Simplifying Timelines and Assuring Regulatory
6 Transparency Act” or the “RESTART Act”.

1 **SEC. 2. MODERNIZING THE NATIONAL ENVIRONMENTAL**
2 **POLICY ACT OF 1969.**

3 (a) EXISTING NEPA REQUIREMENTS.—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 re-
12 quirements of this Act and except as provided
13 by any other provision of law,” before “include
14 in every”;

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

17 “(i) a reasonable number of alter-
18 natives to the major Federal action and ef-
19 fects of those alternatives, including an
20 analysis of any negative effects of not im-
21 plementing the major Federal action in the
22 case of a no action alternative;

23 “(ii) the relationship between local
24 short-term uses of the human environment
25 and the maintenance and enhancement of
26 long-term productivity; and

1 “(iii) any irreversible and irretrievable
2 commitments of Federal resources that
3 would be involved in the major Federal ac-
4 tion if the action is implemented.”; and

5 (C) in the undesignated matter following
6 clause (iii) (as so amended), in the second sen-
7 tence, by striking “the responsible Federal offi-
8 cial” and inserting “the head of the Federal
9 lead agency”;

10 (4) in subparagraph (D)—

11 (A) in the matter preceding clause (i), by
12 striking “official, if:” and inserting “official
13 if—”;

14 (B) in each of clauses (i) and (ii), by strik-
15 ing the comma at the end and inserting a semi-
16 colon;

17 (C) in clause (iii), by striking “, and” and
18 inserting “; and”; and

19 (D) in clause (iv), by striking the period at
20 the end and inserting a semicolon;

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

24 (6) by inserting after the undesignated matter
25 following subparagraph (C) the following:

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

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

6 (7) by striking subparagraph (G) (as so reded-
7 ignated) and inserting the following:

8 “(G) consistent with the requirements of
9 this Act, study, develop, and describe tech-
10 nically feasible alternatives in the jurisdiction
11 and authority of the Federal agency;”;

12 (8) in subparagraph (H) (as so redesignated),
13 by inserting “consistent with the requirements of
14 this Act,” before “recognize”.

15 (b) DEFINITIONS.—The National Environmental Pol-
16 icy Act of 1969 is amended by inserting after section 2
17 (42 U.S.C. 4321) the following:

18 **“SEC. 3. DEFINITIONS.**

19 “In this Act:

20 “(1) ALTERNATIVE.—The term ‘alternative’
21 means an agency action, other than a proposed
22 agency action, that—

23 “(A) is technically and economically fea-
24 sible;

1 “(B) is within the jurisdiction of the Fed-
2 eral agency;

3 “(C) meets the purpose and need of the
4 proposed agency action; and

5 “(D) meets the goals of the project spon-
6 sor.

7 “(2) AUTHORIZATION.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), the term ‘authorization’
10 means any license, permit, approval, finding,
11 determination, or other administrative decision
12 issued by a Federal agency that is required or
13 authorized under Federal law to implement a
14 proposed agency action.

15 “(B) PROGRAMMATIC OR PLANNING AC-
16 TIONS.—The term ‘authorization’, with respect
17 to a proposed agency action that is a pro-
18 grammatic or planning action, does not include
19 a site-specific decision that is intended to imple-
20 ment that action at a later date.

21 “(3) CATEGORICAL EXCLUSION.—The term
22 ‘categorical exclusion’ means a category of actions
23 that a Federal agency has determined, according to
24 procedures established by the Federal agency, do not

1 normally have a significant effect on the human en-
2 vironment.

3 “(4) COOPERATING AGENCY.—The term ‘co-
4 operating agency’ means any Federal agency or
5 State, Tribal, or local agency that has been des-
6 ignated as a cooperating agency under section
7 111(a)(4).

8 “(5) COUNCIL.—The term ‘Council’ means the
9 Council on Environmental Quality.

10 “(6) EFFECTS.—

11 “(A) IN GENERAL.—The term ‘effects’
12 means changes to the human environment as a
13 result of a proposed agency action or an alter-
14 native, as applicable, to be carried out by a
15 Federal agency that—

16 “(i) are reasonably foreseeable, includ-
17 ing changes that may occur not later than
18 10 years after the date on which the lead
19 agency begins preparing an environmental
20 document in an area directly affected by
21 the proposed agency action or alternative,
22 as applicable, such that an individual of or-
23 dinary prudence would take such occur-
24 rence into account in reaching a decision;
25 and

1 “(ii) have a proximate causal relation-
2 ship to the proposed agency action or an
3 alternative, as applicable.

4 “(B) REQUIREMENT.—For purposes of
5 subparagraph (A)(ii), a ‘but for’ causal rela-
6 tionship is insufficient to establish a proximate
7 causal relationship.

8 “(7) ENVIRONMENTAL ASSESSMENT.—The
9 term ‘environmental assessment’ means a concise
10 public document prepared by a Federal agency to
11 determine whether to prepare an environmental im-
12 pact statement or a finding of no significant impact
13 for a proposed agency action.

14 “(8) ENVIRONMENTAL DOCUMENT.—The term
15 ‘environmental document’ includes an environmental
16 assessment, a finding of no significant impact, a no-
17 tice of intent, and an environmental impact state-
18 ment.

19 “(9) ENVIRONMENTAL IMPACT STATEMENT.—
20 The term ‘environmental impact statement’ means a
21 detailed statement required to be prepared for a
22 major Federal action significantly affecting the qual-
23 ity of the human environment in accordance with
24 title I.

1 “(10) ENVIRONMENTAL REVIEW.—The term
2 ‘environmental review’ means the process of pre-
3 paring, for a proposed agency action in accordance
4 with this Act, an environmental impact statement,
5 an environmental assessment, a categorical exclu-
6 sion, a finding of no significant impact, or a record
7 of decision.

8 “(11) FEDERAL AGENCY.—The term ‘Federal
9 agency’ has the meaning given the term ‘agency’ in
10 section 551 of title 5, United States Code.

11 “(12) FINDING OF NO SIGNIFICANT IMPACT.—
12 The term ‘finding of no significant impact’ means a
13 document prepared by a Federal agency briefly pre-
14 senting the reasons why a proposed agency action,
15 not subject to a categorical exclusion—

16 “(A) will not have a significant effect on
17 the human environment; and

18 “(B) will not have an environmental im-
19 pact statement prepared for the action.

20 “(13) INVOLVED FEDERAL AGENCY.—The term
21 ‘involved Federal agency’ means a Federal agency
22 that, with respect to a proposed agency action—

23 “(A) proposed the action; or

24 “(B) is involved in the action because the
25 action is directly related, through functional

1 interdependence or geographic proximity, to an
2 action the Federal agency has taken or has pro-
3 posed to take.

4 “(14) LEAD AGENCY.—The term ‘lead agency’
5 means the agency or agencies, in the case of joint
6 lead agencies, preparing or having taken primary re-
7 sponsibility for carrying out any requirements relat-
8 ing to an environmental review for a proposed agen-
9 cy action pursuant to this Act.

10 “(15) MAJOR FEDERAL ACTION.—

11 “(A) IN GENERAL.—The term ‘major Fed-
12 eral action’ means an action that the Federal
13 agency carrying out the action determines is
14 subject to substantial Federal control and re-
15 sponsibility.

16 “(B) EXCLUSIONS.—The term ‘major Fed-
17 eral action’ does not include—

18 “(i) a non-Federal action—

19 “(I) with no or minimal Federal
20 funding;

21 “(II) with no or minimal Federal
22 involvement where a Federal agency
23 cannot control the outcome of the
24 project; or

1 “(III) that does not include Fed-
2 eral land;

3 “(ii) funding assistance solely in the
4 form of general revenue sharing funds that
5 do not provide Federal agency compliance
6 or enforcement responsibility over the sub-
7 sequent use of those funds;

8 “(iii) loans, loan guarantees, or other
9 forms of financial assistance where a Fed-
10 eral agency does not exercise sufficient
11 control and responsibility over the effect of
12 the action;

13 “(iv) farm ownership and operating
14 loan guarantees by the Farm Service
15 Agency pursuant to sections 305 and 311
16 through 319 of the Consolidated Farm and
17 Rural Development Act (7 U.S.C. 1925,
18 1941–1949);

19 “(v) business loan guarantees pro-
20 vided by the Small Business Administra-
21 tion pursuant to subsection (a) or (b) of
22 section 7 of the Small Business Act (15
23 U.S.C. 636), or title V of the Small Busi-
24 ness Investment Act of 1958 (15 U.S.C.
25 695 et seq.);

1 “(vi) bringing judicial or administra-
2 tive civil or criminal enforcement actions;
3 or

4 “(vii) extraterritorial activities or deci-
5 sions, including agency activities or deci-
6 sions with effects located entirely outside
7 of the jurisdiction of the United States.

8 “(C) DETERMINATION.—An agency action
9 may not be determined to be a major Federal
10 action solely on the basis of—

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

13 “(ii) the provision of Federal funds
14 for the action or related project.

15 “(16) NOTICE OF INTENT.—The term ‘notice of
16 intent’ means a public notice that a Federal agency
17 intends to prepare and consider an environmental
18 impact statement for a proposed agency action.

19 “(17) PAGE.—The term ‘page’ means a page
20 that contains not more than 500 words, not includ-
21 ing any explanatory maps, diagrams, graphs, tables,
22 or other means of graphically displaying quantitative
23 or geospatial information.

24 “(18) PROJECT SPONSOR.—The term ‘project
25 sponsor’ means the agency or other entity, including

1 any private or public-private entity, that seeks an
2 authorization for a proposed agency action.

3 “(19) PROPOSED AGENCY ACTION.—The term
4 ‘proposed agency action’ means an action at a stage
5 when a Federal agency—

6 “(A) has a goal;

7 “(B) is actively preparing to make a deci-
8 sion on 1 or more alternatives to accomplish
9 that goal; and

10 “(C) can meaningfully evaluate the effects
11 of the action.

12 “(20) SPECIAL EXPERTISE.—The term ‘special
13 expertise’, with respect to a proposed agency action,
14 means—

15 “(A) having statutory responsibility;

16 “(B) that the proposed agency action
17 aligns with the mission of a Federal agency; or

18 “(C) having related program experience re-
19 lating to that proposed agency action.”.

20 (c) PROCEDURE FOR DETERMINATION OF LEVEL OF
21 REVIEW.—Title I of the National Environmental Policy
22 Act of 1969 (42 U.S.C. 4331 et seq.) is amended by add-
23 ing at the end the following:

1 **“SEC. 106. PROCEDURE FOR DETERMINATION OF LEVEL OF**
2 **REVIEW.**

3 “(a) **THRESHOLD DETERMINATIONS.**—A Federal
4 agency shall not be required to prepare an environmental
5 document with respect to a proposed agency action if—

6 “(1) the proposed agency action is not a final
7 agency action (within the meaning of chapter 5 of
8 title 5, United States Code);

9 “(2) the proposed agency action is covered by
10 a categorical exclusion established by the agency, a
11 Federal agency, or any other provision of law;

12 “(3) the preparation of an environmental docu-
13 ment would clearly and fundamentally conflict with
14 the requirements of another provision of law;

15 “(4) the proposed agency action is, in whole or
16 in part, a nondiscretionary action with respect to
17 which the agency does not have authority to take en-
18 vironmental factors into consideration in deter-
19 mining whether to carry out the proposed action;

20 “(5) the proposed agency action is a rulemaking
21 that is subject to section 553 of title 5, United
22 States Code; or

23 “(6) the proposed agency action is an action for
24 which the compliance of the agency with the require-
25 ments of another law serves the same or similar

1 function as the requirements of this Act with respect
2 to the action.

3 “(b) LEVELS OF REVIEW.—

4 “(1) ENVIRONMENTAL IMPACT STATEMENT.—

5 Pursuant to section 102(2)(C), a Federal agency
6 shall issue an environmental impact statement with
7 respect to a major Federal action that has a signifi-
8 cant effect on the quality of the human environment.

9 “(2) ENVIRONMENTAL ASSESSMENT.—

10 “(A) IN GENERAL.—A Federal agency
11 shall prepare an environmental assessment with
12 respect to a proposed agency action—

13 “(i) that is not likely to have a signifi-
14 cant effect on the quality of the human en-
15 vironment; or

16 “(ii) for which the significance of the
17 effect on the quality of the human environ-
18 ment is unknown.

19 “(B) REQUIREMENT.—An environmental
20 assessment prepared under subparagraph (A)
21 shall be a concise public document prepared by
22 a Federal agency that briefly provides evidence
23 and analysis for determining whether to prepare
24 an environmental impact statement or a finding
25 of no significant impact.

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

3 “(A) may make use of any reliable data
4 source; and

5 “(B) shall not be required to carry out new
6 scientific or technical research.”.

7 (d) ENVIRONMENTAL IMPACT STATEMENT REQUIRE-
8 MENTS.—

9 (1) IN GENERAL.—Title I of the National Envi-
10 ronmental Policy Act of 1969 (42 U.S.C. 4331 et
11 seq.) (as amended by subsection (c)) is amended by
12 adding at the end the following:

13 **“SEC. 107. ENVIRONMENTAL IMPACT STATEMENT RE-**
14 **QUIREMENTS.**

15 “(a) STATEMENT OF PURPOSE AND NEED.—

16 “(1) IN GENERAL.—Subject to paragraph (2),
17 an environmental impact statement shall briefly
18 specify—

19 “(A) the underlying purpose and need to
20 which a Federal agency is responding; and

21 “(B) the major Federal action, at least 1
22 alternative, and the effects of the major Federal
23 action and any alternative.

24 “(2) STATUTORY AUTHORITY.—When the stat-
25 utory duty of a Federal agency is to review an appli-

1 cation for a proposed agency action, the Federal
2 agency shall base the purpose and need to which the
3 Federal agency is responding on the goals of the
4 project sponsor and the authority of the Federal
5 agency.

6 “(b) COVER SHEET.—The cover sheet for an environ-
7 mental impact statement shall include a statement of the
8 estimated total cost of preparing the environmental impact
9 statement, including the costs of Federal agency full-time
10 equivalent personnel hours, contractor costs, and other di-
11 rect costs.

12 “(c) PAGE LIMITS.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), an environmental impact statement for a
15 major Federal action shall not exceed 150 pages.

16 “(2) UNUSUAL COMPLEXITY.—An environ-
17 mental impact statement for a major Federal action
18 of unusual complexity, as determined by the applica-
19 ble Federal agency, shall not exceed 300 pages.

20 “(d) TIMELINE FOR PREPARING AN ENVIRON-
21 MENTAL IMPACT STATEMENT.—

22 “(1) IN GENERAL.—Not later than 2 years
23 after the date on which a Federal agency issues a
24 notice of intent for a major Federal action, the Fed-
25 eral agency shall publish in the Federal Register the

1 final environmental impact statement or notice of
2 availability of the final environmental impact state-
3 ment for the major Federal action.

4 “(2) FAILURE TO ACT.—

5 “(A) IN GENERAL.—If a Federal agency
6 fails to publish a final environmental impact
7 statement or notice of availability of the final
8 environmental impact statement in accordance
9 with the timeline described in paragraph (1),
10 and the timeline has not been extended in ac-
11 cordance with paragraph (3), the requirements
12 of this title shall be deemed to have been ful-
13 filled for the major Federal action.

14 “(B) NO JUDICIAL REVIEW.—A major
15 Federal action deemed to fulfill the require-
16 ments of this title under subparagraph (A) shall
17 not be subject to judicial review under this title
18 or subchapter II of chapter 5, and chapter 7,
19 of title 5, United States Code (commonly known
20 as the ‘Administrative Procedure Act’).

21 “(3) EXTENSION.—The timeline established
22 under paragraph (1) may only be extended if—

23 “(A) the extension is requested, in writing,
24 by the project sponsor; and

1 “(B) the applicable Federal agency con-
2 curs, in writing, with the extension.

3 “(e) SPECIFICITY OF COMMENTS AND INFORMA-
4 TION.—

5 “(1) REQUEST FOR PUBLIC COMMENT.—A no-
6 tice of availability of a draft environmental impact
7 statement or draft environmental impact statement
8 published in the Federal Register shall include a re-
9 quest for public comment, within a comment period
10 provided by the applicable Federal agency, on—

11 “(A) the applicable major Federal action,
12 at least 1 alternative to the major Federal ac-
13 tion, and the effects of each; and

14 “(B) relevant information, studies, or anal-
15 yses with respect to the applicable major Fed-
16 eral action.

17 “(2) COMMENTS ON DRAFT ENVIRONMENTAL
18 IMPACT STATEMENTS.—Comments and objections
19 relating to a draft environmental impact statement
20 for a major Federal action shall be raised within a
21 comment period provided by the applicable Federal
22 agency, as described in paragraph (1).

23 “(3) UNEXHAUSTED AND FORFEITED COM-
24 MENTS.—Comments and objections not provided

1 within a comment period described in paragraph
2 (1)—

3 “(A) shall be considered unexhausted and
4 forfeited; and

5 “(B) shall not be grounds for judicial re-
6 view.

7 “(f) RECORD OF DECISION.—Each record of decision
8 prepared for a final environmental impact statement by
9 a Federal agency for a major Federal action shall—

10 “(1) contain a statement certifying that the
11 Federal agency considered at least 1 alternative and
12 information and analyses relating to the major Fed-
13 eral action submitted during the process of carrying
14 out the requirements of this title; and

15 “(2) be issued not later than 90 days after the
16 date on which the Federal agency publishes the final
17 environmental impact statement or notice of avail-
18 ability of the final environmental impact statement
19 in the Federal Register.

20 “(g) DEADLINE FOR ISSUANCE OF AUTHORIZA-
21 TIONS.—

22 “(1) ENVIRONMENTAL IMPACT STATEMENTS.—
23 For a major Federal action for which a record of de-
24 cision described in subsection (f) is prepared, all au-
25 thorizations required under any other Federal law

1 associated with the record of decision shall be issued
2 not later than 90 days after the date on which the
3 Federal agency publishes the final record of decision
4 or notice of availability of the record of decision for
5 the major Federal action in the Federal Register.

6 “(2) DEEMED FULFILLED.—For a major Fed-
7 eral action deemed to have fulfilled the requirements
8 of this title under subsection (d)(2)(A), all author-
9 izations required under any other Federal law shall
10 be issued not later than 90 days after the date on
11 which the requirements were deemed to have been
12 fulfilled under that subsection.”.

13 (2) CONFORMING AMENDMENTS.—Section
14 102(2) of the National Environmental Policy Act of
15 1969 (42 U.S.C. 4332(2)) (as amended by sub-
16 section (a)) is amended—

17 (A) in subparagraph (C)—

18 (i) in the matter preceding clause (i),
19 by striking “a detailed statement” and in-
20 sserting “an environmental impact state-
21 ment”; and

22 (ii) in the undesignated matter fol-
23 lowing clause (iii), in the first sentence, by
24 striking “Prior to making any detailed
25 statement” and inserting “Prior to pre-

1 paring an environmental impact state-
2 ment”; and

3 (B) in subparagraph (F)—

4 (i) in the matter preceding clause (i),
5 by striking “detailed statement” and in-
6 serting “environmental impact statement”;
7 and

8 (ii) in clause (iv), by striking “detailed
9 statement” and inserting “environmental
10 impact statement”.

11 (e) ENVIRONMENTAL ASSESSMENT REQUIRE-
12 MENTS.—Title I of the National Environmental Policy Act
13 of 1969 (42 U.S.C. 4331 et seq.) (as amended by sub-
14 section (d)(1)) is amended by adding at the end the fol-
15 lowing:

16 **“SEC. 108. ENVIRONMENTAL ASSESSMENT REQUIREMENTS.**

17 **“(a) STATEMENT OF PURPOSE AND NEED.—**

18 **“(1) IN GENERAL.—**Subject to paragraph (2),
19 an environmental assessment shall briefly specify—

20 **“(A)** the underlying purpose and need to
21 which a Federal agency is responding; and

22 **“(B)** the proposed agency action and the
23 effects of the proposed agency action.

24 **“(2) STATUTORY AUTHORITY.—**When the stat-
25 utory duty of a Federal agency is to review an appli-

1 cation for a proposed agency action, the Federal
2 agency shall base the purpose and need to which the
3 Federal agency is responding on the goals of the
4 project sponsor and the authority of the Federal
5 agency.

6 “(b) TIME LIMIT FOR PREPARING AND ENVIRON-
7 MENTAL ASSESSMENT.—

8 “(1) IN GENERAL.—Not later than 1 year after
9 the date on which a Federal agency decides to pre-
10 pare an environmental assessment for a proposed
11 agency action, the Federal agency shall publish in
12 the Federal Register—

13 “(A) a notice of availability of the environ-
14 mental assessment; and

15 “(B) the associated finding of no signifi-
16 cant impact or notice of availability of the asso-
17 ciated finding of no significant impact or notice
18 of intent, as applicable.

19 “(2) FAILURE TO ACT.—

20 “(A) IN GENERAL.—If a Federal agency
21 fails to publish a notice of availability of the en-
22 vironmental assessment and associated finding
23 of no significant impact or notice of intent, as
24 applicable, in accordance with the timeline de-
25 scribed in paragraph (1), and the timeline has

1 not been extended in accordance with para-
2 graph (3), the proposed agency action shall be
3 deemed to have no significant impacts and the
4 requirements of this title shall be deemed to
5 have been fulfilled for that proposed agency ac-
6 tion.

7 “(B) NO JUDICIAL REVIEW.—A proposed
8 agency action deemed to have no significant im-
9 pacts and to fulfill the requirements of this title
10 under subparagraph (A) shall not be subject to
11 judicial review under this title or subchapter II
12 of chapter 5, and chapter 7, of title 5, United
13 States Code (commonly known as the ‘Adminis-
14 trative Procedure Act’).

15 “(3) EXTENSION.—The timeline established
16 under paragraph (1) may only be extended if—

17 “(A) the extension is requested, in writing,
18 by the project sponsor; and

19 “(B) the Federal agency concurs, in writ-
20 ing, with the extension.

21 “(4) DEADLINE FOR ISSUANCE OF AUTHORIZA-
22 TIONS.—

23 “(A) MATERIALS PUBLISHED.—For a pro-
24 posed agency action for which the materials de-
25 scribed in subparagraphs (A) and (B) of para-

1 graph (1) were published in the Federal Reg-
2 ister, all authorizations required under any
3 other Federal law shall be issued not later than
4 90 days after the date on which those materials
5 were published.

6 “(B) DEEMED TO HAVE NO SIGNIFICANT
7 IMPACTS.—For a proposed agency action that is
8 deemed to have no significant impacts and for
9 which the requirements of this title are deemed
10 to have been fulfilled under paragraph (2)(A),
11 all authorizations required under any other
12 Federal law shall be issued not later than 90
13 days after the date on which the proposed agen-
14 cy action was so deemed under that paragraph.

15 “(c) PAGE LIMITS.—An environmental assessment
16 shall not exceed 75 pages, unless otherwise approved and
17 established, in writing, by the head of the lead agency.”.

18 (f) ADOPTION OF CATEGORICAL EXCLUSIONS.—Title
19 I of the National Environmental Policy Act of 1969 (42
20 U.S.C. 4331 et seq.) (as amended by subsection (e)) is
21 amended by adding at the end the following:

22 **“SEC. 110. ADOPTION OF CATEGORICAL EXCLUSIONS.**

23 “A categorical exclusion established by a Federal
24 agency for a category of proposed agency actions shall be
25 adopted by all other Federal agencies and applied to any

1 proposed agency action that is within the category of pro-
2 posed agency actions for which the categorical exclusion
3 was established.”.

4 (g) EFFICIENT REVIEWS.—Title I of the National
5 Environmental Policy Act of 1969 (42 U.S.C. 4331 et
6 seq.) (as amended by subsection (f)) is amended by adding
7 at the end the following:

8 **“SEC. 111. EFFICIENT REVIEWS.**

9 “(a) DESIGNATION OF LEAD AGENCY.—

10 “(1) IN GENERAL.—If there are 2 or more in-
11 volved Federal agencies that have authority with re-
12 spect to a proposed agency action, the involved Fed-
13 eral agencies shall determine, by letter or memo-
14 randum, which Federal agency shall be the Federal
15 lead agency based on consideration of the following
16 factors:

17 “(A) Magnitude of the involvement of each
18 Federal agency.

19 “(B) Special expertise concerning the ef-
20 fects of the proposed agency action.

21 “(C) Duration of the involvement of each
22 Federal agency.

23 “(2) JOINT LEAD AGENCIES.—

24 “(A) IN GENERAL.—In making a deter-
25 mination under paragraph (1), the involved

1 Federal agencies may appoint State, Tribal, or
2 local agencies as joint lead agencies, as deter-
3 mined appropriate by the involved Federal
4 agencies.

5 “(B) ROLES.—Joint lead agencies shall
6 jointly fulfill the role described in paragraph
7 (3).

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

10 “(A) supervise the preparation of an envi-
11 ronmental document if, with respect to the pro-
12 posed agency action, there is more than 1 in-
13 volved Federal agency;

14 “(B) request the participation of each co-
15 operating agency at the earliest practicable
16 time;

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

21 “(D) develop a schedule with concurrent
22 reviews, in consultation with each involved Fed-
23 eral agency, the project sponsor, and such other
24 entities as the lead agency determines appro-
25 priate, for completion of any environmental re-

1 view or authorization relating to the proposed
2 agency action;

3 “(E) if the lead agency determines that an
4 authorization will not be completed in accord-
5 ance with the schedule developed under sub-
6 paragraph (D), notify the Federal agency re-
7 sponsible for issuing the authorization and re-
8 quest that the agency take such measures as
9 the agency determines appropriate to comply
10 with the schedule; and

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

13 “(4) COOPERATING AGENCY.—

14 “(A) DESIGNATION.—The lead agency
15 may, with respect to a proposed agency action,
16 designate any involved Federal agency or a
17 State, Tribal, or local agency as a cooperating
18 agency.

19 “(B) SUBMISSION OF COMMENTS.—A co-
20 operating agency may, not later than a date
21 specified by the lead agency, submit comments
22 to the lead agency, which shall be limited to
23 matters relating to the proposed agency action
24 with respect to which the cooperating agency

1 has special expertise or jurisdiction by law with
2 respect to an environmental issue.

3 “(5) REQUEST FOR DESIGNATION OF A FED-
4 ERAL LEAD AGENCY.—

5 “(A) IN GENERAL.—A project sponsor or
6 any Federal agency or State, Tribal, or local
7 agency that is substantially affected by the lack
8 of a designation of a lead agency with respect
9 to a proposed agency action under paragraph
10 (1) may submit a written request for such a
11 designation to each involved Federal agency.

12 “(B) SUBMISSION.—An agency that re-
13 ceives a request under subparagraph (A) shall
14 submit the request to each involved Federal
15 agency and the Council.

16 “(6) COUNCIL DESIGNATION OF A FEDERAL
17 LEAD AGENCY.—

18 “(A) REQUEST.—

19 “(i) IN GENERAL.—Not earlier than
20 45 days after the date on which a request
21 is submitted under paragraph (5), if no
22 designation has been made under para-
23 graph (1), the project sponsor or a Federal
24 agency or State, Tribal, or local agency
25 that is substantially affected by the lack of

1 a designation of a lead agency may request
2 that the Council designate a Federal lead
3 agency.

4 “(ii) REQUIREMENTS.—A request
5 made under clause (i) shall include—

6 “(I) a precise description of the
7 nature and extent of the proposed
8 agency action; and

9 “(II) a detailed statement with
10 respect to each involved Federal agen-
11 cy and each factor described in sub-
12 paragraphs (A) through (D) of para-
13 graph (1) with respect to which Fed-
14 eral agency should serve as the Fed-
15 eral lead agency.

16 “(B) SUBMISSION.—The Council shall sub-
17 mit a request received under subparagraph (A)
18 to each involved Federal agency.

19 “(C) RESPONSE.—An involved Federal
20 agency may, not later than 20 days after the
21 date of the submission of a request under sub-
22 paragraph (A), submit to the Council a re-
23 sponse to the request.

24 “(D) DESIGNATION.—Not later than 40
25 days after the date on which an agency or a

1 project sponsor submits a request under sub-
2 paragraph (A)(i), the Council shall designate
3 the Federal lead agency with respect to the ap-
4 plicable proposed agency action.

5 “(b) SINGLE ENVIRONMENTAL DOCUMENT AND
6 JOINT RECORD OF DECISION.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (4), all authorizations relating to a proposed
9 agency action shall rely on a single environmental
10 document and joint record of decision for each kind
11 of environmental document and joint record of deci-
12 sion prepared under this title under the leadership
13 of a lead agency.

14 “(2) USE OF ENVIRONMENTAL DOCUMENT AND
15 RECORD OF DECISION.—

16 “(A) IN GENERAL.—The lead agency shall
17 develop environmental documents and records
18 of decision sufficient to satisfy the requirements
19 for any authorization or other action required
20 for or related to a proposed agency action, in-
21 cluding authorizations by other Federal agen-
22 cies.

23 “(B) COOPERATION OF INVOLVED FED-
24 ERAL AGENCIES.—Involved Federal agencies
25 shall—

1 “(i) cooperate with the lead agency;

2 and

3 “(ii) provide timely information to as-
4 sist the lead agency in carrying out the re-
5 quirements of this subsection.

6 “(3) TREATMENT AS INVOLVED FEDERAL
7 AGENCIES.—A Federal agency with responsibility to
8 issue an authorization or take an action for or re-
9 lated to a proposed agency action shall work with
10 the lead agency to ensure that the agency issuing
11 the authorization or taking the action is treated as
12 an involved Federal agency for the action.

13 “(4) EXCEPTIONS.—The lead agency may waive
14 the requirements of paragraph (1) with respect to a
15 proposed agency action if—

16 “(A) the project sponsor requests that
17 agencies issue separate environmental docu-
18 ments; or

19 “(B) the obligations of a cooperating agen-
20 cy or other involved Federal agency under this
21 title have already been satisfied with respect to
22 the proposed agency action.

23 “(c) SCOPE OF REVIEW.—In developing an environ-
24 mental document for a proposed agency action, the lead

1 agency and any other involved Federal agencies shall only
2 consider the effects of the proposed agency action that—

3 “(1) occur on Federal land; or

4 “(2) are subject to Federal control and respon-
5 sibility.

6 “(d) PROJECT SPONSOR PREPARATION.—

7 “(1) IN GENERAL.—A lead agency shall allow a
8 project sponsor to prepare an environmental docu-
9 ment for a proposed agency action on request of the
10 project sponsor.

11 “(2) GUIDANCE.—A lead agency may provide a
12 project sponsor that elects to prepare an environ-
13 mental document under paragraph (1) with appro-
14 priate guidance and assistance in the preparation of
15 that environmental document.

16 “(3) INDEPENDENT VERIFICATION.—A lead
17 agency shall—

18 “(A) independently evaluate the environ-
19 mental document prepared by a project sponsor
20 under paragraph (1); and

21 “(B) take responsibility for the contents of
22 the environmental document on adoption.”.

23 (h) JUDICIAL REVIEW.—Title I of the National Envi-
24 ronmental Policy Act of 1969 (42 U.S.C. 4331 et seq.)

1 (as amended by subsection (g)) is amended by adding at
 2 the end the following:

3 **“SEC. 112. JUDICIAL REVIEW.**

4 “(a) DEFINITION OF COVERED CAUSE OF ACTION.—
 5 In this section, the term ‘covered cause of action’ means
 6 a cause of action that—

7 “(1) is filed on or after the date of enactment
 8 of this section; and

9 “(2) seeks judicial review—

10 “(A) of a record of decision or finding of
 11 no significant impact based on a claim that an
 12 environmental review was improperly conducted
 13 or an environmental document is invalid under
 14 subchapter II of chapter 5, and chapter 7, of
 15 title 5, United States Code (commonly known
 16 as the ‘Administrative Procedure Act’); or

17 “(B) under Federal law of an authoriza-
 18 tion issued under section 107(g) or 108(b)(4).

19 “(b) TERMINATION OF CAUSE OF ACTION.—

20 “(1) DEFINITIONS.—In this subsection:

21 “(A) FULLY CONSTRUCTED.—The term
 22 ‘fully constructed’, with respect to a project or
 23 activity, means that construction of the project
 24 or activity was completed—

1 “(i) on the date of enactment of this
2 section; or

3 “(ii) at some point during the 180-day
4 period preceding that date of enactment.

5 “(B) OPERATIONAL.—The term ‘oper-
6 ational’, with respect to a project or activity,
7 means that the project or activity is in oper-
8 ation in some form, including test mode—

9 “(i) on the date of enactment of this
10 section; or

11 “(ii) at some point during the 180-day
12 period preceding that date of enactment.

13 “(2) TERMINATION.—Any claim (including any
14 claim pending in a court on the date of enactment
15 of this section) that seeks judicial review of a record
16 of decision or finding of no significant impact based
17 on an objection that an environmental review was
18 improperly conducted, and any claim that seeks judi-
19 cial review of an environmental document as invalid
20 under subchapter II of chapter 5, and chapter 7, of
21 title 5, United States Code (commonly known as the
22 ‘Administrative Procedure Act’), shall be moot and
23 barred on the date of enactment of this section if—

24 “(A) a record of decision or finding of no
25 significant impact has been issued by a Federal

1 agency at the time at which the project or ac-
2 tivity began; and

3 “(B) the project or activity for which the
4 record of decision or finding of no significant
5 impact was issued is fully constructed or oper-
6 ational.

7 “(c) DEADLINE FOR FILING.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of Federal law, a covered cause of action
10 shall be filed by the date that is 60 days after—

11 “(A) the date on which the lead agency
12 publishes in the Federal Register the record of
13 decision or notice of availability of the record of
14 decision, in the case of an environmental review
15 resulting in a final environmental impact state-
16 ment;

17 “(B) the date on which the Federal lead
18 agency publishes in the Federal Register a find-
19 ing of no significant impact or notice of avail-
20 ability of the finding of no significant impact,
21 in the case of an environmental review resulting
22 in a finding of no significant impact; or

23 “(C) the date on which a Federal agency
24 issues an authorization, in the case of an au-

1 thorization issued under section 107(g) or
2 108(b)(4).

3 “(2) PROHIBITION.—A covered cause of action
4 that is not filed by the deadline described in para-
5 graph (1) shall be barred.

6 “(d) DEADLINE FOR RESOLUTION.—A district court
7 of the United States shall render a final judgment on a
8 covered cause of action—

9 “(1) as expeditiously as practicable; and

10 “(2) not later than the date that is 180 days
11 after the date on which the covered cause of action
12 is filed.

13 “(e) APPELLATE REVIEW.—A court of appeals of the
14 United States shall render final judgment on a covered
15 cause of action subject to its original jurisdiction or an
16 interlocutory order or final judgment, decree, or order of
17 a district court of the United States in a covered cause
18 of action—

19 “(1) as expeditiously as practicable; and

20 “(2) not later than the date that is 180 days
21 after the date on which the applicable interlocutory
22 order or final judgment, decree, or order of the dis-
23 trict court was issued.

24 “(f) REMANDED ACTIONS.—

1 “(1) IN GENERAL.—If a court of competent ju-
2 risdiction remands a record of decision, a finding of
3 no significant impact, or an authorization under this
4 title to a Federal agency, the court shall set a rea-
5 sonable schedule and deadline for the Federal agen-
6 cy to act on remand, which shall not exceed 180
7 days from the date on which the order of the court
8 was issued.

9 “(2) EXPEDITED TREATMENT OF REMANDED
10 ACTIONS.—The head of the Federal agency to which
11 a court remands a record of decision, a finding of
12 no significant impact, or an authorization under
13 paragraph (1) shall take such actions as may be nec-
14 essary to provide for the expeditious disposition of
15 the action on remand in accordance with the sched-
16 ule and deadline set by the court under that para-
17 graph.

18 “(g) RANDOM ASSIGNMENT OF CASES.—To the max-
19 imum extent practicable, district courts of the United
20 States and courts of appeals of the United States shall
21 randomly assign cases seeking judicial review in a covered
22 cause of action to judges appointed, designated, or as-
23 signed to sit as judges of the court in a manner to avoid
24 the appearance of favoritism or bias.

25 “(h) EFFECT.—Nothing in this section—

1 “(1) establishes a right to judicial review; or

2 “(2) places any limit on filing a claim that a
3 person has violated the terms of an authorization.

4 “(i) APPLICATION OF CATEGORICAL EXCLUSIONS
5 NOT SUBJECT TO JUDICIAL REVIEW.—Notwithstanding
6 any other provision of law, the application of a categorical
7 exclusion to a final agency action by a Federal agency
8 shall not be subject to judicial review under this title or
9 subchapter II of chapter 5, and chapter 7, of title 5,
10 United States Code (commonly known as the ‘Administra-
11 tive Procedure Act’).

12 “(j) TREATMENT OF SUPPLEMENTAL OR REVISED
13 ENVIRONMENTAL DOCUMENTS AND RECORDS OF DECI-
14 SION.—For purposes of a covered cause of action—

15 “(1) a supplemental or revised environmental
16 document or record of decision for a proposed agen-
17 cy action, when required, shall be considered to be
18 a separate environmental document or record of de-
19 cision; and

20 “(2) the deadline for filing a claim for judicial
21 review of an environmental document or record of
22 decision described in paragraph (1) shall be the date
23 that is 60 days after the date of publication in the
24 Federal Register of a notice of availability of the en-
25 vironmental document or record of decision, unless

1 a shorter time is specified in the Federal law pursu-
2 ant to which judicial review is authorized.”.

3 **SEC. 3. CLEAN WATER ACT PERMITTING AND STATE CER-**
4 **TIFICATION.**

5 (a) IN GENERAL.—Section 401 of the Federal Water
6 Pollution Control Act (33 U.S.C. 1341) is amended—

7 (1) in subsection (d), by striking “(d) Any cer-
8 tification” and inserting the following:

9 “(e) LIMITATIONS AND MONITORING REQUIREMENTS
10 OF CERTIFICATION.—Any certification”;

11 (2) in subsection (e), by striking “(e) In order”
12 and inserting the following:

13 “(d) AUTHORITY OF SECRETARY OF THE ARMY TO
14 PERMIT USE OF SPOIL DISPOSAL AREAS BY FEDERAL
15 LICENSEES OR PERMITTEES.—In order”;

16 (3) in subsection (b), by striking “(b) Nothing”
17 and inserting the following:

18 “(c) COMPLIANCE WITH OTHER PROVISIONS OF LAW
19 SETTING APPLICABLE WATER QUALITY REQUIRE-
20 MENTS.—Nothing”;

21 (4) by striking the heading and section designa-
22 tion and all that follows through “may be.” at the
23 end of subsection (a)(1) and inserting the following:

1 **“SEC. 401. CERTIFICATION.**

2 “(a) DEFINITION OF WATER QUALITY REQUIRE-
3 MENTS.—In this section, the term ‘water quality require-
4 ments’ means—

5 “(1) the applicable provisions of sections 301,
6 302, 303, 306, and 307; and

7 “(2) any applicable State or Tribal regulatory
8 requirements for point source discharges into waters
9 of the United States.

10 “(b) STATE CERTIFICATIONS.—

11 “(1) CERTIFICATION REQUIRED.—

12 “(A) DEFINITIONS.—In this paragraph:

13 “(i) CERTIFICATION APPLICATION.—

14 The term ‘certification application’ means
15 a request from an applicant for a certifi-
16 cation described in subparagraph (B).

17 “(ii) CERTIFYING AUTHORITY.—The
18 term ‘certifying authority’, with respect to
19 a certification application, means, as appli-
20 cable—

21 “(I) the State or interstate agen-
22 cy to which the certification applica-
23 tion was submitted; or

24 “(II) if no State or interstate
25 agency has the authority to provide

1 the certification described in subpara-
2 graph (B), the Administrator.

3 “(B) COMPLIANCE WITH LIMITATIONS.—

4 “(i) CERTIFICATION SOURCE.—

5 “(I) IN GENERAL.—Any appli-
6 cant for a Federal license or permit to
7 conduct an activity, including the con-
8 struction or operation of facilities,
9 that may result in a discharge from a
10 point source into the waters of the
11 United States shall provide to the
12 Federal licensing or permitting agency
13 a certification from the State in which
14 the discharge originates or will origi-
15 nate or, if appropriate, the interstate
16 water pollution control agency with
17 jurisdiction over the waters of the
18 United States at the point where the
19 discharge originates or will originate
20 that the discharge will comply with
21 water quality requirements.

22 “(II) CERTIFICATION BY ADMIN-
23 ISTRATOR.—If no State or interstate
24 water pollution control agency has the
25 authority to give a certification de-

1 scribed in subclause (I), the Adminis-
2 trator is authorized to provide the cer-
3 tification to the Federal licensing or
4 permitting agency.

5 “(ii) CERTIFICATION OF NO LIMITA-
6 TION AND STANDARD.—

7 “(I) IN GENERAL.—In the case
8 of any discharge described in clause
9 (i) for which there is not an applicable
10 effluent limitation or other limitation
11 under sections 301(b) and 302 and
12 for which there is not an applicable
13 standard under sections 306 and 307,
14 the certifying authority shall so cer-
15 tify.

16 “(II) EFFECT.—A certification
17 under subclause (I) does not satisfy
18 section 511(c).

19 “(iii) CERTIFICATION REQUIRED.—

20 “(I) ACTIVITY PROHIBITED
21 UNTIL CERTIFICATION.—Activity for
22 which a certification is required under
23 this subparagraph may not begin until
24 the certification has been obtained,
25 unless the requirement for the certifi-

1 cation has been waived in accordance
2 with this paragraph.

3 “(II) EFFECT OF DENIAL.—If a
4 certifying authority denies a certifi-
5 cation application, the Federal license
6 or permit for which the certification
7 application was made may not be
8 granted.

9 “(iv) SCOPE OF CERTIFICATION.—The
10 scope of a certification provided under this
11 section shall be limited to ensuring that a
12 discharge from a federally licensed or per-
13 mitted activity complies with water quality
14 requirements.

15 “(C) REQUIRED PROCEDURES.—

16 “(i) NOTICE AND HEARINGS.—Each
17 certifying authority shall establish proce-
18 dures for—

19 “(I) public notice in the case of
20 all certification applications;

21 “(II) to the extent the certifying
22 authority determines to be appro-
23 priate, public hearings in connection
24 with specific certification applications;
25 and

1 “(III) a prefiling meeting as de-
2 scribed in clause (ii).

3 “(ii) PREFILING MEETING.—

4 “(I) REQUEST.—Before submit-
5 ting a certification application, the
6 prospective applicant may request a
7 prefiling meeting with the certifying
8 authority—

9 “(aa) to ensure that the cer-
10 tifying authority receives early
11 notification of projects for which
12 a certification under subpara-
13 graph (B) is necessary; and

14 “(bb) to discuss informa-
15 tional needs with the certifying
16 authority before submitting the
17 application.

18 “(II) RESPONSE REQUIRED.—If
19 a prospective applicant requests a pre-
20 filing meeting with a certifying au-
21 thority pursuant to subclause (I), the
22 certifying authority shall—

23 “(aa) respond to the request
24 not later than 30 days after the

1 date on which the request is re-
2 ceived; and

3 “(bb) hold the prefilings
4 meeting with the prospective ap-
5 plicant not later than 60 days
6 after the date on which the re-
7 quest is received.

8 “(iii) DENIALS OF CERTIFICATION.—

9 “(I) INDIVIDUAL LICENSES AND
10 PERMITS.—If a certifying authority
11 denies a certification application for
12 an individual license or permit, the
13 certifying authority is authorized to
14 provide to the applicable Federal li-
15 censing or permitting agency—

16 “(aa) the specific water
17 quality requirements with which
18 the discharge will not comply;

19 “(bb) a statement explaining
20 why the discharge will not comply
21 with the identified water quality
22 requirements; and

23 “(cc) if the denial is due to
24 insufficient information, a de-
25 scription of the specific water

1 quality data or information, if
2 any, that would be needed to en-
3 sure that the discharge from the
4 proposed project will comply with
5 water quality requirements.

6 “(II) GENERAL LICENSES OR
7 PERMITS.—If a certifying authority
8 denies a certification application for a
9 general license or permit, the certi-
10 fying authority shall provide to the
11 applicable Federal licensing or permit-
12 ting agency—

13 “(aa) the specific water
14 quality requirements with which
15 discharges that could be author-
16 ized by the general license or per-
17 mit will not comply;

18 “(bb) a statement explaining
19 why discharges that could be au-
20 thorized by the general license or
21 permit will not comply with the
22 identified water quality require-
23 ments; and

24 “(cc) if the denial is due to
25 insufficient information, a de-

1 description of the specific water
2 quality data or information, if
3 any, that would be needed to as-
4 sure that the range of discharges
5 that could be authorized by the
6 general license or permit from
7 potential projects will comply
8 with water quality requirements.

9 “(D) REVIEW PERIOD.—

10 “(i) IN GENERAL.—Subject to clause
11 (iii), a licensing or permitting agency shall,
12 categorically or on a case-by-case basis for
13 each certification application, establish a
14 reasonable period of time (not to exceed 1
15 year from the date of receipt of the certifi-
16 cation application) within which a certi-
17 fying authority shall issue a final action on
18 the certification application.

19 “(ii) FAILURE TO ACT.—If a certi-
20 fying authority fails or refuses to issue a
21 final action as described in subparagraph
22 (F) on a certification application by the
23 end of the reasonable period of time estab-
24 lished under clause (i) and the reasonable
25 period of time has not been extended in ac-

1 cordance with clause (iii), the requirement
2 for a certification under subparagraph (B)
3 shall be waived.

4 “(iii) REQUIREMENT FOR EXTEN-
5 SION.—With respect to a certification ap-
6 plication, the reasonable period of time es-
7 tablished under clause (i) may only be ex-
8 tended if—

9 “(I) the extension is requested, in
10 writing, by the applicant; and

11 “(II) the certifying authority con-
12 curs, in writing, with the extension.

13 “(E) WAIVER OF CERTIFICATION RE-
14 QUIREMENT.—

15 “(i) IN GENERAL.—A certifying au-
16 thority may, at any time during the rea-
17 sonable period of time described in sub-
18 paragraph (D), affirmatively waive the re-
19 quirement for a certification under sub-
20 paragraph (B).

21 “(ii) NO JUDICIAL REVIEW.—Notwith-
22 standing any other provision of Federal
23 law, including any provision of this section,
24 a waiver pursuant to clause (i) shall not be
25 subject to judicial review.

1 “(F) FINAL ACTION.—

2 “(i) IN GENERAL.—Not later than the
3 date on which the reasonable period of
4 time established under subparagraph (D)
5 for a certification application ends or on
6 the date of a waiver pursuant to subpara-
7 graph (E)(i), as applicable, the certifying
8 authority or Federal licensing or permit-
9 ting authority, as applicable, shall apply
10 only 1 of the following final actions to the
11 certification application:

12 “(I) The certification application
13 is granted.

14 “(II) The certification application
15 is granted with conditions.

16 “(III) The certification applica-
17 tion is denied.

18 “(IV) The certification require-
19 ments under subparagraph (B) have
20 been waived in accordance with sub-
21 paragraph (D) or (E) with respect to
22 the activity for which the certification
23 application was submitted.

24 “(ii) NO OTHER FINAL ACTIONS.—No
25 other final action may apply to a certifi-

1 cation application except as described in
2 clause (i).

3 “(G) ENFORCEMENT OF CONDITIONS.—
4 The licensing or permitting authority to which
5 a certification under this subsection was issued
6 may enforce any conditions included with that
7 certification.

8 “(H) TIMELINE FOR ACTION.—If a Fed-
9 eral court remands or vacates a certification
10 under this paragraph, the Federal court shall
11 set and enforce a reasonable schedule and dead-
12 line, not to exceed 180 days from the date on
13 which the Federal court remands or vacates the
14 certification, for the certifying agency to act on
15 the remand or vacatur.”; and

16 (5) in subsection (b) (as so redesignated)—

17 (A) in paragraph (2), by striking “(2)
18 Upon receipt” and inserting the following:

19 “(2) NOTICE TO ADMINISTRATOR; EFFECT ON
20 OTHER STATES.—On receipt”;

21 (B) in paragraph (3), by striking “(3) The
22 certification” and inserting the following:

23 “(3) FULFILLMENT OF REQUIREMENTS.—The
24 certification”;

1 (C) in paragraph (4), by striking “(4)
2 Prior to” and inserting the following:

3 “(4) REVIEW FOR COMPLIANCE.—Prior to”;

4 (D) in paragraph (5), by striking “(5) Any
5 Federal” and inserting the following:

6 “(5) SUSPENSION AND REVOCATION.—Any
7 Federal”; and

8 (E) in paragraph (6), by striking “(6) Ex-
9 cept with” and inserting the following:

10 “(6) APPLICABILITY TO CERTAIN FACILITIES.—
11 Except with”.

12 (b) CONFORMING AMENDMENT.—Section 217(b)(2)
13 of the Water Resources Development Act of 1996 (33
14 U.S.C. 2326a(b)(2)) is amended by striking “section
15 401(c) of the Federal Water Pollution Control Act (33
16 U.S.C. 1341(c))” and inserting “subsection (d) of section
17 401 of the Federal Water Pollution Control Act (33
18 U.S.C. 1341)”.

19 **SEC. 4. DEFINITION OF NAVIGABLE WATERS.**

20 (a) IN GENERAL.—Section 502 of the Federal Water
21 Pollution Control Act (33 U.S.C. 1362) is amended—

22 (1) by striking the heading and section designa-
23 tion and all that follows through “Act:” in the mat-
24 ter preceding paragraph (1) and inserting the fol-
25 lowing:

1 **“SEC. 502. GENERAL DEFINITIONS.**

2 “In this Act:”;

3 (2) by indenting the margins of each of para-
4 graphs (1) through (20) appropriately;

5 (3) in each of paragraphs (1), (2), (3), (4), (5),
6 (6), (8), (9), (10), (11), (13), (14), (15), (16), (17),
7 (18), (19), and (20), by inserting a paragraph head-
8 ing, the text of which comprises the term defined in
9 the paragraph;

10 (4) in paragraph (12), by striking “(12) The
11 term” and inserting the following:

12 “(12) DISCHARGE OF A POLLUTANT; DIS-
13 CHARGE OF POLLUTANTS.—The term”;

14 (5) by redesignating paragraphs (1) through
15 (27) as paragraphs (24), (10), (23), (12), (17), (19),
16 (13), (25), (3), (14), (6), (5), (26), (18), (1), (4),
17 (22), (9), (20), (11), (2), (7), (16), (15), (21), (27),
18 and (8), respectively, and moving the paragraphs so
19 as to appear in numerical order; and

20 (6) by striking paragraph (13) (as so redesign-
21 nated) and inserting the following:

22 “(13) NAVIGABLE WATERS; WATERS OF THE
23 UNITED STATES.—

24 “(A) IN GENERAL.—The terms ‘navigable
25 waters’ and ‘waters of the United States’
26 mean—

1 “(i) the territorial seas;

2 “(ii) a body of water, including a body
3 of water subject to the ebb and flow of the
4 tide, that—

5 “(I) is used in interstate or for-
6 eign commerce;

7 “(II) has previously been used in
8 interstate or foreign commerce; or

9 “(III) may be susceptible for use
10 in interstate or foreign commerce;

11 “(iii) a tributary;

12 “(iv) a lake, pond, or covered im-
13 poundment; and

14 “(v) adjacent wetland.

15 “(B) EXCLUSIONS.—The terms ‘navigable
16 waters’ and ‘waters of the United States’ do not
17 include—

18 “(i) a body of water or a water fea-
19 ture that is not described in subparagraph
20 (A);

21 “(ii) groundwater, including ground-
22 water drained through a subsurface drain-
23 age system;

1 “(iii) an ephemeral feature, including
2 an ephemeral stream, swale, gully, rill, or
3 pool;

4 “(iv) diffuse stormwater run-off and
5 directional sheet flow over upland;

6 “(v) a ditch that is not described in
7 clause (i), (ii), or (iii) of subparagraph (A);

8 “(vi) the portion of a ditch con-
9 structed in an adjacent wetland that does
10 not meet the requirements described in
11 subparagraph (C)(i);

12 “(vii) prior converted cropland;

13 “(viii) an artificially irrigated area, in-
14 cluding a field flooded for agricultural pro-
15 duction, that would revert to upland if the
16 application of irrigation waters to that
17 areas cease;

18 “(ix) an artificial lake or pond, includ-
19 ing a water storage reservoir and a farm,
20 irrigation, stock watering, or log cleaning
21 pond, that is constructed or excavated in
22 upland or in a body of water that is not
23 otherwise described in subparagraph (A), if
24 the artificial lake or pond is not otherwise
25 a lake, pond, or covered impoundment;

1 “(x) a water-filled depression con-
2 structed or excavated in upland or in a
3 body of water that is not otherwise de-
4 scribed in subparagraph (A) that is inci-
5 dental to mining or construction activity;

6 “(xi) a pit excavated in upland or in
7 a body of water that is not otherwise de-
8 scribed in subparagraph (A) to obtain fill,
9 sand, or gravel;

10 “(xii) a stormwater control feature
11 constructed or excavated in upland or in a
12 body of water that is not otherwise de-
13 scribed in subparagraph (A) to convey,
14 treat, infiltrate, or store stormwater run-
15 off;

16 “(xiii) a groundwater recharge, water
17 reuse, or wastewater recycling structure,
18 including a detention, retention, or infiltra-
19 tion basin or pond, that is constructed or
20 excavated in upland or in a body of water
21 that is not otherwise described in subpara-
22 graph (A); or

23 “(xiv) a waste treatment system.

24 “(C) ASSOCIATED DEFINITIONS.—In this
25 paragraph:

1 “(i) ADJACENT WETLAND.—

2 “(I) IN GENERAL.—The term
3 ‘adjacent wetland’ means a wetland
4 that—

5 “(aa) touches at least 1
6 point or side of a body of water
7 described in clause (i), (ii), (iii),
8 or (iv) of subparagraph (A);

9 “(bb) is inundated by flood-
10 ing from a body of water de-
11 scribed in clause (i), (ii), (iii), or
12 (iv) of subparagraph (A) in a
13 typical year; or

14 “(cc) is physically separated
15 from a body of water described in
16 clause (i), (ii), (iii), or (iv) of
17 subparagraph (A) only by—

18 “(AA) a natural berm,
19 bank, dune, or similar nat-
20 ural feature; or

21 “(BB) an artificial
22 dike, an artificial barrier, or
23 a similar artificial structure,
24 if that structure allows for a
25 direct hydrologic surface

1 connection between the wet-
2 land and the body of water
3 described in clause (i), (ii),
4 (iii), or (iv) of subparagraph
5 (A) during a typical year,
6 such as through a culvert,
7 flood or tide gate, pump, or
8 similar artificial feature.

9 “(II) EFFECT OF ROADS AND
10 OTHER STRUCTURES.—For the pur-
11 poses of subparagraph (A)(v), the di-
12 vision of an adjacent wetland by a
13 road or similar artificial structure
14 does not prevent the adjacent wetland
15 in its entirety from being a navigable
16 water or water of the United States if
17 the road or similar artificial structure
18 allows for a direct hydrologic surface
19 connection through or over that struc-
20 ture in a typical year.

21 “(ii) BODY OF WATER SUBJECT TO
22 THE EBB AND FLOW OF THE TIDE.—

23 “(I) IN GENERAL.—The term
24 ‘body of water subject to the ebb and
25 flow of the tide’ means a body of

1 water that rises and falls in a predict-
2 able and measurable rhythm or cycle
3 due to the gravitational pulls of the
4 moon and sun.

5 “(II) END OF INFLUENCE.—For
6 purposes of this clause, a body of
7 water described in subclause (I) ends
8 when the rise and fall of the water
9 surface can no longer be practically
10 measured in a predictable rhythm due
11 to masking by hydrologic, wind, or
12 other effects.

13 “(iii) DITCH.—The term ‘ditch’
14 means a constructed or excavated channel
15 used to convey water.

16 “(iv) EPHEMERAL.—The term
17 ‘ephemeral’ means surface water flowing or
18 pooling only in direct response to precipita-
19 tion, such as rain or snow fall.

20 “(v) HIGH TIDE LINE.—

21 “(I) IN GENERAL.—The term
22 ‘high tide line’ means the line of inter-
23 section of the land with the surface of
24 a body of water at the maximum
25 height reached by a rising tide.

1 “(II) INCLUSION.—The term
2 ‘high tide line’ includes the maximum
3 height reached by a spring high tide
4 or other high tide that occurs with
5 periodic frequency.

6 “(III) EXCLUSION.—The term
7 ‘high tide line’ does not include the
8 maximum height reached as a result
9 of a storm surge in which there is a
10 departure from the normal or pre-
11 dicted reach of the tide due to the pil-
12 ing up of water against a coast by
13 strong winds, such as those accom-
14 panying a hurricane or other intense
15 storm.

16 “(IV) METHODS OF DETERMINA-
17 TION IN THE ABSENCE OF DATA.—
18 For purposes of this clause, in the ab-
19 sence of data on the high tide line, the
20 high tide line may be determined by—

21 “(aa) a line of oil or scum
22 along shore objects;

23 “(bb) a more or less contin-
24 uous deposit of fine shell or de-
25 bris on the foreshore or berm;

1 “(cc) other physical mark-
2 ings or characteristics;

3 “(dd) vegetation lines;

4 “(ee) tidal gages; or

5 “(ff) other suitable means
6 that delineate the general height
7 reached by a rising tide.

8 “(vi) INTERMITTENT.—The term
9 ‘intermittent’ means surface water that
10 flows continuously during certain times of
11 the year and more than in direct response
12 to precipitation, such as water that flows
13 seasonally when the groundwater table is
14 elevated or when snowpack melts.

15 “(vii) LAKE, POND, OR COVERED IM-
16 POUNDMENT.—

17 “(I) IN GENERAL.—The term
18 ‘lake, pond, or covered impoundment’
19 means a standing body of open water
20 that contributes surface water flow to
21 a body of water described in clause (i)
22 or (ii) of subparagraph (A) during a
23 typical year through—

24 “(aa) direct means; or

1 “(bb) 1 or more bodies of
2 water described in clause (iii),
3 (iv), or (v) of that subparagraph.

4 “(II) INCLUSION.—The term
5 ‘lake, pond, or covered impoundment’
6 includes a body of water described in
7 subclause (I) that—

8 “(aa) contributes surface
9 water flow to a downstream body
10 of water described in subpara-
11 graph (A) in a typical year
12 through—

13 “(AA) a channelized
14 surface water feature that is
15 not otherwise described in
16 that subparagraph;

17 “(BB) a culvert, dike,
18 spillway, or other similar ar-
19 tificial feature; or

20 “(CC) a debris pile
21 boulder field, or similar nat-
22 ural feature; or

23 “(bb) is inundated by flood-
24 ing from a body of water de-
25 scribed in clause (i), (ii), (iii), or

1 (iv) of subparagraph (A) during
2 a typical year.

3 “(viii) ORDINARY HIGH WATER
4 MARK.—The term ‘ordinary high water
5 mark’ means a line on the shore of a body
6 of water—

7 “(I) established by the fluctua-
8 tions of the water; and

9 “(II) indicated by physical char-
10 acteristics such as—

11 “(aa) a clear, natural line
12 impressed on the bank;

13 “(bb) shelving;

14 “(cc) changes in the char-
15 acter of the soil;

16 “(dd) destruction of terres-
17 trial vegetation;

18 “(ee) the presence of litter
19 and debris; and

20 “(ff) other appropriate
21 means that consider the charac-
22 teristics of the surrounding
23 areas.

1 “(ix) PERENNIAL.—The term ‘peren-
2 nial’ means surface water that flows con-
3 tinuously throughout the year.

4 “(x) PRIOR CONVERTED CROPLAND.—

5 “(I) IN GENERAL.—The term
6 ‘prior converted cropland’ means an
7 area that, prior to December 23,
8 1985, was drained or otherwise ma-
9 nipulated for the purpose, or having
10 the effect, of making production of an
11 agricultural product possible.

12 “(II) DESIGNATION BY SEC-
13 RETARY OF AGRICULTURE.—For pur-
14 poses of this clause—

15 “(aa) the Secretary of Agri-
16 culture may designate an area as
17 prior converted cropland; and

18 “(bb) except as provided in
19 subclause (III), the Adminis-
20 trator and the Secretary shall
21 recognize a designation by the
22 Secretary of Agriculture under
23 item (aa) for purposes of this
24 Act.

25 “(III) EXCLUSION.—

1 “(aa) IN GENERAL.—The
2 term ‘prior converted cropland’
3 does not include an area de-
4 scribed in subclause (I) that has,
5 as determined by the Secretary,
6 in coordination with the heads of
7 other relevant Federal agencies,
8 as appropriate—

9 “(AA) subject to items
10 (bb) and (cc), been aban-
11 doned; and

12 “(BB) reverted to a
13 wetland.

14 “(bb) ABANDONMENT.—For
15 purposes of subitem (AA) of item
16 (aa), an area described in that
17 item is considered abandoned
18 when the area is not used for, or
19 in support of, agricultural pur-
20 poses at least once in the 5-year
21 period immediately preceding a
22 determination described in that
23 item.

24 “(cc) FINAL AUTHORITY.—
25 Notwithstanding a determination

1 by the Secretary of whether an
2 area described in subclause (I)
3 has been abandoned, the Admin-
4 istrator shall have final authority
5 to make that determination.

6 “(xi) SECRETARY.—The term ‘Sec-
7 retary’ means the Secretary of the Army,
8 acting through the Chief of Engineers.

9 “(xii) SNOWPACK.—The term
10 ‘snowpack’ means 1 or more layers of snow
11 that have accumulated over an extended
12 period of time in certain geographic re-
13 gions or at high elevations, such as in
14 northern climes or in mountainous regions.

15 “(xiii) TRIBUTARY.—

16 “(I) IN GENERAL.—The term
17 ‘tributary’ means a river, stream, or
18 similar naturally occurring surface
19 water channel that contributes peren-
20 nial or intermittent surface water flow
21 to a body of water described in clause
22 (i) or (ii) of subparagraph (A) in a
23 typical year through—

24 “(aa) direct means; or

1 “(bb) 1 or more bodies of
2 water described in clause (iii),
3 (iv), or (v) of that subparagraph.

4 “(II) INCLUSION.—

5 “(aa) ALTERATION OR RE-
6 LOCATION.—The alteration or re-
7 location of a channel described in
8 subclause (I) does not otherwise
9 modify the status of the channel
10 under this paragraph if the chan-
11 nel continues to meet the require-
12 ments of subclause (I) after that
13 alteration or relocation.

14 “(bb) EFFECT OF FLOW
15 THROUGH CERTAIN FEATURES.—
16 A channel described in subclause
17 (I) shall be considered a tribu-
18 tary for purposes of this clause if
19 the channel contributes surface
20 water flow in a typical year
21 through—

22 “(AA) a channelized
23 surface water feature that is
24 not otherwise described in
25 subparagraph (A);

1 “(BB) a subterranean
2 river;

3 “(CC) a culvert, dam,
4 tunnel, or similar artificial
5 feature; or

6 “(DD) a debris pile,
7 boulder field, or similar nat-
8 ural feature.

9 “(cc) RELOCATION.—A
10 ditch that relocates a tributary,
11 is constructed in a tributary, or
12 is constructed in an adjacent
13 wetland is a tributary if the ditch
14 meets the requirements of sub-
15 clause (I).

16 “(xiv) TYPICAL YEAR.—The term
17 ‘typical year’ means a year within which
18 precipitation and other climactic variables
19 are within the normal periodic range (e.g.,
20 seasonally, annually) for the geographic
21 area of the applicable body of water based
22 on the most recent 30-year period.

23 “(xv) UPLAND.—The term ‘upland’
24 means a land area that, under normal cir-
25 cumstances—

1 “(I) is not a wetland because it
2 does not meet the requirements de-
3 scribed in each of items (aa), (bb),
4 and (cc) of clause (xvii)(I); and

5 “(II) does not lie below the ordi-
6 nary high water mark or the high tide
7 line of a body of water described in
8 subparagraph (A).

9 “(xvi) WASTE TREATMENT SYSTEM.—
10 The term ‘waste treatment system’ in-
11 cludes all components, including lagoons
12 and treatment ponds (such as settling or
13 cooling ponds), that are designed to either
14 convey or retain, concentrate, settle, re-
15 duce, or remove pollutants, either actively
16 or passively, from wastewater prior to dis-
17 charge (or eliminating any such discharge).

18 “(xvii) WETLAND.—

19 “(I) IN GENERAL.—The term
20 ‘wetland’ means an area—

21 “(aa) that is inundated or
22 saturated by surface water or
23 groundwater;

24 “(bb) for which the inunda-
25 tion or saturation described in

1 item (aa) is at a frequency and
2 duration sufficient to support,
3 and that under normal cir-
4 cumstances does support, a prev-
5 alence of vegetation; and

6 “(cc) in which the vegetation
7 described in item (bb) is typically
8 adapted for life in saturated soil
9 conditions.

10 “(II) INCLUSIONS.—The term
11 ‘wetland’ includes swamps, marshes,
12 bogs, and similar areas.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 109(e) of the Deep Seabed Hard
15 Mineral Resources Act (30 U.S.C. 1419(e)) is
16 amended—

17 (A) by striking “section 502(12)(B) of the
18 Clean Water Act” and inserting “paragraph
19 (5)(B) of section 502 of the Federal Water Pol-
20 lution Control Act (33 U.S.C. 1362)”; and

21 (B) by striking “to the Clean Water Act”
22 and inserting “to the Federal Water Pollution
23 Control Act (33 U.S.C. 1251 et seq.)”.

1 (2) Section 501(b) of the Water Resources De-
2 velopment Act of 1992 (33 U.S.C. 1271 note; Public
3 Law 102–580) is amended—

4 (A) in paragraph (2), by striking “section
5 502(7) of the Federal Water Pollution Control
6 Act (33 U.S.C. 1362(7))” and inserting “sec-
7 tion 502 of the Federal Water Pollution Control
8 Act (33 U.S.C. 1362)”;

9 (B) in paragraph (3), by striking “section
10 502(6) of the Federal Water Pollution Control
11 Act (33 U.S.C. 1362(6))” and inserting “sec-
12 tion 502 of the Federal Water Pollution Control
13 Act (33 U.S.C. 1362)”.

14 (3) Section 309(c)(6) of the Federal Water Pol-
15 lution Control Act (33 U.S.C. 1319(c)(6)) is amend-
16 ed by striking “section 502(5) of this Act” and in-
17 serting “section 502”.

18 (4) Section 107(f) of the Ocean Thermal En-
19 ergy Conversion Act of 1980 (42 U.S.C. 9117(f)) is
20 amended by striking “section 502(12)(B) of the
21 Federal Water Pollution Control Act of 1972 (33
22 U.S.C. 1362(12)(B))” and inserting “paragraph
23 (5)(B) of section 502 of the Federal Water Pollution
24 Control Act (33 U.S.C. 1362)”.

1 **SEC. 5. PROVIDING REGULATORY CERTAINTY UNDER THE**
2 **FEDERAL WATER POLLUTION CONTROL ACT.**

3 (a) CODIFICATION OF NATIONWIDE PERMITS.—

4 (1) IN GENERAL.—The Nationwide Permits
5 issued, reissued, or modified, as applicable, in the
6 following final rules of the Corps of Engineers are
7 enacted into law:

8 (A) The final rule of the Corps of Engi-
9 neers entitled “Reissuance and Modification of
10 Nationwide Permits” (86 Fed. Reg. 2744 (Jan-
11 uary 13, 2021)).

12 (B) The final rule of the Corps of Engi-
13 neers entitled “Reissuance and Modification of
14 Nationwide Permits” (86 Fed. Reg. 73522 (De-
15 cember 27, 2021)).

16 (2) PERIOD OF APPLICABILITY.—

17 (A) IN GENERAL.—Paragraph (1) ceases
18 to be effective March 14, 2026.

19 (B) EFFECT.—Notwithstanding subpara-
20 graph (A), the Nationwide Permits described in
21 paragraph (1) shall remain in effect on and
22 after the date described in that subparagraph
23 until the date on which the Nationwide Permits
24 are reissued or modified.

25 (b) NATIONAL POLLUTANT DISCHARGE ELIMI-
26 NATION SYSTEM.—Section 402(b)(1)(B) of the Federal

1 Water Pollution Control Act (33 U.S.C. 1342(b)(1)(B))
2 is amended by striking “five years” and inserting “10
3 years”.

4 (c) CERTAINTY ON AVAILABILITY OF NATIONAL POL-
5 LUTANT DISCHARGE ELIMINATION SYSTEM GENERAL
6 PERMITS.—Section 402(a)(3) of the Federal Water Pollu-
7 tion Control Act (33 U.S.C. 1342(a)(3)) is amended—

8 (1) by striking “(3) The permit” and inserting
9 the following:

10 “(3) TERMS, CONDITIONS, AND REQUIRE-
11 MENTS.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), the permit”; and

14 (2) by adding at the end the following:

15 “(B) EXCEPTION.—Notwithstanding sub-
16 section (b)(1)(B), a general permit issued or re-
17 issued by the Administrator on or after Sep-
18 tember 19, 2017, under the permit program
19 under paragraph (1) shall remain in effect until
20 the date on which the Administrator reissues or
21 modifies that general permit.”.

22 (d) PERMITTING REQUIREMENTS FOR CERTAIN DIS-
23 CHARGES OF FIRE RETARDANT.—

1 (1) DEFINITION OF FEDERAL LAND MANAGE-
2 MENT AGENCY.—In this subsection, the term “Fed-
3 eral land management agency” means—

4 (A) the Forest Service;

5 (B) the National Park Service;

6 (C) the Bureau of Land Management;

7 (D) the United States Fish and Wildlife
8 Service;

9 (E) the Bureau of Indian Affairs; and

10 (F) the Federal Emergency Management
11 Agency.

12 (2) NO PERMITTING REQUIRED.—Notwith-
13 standing any provision of the Federal Water Pollu-
14 tion Control Act (33 U.S.C. 1251 et seq.), a permit
15 under section 402 of that Act (33 U.S.C. 1342)
16 shall not be required for the discharge of fire retard-
17 ant in connection with fire suppression, control, or
18 prevention activities carried out by a Federal land
19 management agency, a State government, a political
20 subdivision of a State, or a Tribal government.

21 **SEC. 6. PROHIBITION ON RETROACTIVE PERMIT VETOES.**

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

25 “(c) AUTHORITY OF EPA ADMINISTRATOR.—

1 “(1) POSSIBLE PROHIBITION OF SPECIFICA-
2 TION.—Until such time as the Secretary has issued
3 a permit under this section, the Administrator may
4 prohibit the specification (including the withdrawal
5 of specification) of any defined area as a disposal
6 site, and the Administrator may deny or restrict the
7 use of any defined area for specification (including
8 the withdrawal of specification) as a disposal site,
9 whenever the Administrator determines, after notice
10 and opportunity for public hearings, that the dis-
11 charge of those materials into that area will have an
12 unacceptable adverse effect on municipal water sup-
13 plies, shellfish beds and fishery areas (including
14 spawning and breeding areas), wildlife, or rec-
15 reational areas.

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

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

1 **SEC. 7. EFFICIENT CONSULTATIONS UNDER THE ENDAN-**
2 **GERED SPECIES ACT OF 1973.**

3 (a) **TIMELINES FOR SECTION 7 CONSULTATIONS.**—
4 Section 7(b)(1) of the Endangered Species Act of 1973
5 (16 U.S.C. 1536(b)(1)) is amended—

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

8 (2) in subparagraph (B)—

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

10 (i) by striking “90 days” and insert-
11 ing “60 days”; and

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

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

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

19 (b) **STATE ASSUMPTION OF CONSULTATION RESPON-**
20 **SIBILITIES.**—

21 (1) **DEFINITIONS.**—In this subsection:

22 (A) **PROGRAM.**—The term “program”
23 means the program carried out by the Secretary
24 pursuant to this subsection.

25 (B) **SECRETARY.**—The term “Secretary”
26 means the Secretary of the Interior.

- 1 (C) STATE.—The term “State” means—
2 (i) each of the several States of the
3 United States;
4 (ii) the District of Columbia;
5 (iii) the Commonwealth of Puerto
6 Rico;
7 (iv) Guam;
8 (v) American Samoa;
9 (vi) the Commonwealth of the North-
10 ern Mariana Islands; and
11 (vii) the United States Virgin Islands.

12 (D) STATE AGENCY.—The term “State
13 agency” means any agency, department, board,
14 commission, or other governmental entity in a
15 State with primary jurisdiction over environ-
16 mental or wildlife management matters in the
17 State, as determined by the Governor of the
18 State.

19 (2) PROGRAM.—

20 (A) IN GENERAL.—The Secretary shall
21 carry out a program under which the Secretary
22 may assign consultation responsibilities de-
23 scribed in subparagraph (B)(i) to States.

24 (B) ASSUMPTION OF RESPONSIBILITY.—

1 (i) IN GENERAL.—Subject to the re-
2 quirements of this subsection, with the
3 written agreement of the Secretary and a
4 State, which may be in the form of a
5 memorandum of understanding, the Sec-
6 retary may assign, and the State may as-
7 sume, the consultation responsibilities of
8 the Secretary within the boundary of the
9 State under subsections (a), (b), and (c) of
10 section 7 of the Endangered Species Act of
11 1973 (16 U.S.C. 1536).

12 (ii) PROCEDURAL AND SUBSTANTIVE
13 REQUIREMENTS.—A State shall assume re-
14 sponsibility under the program subject to
15 the same procedural and substantive re-
16 quirements as would apply if that responsi-
17 bility were carried out by the Secretary.

18 (iii) FEDERAL RESPONSIBILITY.—Any
19 responsibility of the Secretary not explicitly
20 assumed by the State by written agree-
21 ment under the program shall remain the
22 responsibility of the Secretary.

23 (3) STATE PARTICIPATION.—

24 (A) PARTICIPATING STATES.—All States
25 are eligible to participate in the program.

1 (B) APPLICATION.—

2 (i) IN GENERAL.—A State seeking to
3 participate in the program shall submit to
4 the Secretary an application at such time,
5 in such manner, and containing such infor-
6 mation as the Secretary may require,
7 which shall include—

8 (I) verification of the financial
9 and legal resources necessary to carry
10 out the authority that may be granted
11 to the State under the program;

12 (II) verification of the personnel
13 resources or a plan to hire the per-
14 sonnel, not later than 1 year after the
15 date on which the application is ap-
16 proved, necessary to carry out the au-
17 thority that may be granted to the
18 State under the program; and

19 (III) evidence of the notice and
20 solicitation of public comment by the
21 State relating to participation of the
22 State in the program, including copies
23 of comments received from that solici-
24 tation.

25 (ii) DENIAL.—

1 (I) IN GENERAL.—The Secretary
2 shall only deny an application sub-
3 mitted by a State under clause (i) if
4 the Secretary determines that the
5 State does not demonstrate the legal,
6 financial, or personnel capability to
7 assume responsibility under the pro-
8 gram.

9 (II) DENIAL REQUIREMENTS.—
10 On denial of an application submitted
11 by a State under clause (i)—

12 (aa) the Secretary shall—

13 (AA) respond to the
14 State in writing, identifying
15 the reasons for the denial;
16 and

17 (BB) at the request of
18 the State, provide technical
19 assistance to the State to
20 address the reasons identi-
21 fied under subitem (AA);
22 and

23 (bb) the State may reapply
24 in accordance with the require-
25 ments of clause (i).

1 (C) PUBLIC NOTICE.—

2 (i) IN GENERAL.—Not less than 30
3 days before the date of submission of an
4 application of a State under subparagraph
5 (B)(i), the State shall, in accordance with
6 the applicable public notice law of the
7 State—

8 (I) publish the complete applica-
9 tion of the State; and

10 (II) provide an opportunity for
11 public comment on the application,
12 which shall not exceed 30 days.

13 (ii) RESPONSE TO COMMENTS.—Not-
14 withstanding any other provision of law, a
15 State shall not be required to respond to
16 public comments received under clause
17 (i)(II).

18 (D) SELECTION CRITERIA.—The Secretary
19 shall approve the application of a State sub-
20 mitted under subparagraph (B)(i) if—

21 (i) the Secretary determines that the
22 State has demonstrated the legal, financial,
23 and current or future personnel capability
24 to assume the responsibility; and

1 (ii) the head of the State agency en-
 2 ters into a written agreement with the Sec-
 3 retary described in paragraph (4)(A).

4 (E) FAILURE TO APPROVE OR DENY AP-
 5 PPLICATION.—If the Secretary fails to make a
 6 determination with respect to any application
 7 submitted under subparagraph (B)(i) within
 8 180 days after the date on which the Secretary
 9 receives that application—

10 (i) the application shall be deemed ap-
 11 proved; and

12 (ii) the Secretary shall—

13 (I) notify the State that sub-
 14 mitted the application of the approval;
 15 and

16 (II) execute a written agreement
 17 described in paragraph (4)(A).

18 (4) WRITTEN AGREEMENT.—

19 (A) IN GENERAL.—A written agreement
 20 referred to in paragraph (3)(D)(ii) shall—

21 (i) be executed by the Governor or the
 22 top-ranking environmental official in the
 23 State who is charged with responsibility for
 24 environmental matters;

1 (ii) be in such form as the Secretary
2 may prescribe;

3 (iii) provide that the State—

4 (I) agrees to assume all or part
5 of the responsibilities of the Secretary
6 described in paragraph (2)(B);

7 (II) expressly consents, on behalf
8 of the State, to accept the jurisdiction
9 of the Federal courts for the compli-
10 ance, discharge, and enforcement of
11 any responsibility of the Secretary as-
12 sumed by the State;

13 (III) certifies that State laws (in-
14 cluding regulations) are in effect
15 that—

16 (aa) authorize the State to
17 take the actions necessary to
18 carry out the responsibilities
19 being assumed; and

20 (bb) are comparable to sec-
21 tion 552 of title 5, United States
22 Code, including providing that
23 any decision regarding the public
24 availability of a document under
25 those State laws is reviewable by

1 a court of competent jurisdiction;

2 and

3 (IV) agrees to maintain the fi-
4 nancial resources necessary to carry
5 out the responsibilities being assumed;

6 (iv) require the State to provide to the
7 Secretary any information the Secretary
8 reasonably considers necessary to ensure
9 that the State is adequately carrying out
10 the responsibilities assigned to the State;

11 (v) be renewable; and

12 (vi) have a term of—

13 (I) not more than 5 years; or

14 (II) 10 years, in the case of a
15 State that has participated in a pro-
16 gram under this subsection (or under
17 a predecessor program) for not less
18 than 10 years.

19 (B) ROLE OF SECRETARY.—The Secretary
20 shall not delegate the responsibilities of the Sec-
21 retary with respect to entering into a written
22 agreement with a State under subparagraph
23 (A).

24 (5) JURISDICTION.—

1 (A) IN GENERAL.—The district courts of
2 the United States shall have exclusive jurisdic-
3 tion over any civil action against a State for
4 failure to carry out any responsibility of the
5 State under the program.

6 (B) LEGAL STANDARDS AND REQUIRE-
7 MENTS.—A civil action under subparagraph (A)
8 shall be governed by the legal standards and re-
9 quirements that would apply in such a civil ac-
10 tion against the Secretary had the Secretary
11 taken the actions in question.

12 (C) INTERVENTION.—The Secretary shall
13 have the right to intervene in any action de-
14 scribed in subparagraph (A).

15 (6) EFFECT OF ASSUMPTION OF RESPONSI-
16 BILITY.—A State that assumes responsibility under
17 paragraph (2)(B) shall be solely responsible and
18 solely liable for carrying out, in lieu of and without
19 further approval of the Secretary, the responsibilities
20 assumed under that paragraph, until the Secretary
21 or the State, as applicable, terminates the participa-
22 tion of the State in the program in accordance with
23 subparagraph (A) or (B) of paragraph (11), as ap-
24 plicable.

1 (7) LIMITATIONS ON AGREEMENTS.—Nothing
2 in this subsection permits a State to assume any
3 rulemaking authority of the Secretary under any
4 Federal law.

5 (8) AUDITS.—

6 (A) IN GENERAL.—To ensure compliance
7 by a State with any agreement of the State
8 under paragraph (3)(D)(ii) (including compli-
9 ance by the State with all Federal laws for
10 which responsibility is assumed under para-
11 graph (2)(B)), for each State participating in
12 the program, the Secretary shall—

13 (i) not later than 180 days after the
14 date of execution of the agreement, meet
15 with the State to review implementation of
16 the agreement and discuss plans for the
17 first annual audit;

18 (ii) conduct annual audits during each
19 of the first 4 years of State participation;

20 (iii) in the case of an agreement pe-
21 riod of greater than 5 years pursuant to
22 paragraph (4)(A)(vi)(II), conduct an audit
23 covering the first 5 years of the agreement
24 period; and

1 (iv) ensure that the time period for
2 completing an audit, from initiation to
3 completion (including public comment and
4 responses to those comments), does not ex-
5 ceed 180 days.

6 (B) PUBLIC AVAILABILITY AND COM-
7 MENT.—

8 (i) IN GENERAL.—An audit conducted
9 under subparagraph (A) shall be provided
10 to the public for comment.

11 (ii) RESPONSE.—Not later than 60
12 days after the date on which the period for
13 public comment ends—

14 (I) the Secretary shall respond to
15 public comments received under clause
16 (i); and

17 (II) to the extent necessary, the
18 applicable State agency may respond
19 to those comments.

20 (C) AUDIT TEAM.—

21 (i) IN GENERAL.—An audit conducted
22 under subparagraph (A) shall be carried
23 out by an audit team determined by the
24 Secretary, in consultation with the State,
25 in accordance with clause (ii).

1 (ii) CONSULTATION.—Consultation
2 with the State under clause (i) shall in-
3 clude a reasonable opportunity for the
4 State to review and provide comments on
5 the proposed members of the audit team.

6 (iii) LIMITATION.—An audit team
7 shall only include—

8 (I) qualified staff of regional and
9 headquarters offices of the United
10 States Fish and Wildlife Service;

11 (II) staff of the Department of
12 the Interior Office of Inspector Gen-
13 eral; and

14 (III) staff of the applicable State
15 agency.

16 (9) MONITORING.—After the fourth year of the
17 participation of a State in the program, the Sec-
18 retary shall monitor compliance by the State with
19 the written agreement entered into under paragraph
20 (3)(D)(ii), including the provision by the State of fi-
21 nancial resources to carry out the written agree-
22 ment.

23 (10) REPORT TO CONGRESS.—The Secretary
24 shall submit to the Committee on Environment and
25 Public Works of the Senate and the Committee on

1 Natural Resources of the House of Representatives
2 an annual report that describes the administration
3 of the program, which shall include an identification
4 of—

5 (A) the number of active written agree-
6 ments entered into under paragraph (3)(D)(ii)
7 being carried out;

8 (B) the number of pending written agree-
9 ments entered into under that paragraph;

10 (C) the number of applications denied
11 under paragraph (3)(B)(ii) and the reasons for
12 those denials, if any; and

13 (D) the results of any audits completed
14 pursuant to paragraph (8) in the year covered
15 by the report.

16 (11) TERMINATION.—

17 (A) TERMINATION BY THE SECRETARY.—

18 The Secretary may terminate the participation
19 of a State in the program if—

20 (i) the Secretary determines that the
21 State is not adequately carrying out the re-
22 sponsibilities assigned to the State;

23 (ii) the Secretary provides to the
24 State—

1 (I) a notification of the deter-
2 mination of noncompliance;

3 (II) a period of not less than 120
4 days to take corrective action as the
5 Secretary determines to be necessary
6 to comply with the applicable agree-
7 ment; and

8 (III) on request of the Governor
9 of the State, a detailed description of
10 each responsibility in need of correc-
11 tive action relating to an inadequacy
12 identified under clause (i); and

13 (iii) the State, after the notification
14 and period provided under clause (ii), fails
15 to take satisfactory corrective action, as
16 determined by the Secretary.

17 (B) TERMINATION BY THE STATE.—The
18 State may terminate the participation of the
19 State in the program at any time by providing
20 to the Secretary a notice not later than the date
21 that is 90 days before the date of termination,
22 subject to such terms and conditions as the
23 Secretary may provide.

24 (12) CAPACITY BUILDING.—The Secretary, in
25 cooperation with relevant State officials, shall pro-

1 vide funding for education, training, peer-exchange,
2 and other initiatives as appropriate—

3 (A) to assist States in developing the ca-
4 pacity to participate in the program; and

5 (B) to promote information sharing and
6 collaboration among States that are partici-
7 pating in the program.

8 (13) AGENCY DEEMED TO BE FEDERAL AGEN-
9 CY.—A State agency that is assigned a responsibility
10 under an agreement under the program shall be
11 deemed to be an agency for the purposes of section
12 2412 of title 28, United States Code.

13 **SEC. 8. NEW SOURCE REVIEW PERMITTING.**

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

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

20 (2) by inserting before the period at the end the
21 following: “. For purposes of the preceding sentence,
22 a change increases the amount of any air pollutant
23 emitted by such source only if the maximum hourly
24 emission rate of an air pollutant that is achievable
25 by such source after the change is higher than the

1 maximum hourly emission rate of such air pollutant
2 that was achievable by such source during any hour
3 in the 10-year period immediately preceding the
4 change”; and

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

6 “(B) Notwithstanding subparagraph (A),
7 the term ‘modification’ does not include a
8 change at a stationary source that is de-
9 signed—

10 “(i) to reduce the amount of any air
11 pollutant emitted by the source per unit of
12 production; or

13 “(ii) to restore, maintain, or improve
14 the reliability of operations at, or the safe-
15 ty of, the source,

16 except, with respect to either clause (i) or (ii),
17 when the change would be a modification as de-
18 fined in subparagraph (A) and the Adminis-
19 trator determines that the increase in the max-
20 imum achievable hourly emission rate of a pol-
21 lutant from such change would cause an ad-
22 verse effect on human health or the environ-
23 ment.”.

24 (b) CLARIFICATION OF DEFINITION OF CONSTRUC-
25 TION FOR PREVENTION OF SIGNIFICANT DETERIORA-

1 TION.—Section 169(2) of the Clean Air Act (42 U.S.C.
2 7479(2)) is amended by striking subparagraph (C) and
3 inserting the following:

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

14 (c) CLARIFICATION OF DEFINITION OF MODIFICA-
15 TIONS AND MODIFIED FOR NONATTAINMENT AREAS.—
16 Section 171 of the Clean Air Act (42 U.S.C. 7501) is
17 amended by striking paragraph (4) and inserting the fol-
18 lowing:

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

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

7 **SEC. 9. PROHIBITIONS ON USE OF SOCIAL COST OF GREEN-**
8 **HOUSE GAS ESTIMATES.**

9 (a) **IN GENERAL.**—In promulgating regulations,
10 issuing guidance, or taking any agency action (as defined
11 in section 551 of title 5, United States Code) relating to
12 the social cost of greenhouse gases, no Federal agency
13 shall adopt or otherwise use any estimates for the social
14 cost of carbon, methane, or nitrous oxide that—

15 (1) may increase the cost of energy, including
16 the levelized cost of electricity and gasoline prices, as
17 determined through a review by the Energy Infor-
18 mation Administration; or

19 (2) could prolong the timeline necessary to pro-
20 mulgate that regulation, guidance, or agency action.

21 (b) **INCLUSION.**—The estimates referred to in sub-
22 section (a) include the interim estimates in the document
23 of the Interagency Working Group on the Social Cost of
24 Greenhouse Gases entitled “Technical Support Document:
25 Social Cost of Carbon, Methane, and Nitrous Oxide In-

1 terim Estimates under Executive Order 13990” and dated
2 February 2021.

3 **SEC. 10. POLICY REVIEW UNDER THE CLEAN AIR ACT.**

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

6 **“SEC. 309. POLICY REVIEW.**

7 “(a) ENVIRONMENTAL IMPACT OF PROPOSED LEGIS-
8 LATION.—

9 “(1) IN GENERAL.—The Administrator shall re-
10 view, and comment in writing, on the environmental
11 impact of any matter relating to the duties and re-
12 sponsibilities granted to the authority of the Admin-
13 istrator pursuant to this Act or any other law con-
14 tained in any legislation proposed by a Federal de-
15 partment.

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

19 “(b) UNSATISFACTORY LEGISLATION.—If the Ad-
20 ministrator determines that any legislation reviewed under
21 subsection (a)(1) is unsatisfactory from the standpoint of
22 public health, welfare, or environmental quality, the Ad-
23 ministrator shall publish the determination of the Admin-
24 istrator and the matter shall be referred to the Council
25 on Environmental Quality.”.

1 **SEC. 11. DOMESTIC ENERGY INDEPENDENCE REPORT.**

2 Not later than 120 days after the date of enactment
3 of this Act, the Administrator of the Environmental Pro-
4 tection Agency, in consultation with the Secretary of En-
5 ergy, shall submit to Congress a report that identifies and
6 assesses regulations promulgated by the Administrator of
7 the Environmental Protection Agency during the 15-year
8 period ending on the date of enactment of this Act that
9 have—

10 (1) reduced the energy independence of the
11 United States;

12 (2) increased the regulatory burden for energy
13 producers in the United States;

14 (3) decreased the energy output by those energy
15 producers;

16 (4) reduced the energy security of the United
17 States; or

18 (5) increased energy costs for consumers in the
19 United States.

20 **SEC. 12. STATE PRIMARY ENFORCEMENT RESPONSIBILITY.**

21 (a) AMENDMENTS.—Section 1422(b) of the Safe
22 Drinking Water Act (42 U.S.C. 300h–1(b)) is amended—

23 (1) in paragraph (2)—

24 (A) by striking “(2) Within ninety days”
25 and inserting the following:

26 “(2) REQUIRED TIMELINE.—

1 “(A) IN GENERAL.—Within 90 days”;

2 (B) in subparagraph (A) (as so des-
3 ignated), by striking “and after reasonable op-
4 portunity for presentation of views”; and

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

6 “(B) FAILURE TO ACT.—

7 “(i) DEFINITION OF CLASS VI
8 WELL.—In this subparagraph, the term
9 ‘Class VI well’ means a well described in
10 section 144.6(f) of title 40, Code of Fed-
11 eral Regulations (as in effect on the date
12 of enactment of this subparagraph).

13 “(ii) NOTICE TO STATE.—If, 180 cal-
14 endar days after the date on which a
15 State’s application is submitted under
16 paragraph (1)(A) or notice is submitted
17 under (1)(B), the Administrator has not,
18 pursuant to subparagraph (A), by rule ap-
19 proved, disapproved, or approved in part
20 and disapproved in part the underground
21 injection control program of the State for
22 Class VI wells, the Administrator shall
23 submit to the State, in writing, a detailed
24 explanation as to the status of the applica-
25 tion or notice.

1 “(iii) DEEMED APPROVAL.—The un-
2 derground injection control program of a
3 State for Class VI wells shall be deemed to
4 be approved if—

5 “(I) by the date that is 30 days
6 after the end of the 180-day period
7 described in clause (ii), the Adminis-
8 trator has not by rule approved, dis-
9 approved, or approved in part and dis-
10 approved in part the underground in-
11 jection control program of the State
12 for Class VI wells; and

13 “(II) the State has established
14 and implemented a primary enforce-
15 ment authority program for 1 or more
16 classes of underground injection con-
17 trol wells (including adequate record-
18 keeping and reporting) to prevent un-
19 derground injection that endangers
20 drinking water sources.

21 “(iv) LIMITATION.—The Adminis-
22 trator shall not condition the processing or
23 approval of a State’s application under
24 paragraph (1)(A) or notice under para-
25 graph (1)(B) for a primary enforcement

1 authority program for Class VI wells on
2 the addition or revision of any other pro-
3 gram, including any primary enforcement
4 authority program for 1 or more classes of
5 underground injection control wells that
6 are not Class VI wells.”;

7 (2) by striking paragraph (4) and inserting the
8 following:

9 “(4) OPPORTUNITY FOR PRESENTATION OF
10 VIEWS.—Before promulgating any rule under para-
11 graph (2) or (3) of this subsection, the Adminis-
12 trator shall—

13 “(A) provide a reasonable opportunity for
14 presentation of views with respect to that rule,
15 including a public hearing and a public com-
16 ment period; and

17 “(B) publish in the Federal Register notice
18 of the reasonable opportunity for presentation
19 of views provided under subparagraph (A).”;
20 and

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

22 “(5) PREAPPLICATION ACTIVITIES.—The Ad-
23 ministrator shall work as expeditiously as possible
24 with States to complete any necessary activities rel-

1 evant to the submission of an application under
2 paragraph (1)(A) or notice under paragraph (1)(B).

3 “(6) REPORT.—

4 “(A) IN GENERAL.—Not later than 90
5 days after the date of enactment of this para-
6 graph, the Administrator shall submit to the
7 appropriate congressional committees a report,
8 including recommendations, regarding the avail-
9 ability of staff and resources to promptly carry
10 out the Class VI wells (as defined in paragraph
11 (2)(B)(i)) program.

12 “(B) APPROPRIATE CONGRESSIONAL COM-
13 MITTEES DEFINED.—In this paragraph, the
14 term ‘appropriate congressional committees’
15 means—

16 “(i) in the Senate—

17 “(I) the Committee on Environ-
18 ment and Public Works; and

19 “(II) the Committee on Appro-
20 priations; and

21 “(ii) in the House of Representa-
22 tives—

23 “(I) the Committee on Energy
24 and Commerce; and

1 “(II) the Committee on Appro-
2 priations.”.

3 (b) RULES OF CONSTRUCTION.—

4 (1) APPLICABILITY TO NEW APPLICATIONS.—

5 The amendments made by this section apply to all
6 applications submitted to the Environmental Protec-
7 tion Agency after the date of enactment of this Act
8 to establish an underground injection control pro-
9 gram under section 1422(b) of the Safe Drinking
10 Water Act (42 U.S.C. 300h–1(b)).

11 (2) APPLICABILITY TO PENDING APPLICA-

12 TIONS.—With respect to any applications described
13 in paragraph (1) submitted prior to the date of en-
14 actment of this Act, the 180-day and 210-day dead-
15 lines established under clauses (ii) and (iii), respec-
16 tively, of section 1422(b)(2)(B) of the Safe Drinking
17 Water Act (42 U.S.C. 300h–1(b)(1)(B)) (as added
18 by subsection (a)(1)(C)) shall begin on the date of
19 enactment of this Act.

20 **SEC. 13. EXPEDITING COMPLETION OF THE MOUNTAIN**
21 **VALLEY 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, as may be modified by a subse-
20 quently issued record of decision following the sup-
21 plemental environmental impact statement issued on
22 April 13, 2023; and

23 (3) the Secretary of the Interior shall—

24 (A) continue to maintain the biological
25 opinion and incidental take statement for the

1 Mountain Valley Pipeline in a manner that is
2 substantively identical to the biological opinion
3 and incidental take statement issued on Feb-
4 ruary 28, 2023; and

5 (B) grant and maintain all necessary
6 rights-of-way and temporary use permits in a
7 manner that is substantively identical to those
8 rights-of-way and temporary use permits ap-
9 proved in the record of decision with respect to
10 the Mountain Valley Pipeline issued on January
11 14, 2021, or as may be modified by any subse-
12 quently issued rights-of-way and temporary use
13 permits.

14 (c) JUDICIAL REVIEW.—

15 (1) IN GENERAL.—No action taken by the Sec-
16 retary of the Army, the Federal Energy Regulatory
17 Commission, the Secretary of Agriculture, or the
18 Secretary of the Interior that grants an authoriza-
19 tion, permit, verification, biological opinion, inci-
20 dental take statement, or any other approval related
21 to the Mountain Valley Pipeline, including the
22 issuance of any authorization, permit, verification,
23 biological opinion, incidental take statement, or
24 other approval for the Mountain Valley Pipeline,
25 whether issued prior to, on, or after the date of en-

1 actment of this section, shall be subject to judicial
2 review.

3 (2) EFFECT.—Any lawsuit (including any law-
4 suit pending in a court on the date of enactment of
5 this Act) seeking judicial review of an agency order
6 or action described in paragraph (1)—

7 (A) shall not be maintained in any court;

8 and

9 (B) shall be promptly dismissed.

10 (d) EFFECT.—This section supersedes any other pro-
11 vision of law (including any other section of this Act or
12 another Act of Congress), any regulation, any judicial de-
13 cision, or any agency guidance that is inconsistent with
14 the issuance of any authorization, permit, verification, bio-
15 logical opinion, incidental take statement, or other ap-
16 proval for the Mountain Valley Pipeline.

○