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117TH CONGRESS
2D SESSION

H. R. 8966

To clarify regulatory certainty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2022

Mr. KELLY of Pennsylvania introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce, Transportation and Infrastructure, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To clarify regulatory certainty, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Simplify Timelines and Assure Regulatory Transparency Act'' or the ''START Act''.

SEC. 2. CODIFICATION OF NEPA REGULATIONS.

The revisions to the Code of Federal Regulations made pursuant to the final rule of the Council on Environmental Quality titled ''Update to the Regulations Imple-

menting the Procedural Provisions of the National Environmental Policy Act'' and published on July 16, 2020 (85 Fed. Reg. 43304), shall have the same force and effect of law as if enacted by an Act of Congress.

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

(a) WATERS OF THE UNITED STATES.—The definitions of the term ''waters of the United States'' and the other terms defined in section 328.3 of title 33, Code of Federal Regulations (as in effect on January 1, 2021), are enacted into law.

(b) CODIFICATION OF SECTION 401 CERTIFICATION RULE.—The final rule of the Environmental Protection Agency entitled ''Clean Water Act Section 401 Certification Rule'' (85 Fed. Reg. 42210 (July 13, 2020)) is enacted into law.

(c) CODIFICATION OF NATIONWIDE PERMITS.—The Nationwide Permits issued, reissued, or modified, as applicable, in the following final rules of the Corps of Engineers are enacted into law:

(1) The final rule of the Corps of Engineers entitled ''Reissuance and Modification of Nationwide Permits'' (86 Fed. Reg. 2744 (January 13, 2021)).

(2) The final rule of the Corps of Engineers entitled ''Reissuance and Modification of Nationwide

Permits'' (86 Fed. Reg. 73522 (December 27, 2021)).

(d) NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM.—Section 402(b)(1)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1342(b)(1)(B)) is amended by striking ''five years'' and inserting ''10 years''.

SEC. 4. PROHIBITION ON USE OF SOCIAL COST OF GREENHOUSE GAS ESTIMATES RAISING GASOLINE PRICES.

(a) IN GENERAL.—In promulgating regulations, issuing guidance, or taking any agency action (as defined in section 551 of title 5, United States Code) relating to the social cost of greenhouse gases, no Federal agency shall adopt or otherwise use any estimates for the social cost of greenhouse gases that may raise gasoline prices, as determined through a review by the Energy Information Administration.

(b) INCLUSION.—The estimates referred to in subsection (a) include the interim estimates in the document of the Interagency Working Group on the Social Cost of Greenhouse Gases entitled ''Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990'' and dated February 2021.

SEC. 5. EXPEDITING PERMITTING AND REVIEW PROCESSES.

(a) DEFINITIONS.—In this section:

(1) AUTHORIZATION.—The term ''authorization'' means any license, permit, approval, finding, determination, or other administrative decision issued by a Federal department or agency that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of an energy project, including any authorization described in section 41001(3) of the FAST Act (42 U.S.C. 4370m(3)).

(2) ENERGY PROJECT.—The term ''energy project'' means any project involving the exploration, development, production, transportation, combustion, transmission, or distribution of an energy resource or electricity for which—

(A) an authorization is required under a Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B)(i) the head of the lead agency has determined that an environmental impact statement is required; or

(ii) the head of the lead agency has determined that an environmental assessment is re-

quired, and the project sponsor requests that the project be treated as an energy project.

(3) ENVIRONMENTAL IMPACT STATEMENT.—The term ''environmental impact statement'' means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) ENVIRONMENTAL REVIEW AND AUTHORIZATION PROCESS.—The term ''environmental review and authorization process'' means—

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

(B) the completion of any authorization decision required for an energy project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(5) LEAD AGENCY.—The term ''lead agency'' means—

(A) the Department of Energy;

(B) the Department of the Interior;

(C) the Department of Agriculture;

(D) the Federal Energy Regulatory Commission;

(E) the Nuclear Regulatory Commission; or

(F) any other appropriate Federal agency, as applicable, that may be responsible for navigating the energy project through the environmental review and authorization process.

(6) PROJECT SPONSOR.—The term ''project sponsor'' means an agency or other entity, including any private or public-private entity, that seeks approval from a lead agency for an energy project.

(b) TIMELY AUTHORIZATIONS FOR ENERGY PROJECTS.—

(1) IN GENERAL.—

(A) DEADLINE.—Except as provided in subparagraph (C), all authorization decisions necessary for the construction of an energy project shall be completed by not later than 90 days after the date of the issuance of a record of decision for the energy project by the lead agency.

(B) DETAIL.—The final environmental impact statement for an energy project shall in-

clude an adequate level of detail to inform decisions necessary for the role of any Federal agency involved in the environmental review and authorization process for the energy project.

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

(i) Federal law prohibits the lead agency or another agency from issuing an approval or permit within the period described in that subparagraph;

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

(iii) an extension would facilitate completion of the environmental review and authorization process of the energy project.

(2) ENERGY PROJECT SCHEDULE.—To the maximum extent practicable and consistent with applicable Federal law, for an energy project, the lead agency shall develop, in concurrence with the project sponsor, a schedule for the energy project that is consistent with a time period of not more than 2 years for the completion of the environmental review

and authorization process for an energy project, as measured from, as applicable—

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

(B) the date on which the head of the lead agency determines that an environmental assessment is required to a finding of no significant impact.

(3) LENGTH OF ENVIRONMENTAL IMPACT STATEMENT.—

(A) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subparagraph (B), to the maximum extent practicable, the text of the items described in paragraphs (4) through (6) of section 1502.10(a) of title 40, Code of Federal Regulations (or successor regulations), of an environmental impact statement for an energy project shall be 200 pages or fewer.

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

limit for the environmental impact statement for that energy project.

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

(1) DEFINITIONS.—In this subsection:

(A) AGENCY ACTION.—The term ''agency action'' has the meaning given the term in section 551 of title 5, United States Code.

(B) ENERGY-RELATED CAUSE OF ACTION.—The term ''energy-related cause of action'' means a cause of action that—

(i) is filed on or after the date of enactment of this Act; and

(ii) seeks judicial review of a final agency action to issue a permit, license, or other form of agency permission for an energy project.

(2) DEADLINE FOR FILING.—

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

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

(ii) if another Federal law provides for an earlier deadline than the deadline described in clause (i), the earlier deadline.

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

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

(1) the agency makes a determination, in consultation with the lead agency, that the categorical exclusion applies to the energy project;

(2) the energy project satisfies the conditions for a categorical exclusion under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(3) the use of the categorical exclusion does not otherwise conflict with the implementing regulations of the agency, except any list of the agency that designates categorical exclusions.

SEC. 6. FRACTURING AUTHORITY WITHIN STATES.

(a) DEFINITION OF FEDERAL LAND.—In this section, the term ''Federal land'' means—

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

(2) National Forest System land;

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

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

(b) STATE AUTHORITY.—

(1) IN GENERAL.—A State shall have the sole authority to promulgate or enforce any regulation, guidance, or permit requirement regarding the treatment of a well by the application of fluids under pressure to which propping agents may be added for the expressly designed purpose of initiating or propagating fractures in a target geologic formation in order to enhance production of oil, natural gas, or geothermal production activities on or under any land within the boundaries of the State.

(2) FEDERAL LAND.—The treatment of a well by the application of fluids under pressure to which propping agents may be added for the expressly designed purpose of initiating or propagating fractures

in a target geologic formation in order to enhance production of oil, natural gas, or geothermal production activities on Federal land shall be subject to the law of the State in which the land is located.

SEC. 7. FEDERAL LAND FREEDOM.

(a) DEFINITIONS.—In this section:

(1) AVAILABLE FEDERAL LAND.—The term ''available Federal land'' means any Federal land that, as of May 31, 2013—

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

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

(C) is not a unit of the National Park System;

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

(E) is not a congressionally designated wilderness area.

(2) STATE.—The term ''State'' means—

(A) a State; and

(B) the District of Columbia.

(3) STATE LEASING, PERMITTING, AND REGULATORY PROGRAM.—The term ''State leasing, per-

mitting, and regulatory program'' means a program established pursuant to State law that regulates the exploration and development of oil, natural gas, and other forms of energy on land located in the State.

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

(1) STATE LEASING, PERMITTING, AND REGULATORY PROGRAMS.—Any State that has established a State leasing, permitting, and regulatory program may—

(A) submit to the Secretaries of the Interior, Agriculture, and Energy a declaration that a State leasing, permitting, and regulatory program has been established or amended; and

(B) seek to transfer responsibility for leasing, permitting, and regulating oil, natural gas, and other forms of energy development from the Federal Government to the State.

(2) STATE ACTION AUTHORIZED.—Notwithstanding any other provision of law, on submission of a declaration under paragraph (1)(A), the State submitting the declaration may lease, permit, and regulate the exploration and development of oil, natural gas, and other forms of energy on Federal land

located in the State in lieu of the Federal Government.

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

(A) subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the ''Administrative Procedure Act'');

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

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

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

(c) NO EFFECT ON FEDERAL REVENUES.—

(1) IN GENERAL.—Any lease or permit issued by a State pursuant to subsection (b) shall include provisions for the collection of royalties or other revenues in an amount equal to the amount of royalties or revenues that would have been collected if the lease or permit had been issued by the Federal Government.

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

(3) EFFECT ON STATE PROCESSING FEES.—Nothing in this section prohibits a State from collecting and retaining a fee from an applicant to cover the administrative costs of processing an application for a lease or permit.

SEC. 8. FASTER PROJECT CONSULTATION.

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

(1) in subparagraph (A), by striking ''90-day'' and inserting ''60-day''; and

(2) in subparagraph (B)—

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

(i) by striking ''90 days'' and inserting ''60 days''; and

(ii) by striking ''90th day'' and inserting ''60th day'';

(B) in clause (i), in the matter preceding subclause (I), by striking ''150th day'' and inserting ''100th day''; and

(C) in clause (ii), by striking ''150 or more'' and inserting ''100 or more''.

SEC. 9. NEW SOURCE REVIEW PERMITTING.

(a) CLARIFICATION OF DEFINITION OF A MODIFICATION FOR EMISSION RATE INCREASES, POLLUTION CONTROL, EFFICIENCY, SAFETY, AND RELIABILITY PROJECTS.—Paragraph (4) of section 111(a) of the Clean Air Act (42 U.S.C. 7411(a)) is amended—

(1) by inserting ''(A)'' before ''The term'';

(2) by inserting before the period at the end the following: ''. For purposes of the preceding sentence, a change increases the amount of any air pollutant emitted by such source only if the maximum hourly emission rate of an air pollutant that is achievable by such source after the change is higher than the maximum hourly emission rate of such air pollutant that was achievable by such source during any hour in the 10-year period immediately preceding the change''; and

(3) by adding at the end the following:

''(B) Notwithstanding subparagraph (A), the term 'modification' does not include a change at a stationary source that is designed—

''(i) to reduce the amount of any air pollutant emitted by the source per unit of production; or

''(ii) to restore, maintain, or improve the reliability of operations at, or the safety of, the source,

except, with respect to either clause (i) or (ii), when the change would be a modification as defined in subparagraph (A) and the Administrator determines that the increase in the maximum achievable hourly emission rate of a pollutant from such change would cause an adverse effect on human health or the environment.''.

(b) CLARIFICATION OF DEFINITION OF CONSTRUCTION FOR PREVENTION OF SIGNIFICANT DETERIORATION.—Subparagraph (C) of section 169(2) of the Clean Air Act (42 U.S.C. 7479(2)) is amended to read as follows:

''(C) The term 'construction', when used in connection with a major emitting facility, includes a modification (as defined in section 111(a)) at such facility, except that for purposes of this subparagraph a modification does not include a change at a major emitting facility that does not result in a significant emis-

sions increase, or a significant net emissions increase, in annual actual emissions at such facility.''.

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

''(4) The terms 'modifications' and 'modified' mean a modification as defined in section 111(a)(4), except that such terms do not include a change at a major emitting facility that does not result in a significant emissions increase, or a significant net emissions increase, in annual actual emissions at such facility.''.

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

SEC. 10. PROHIBITION ON RETROACTIVE PERMIT VETOES.

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

''(c) AUTHORITY OF EPA ADMINISTRATOR.—

''(1) POSSIBLE PROHIBITION OF SPECIFICATION.—Until such time as the Secretary has issued a permit under this section, the Administrator may prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and the Administrator may deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever the Administrator determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

''(2) CONSULTATION REQUIRED.—Before making a determination under paragraph (1), the Administrator shall consult with the Secretary.

''(3) WRITTEN FINDINGS REQUIRED.—The Administrator shall set forth in writing and make public the findings and reasons of the Administrator for making any determination under this subsection.''.

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

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

"SEC. 309. POLICY REVIEW.

"(a) ENVIRONMENTAL IMPACT OF PROPOSED LEGISLATION.—

"(1) IN GENERAL.—The Administrator shall review, and comment in writing, on the environmental impact of any matter relating to the duties and responsibilities granted to the authority of the Administrator pursuant to this Act or any other law contained in any legislation proposed by a Federal department.

"(2) PUBLISH.—A written comment referred to in paragraph (1) shall be made public at the conclusion of any review conducted under that paragraph.

"(b) UNSATISFACTORY LEGISLATION.—In the event the Administrator determines that any legislation reviewed under subsection (a)(1) is unsatisfactory from the standpoint of public health, welfare, or environmental quality, the Administrator shall publish the determination of the Administrator and the matter shall be referred to the Council on Environmental Quality.".

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