

**Section by Section: Revitalizing the Economy by Simplifying Timelines and Assuring
Regulatory Transparency Act (RESTART Act)**
U.S. Senator Shelley Moore Capito (R-W.Va.), EPW Committee Ranking Member

Section 2. Modernizing the National Environmental Policy Act of 1969.

This section amends the National Environmental Policy Act of 1969 (NEPA) to require a one-year timeline for environmental assessments (EAs) and a two-year timeline for environmental impact statements (EISs) that, if not met by an agency, results in the requirements of NEPA being deemed to have been fulfilled for the project and not subject to judicial review. Requires agencies to prepare a single environmental document with page limits on final EAs and EISs. Designates a process for determining when NEPA applies and what level of review is required. Allows agencies to adopt categorical exclusions established by other agencies. Outlines a process for designating lead and cooperating agencies and allows for project sponsor preparation of environmental documents. Requires courts to process challenges to NEPA documents expeditiously and issue final judgment within 180 days. Tightens statute of limitations for filing court challenges to NEPA documents, and instructs courts to set deadlines for agency action when the court remands an environmental document to the agency. Codifies definitions for NEPA.

Sec. 3. Clean Water Act Permitting and State Certification.

This section builds upon the Trump Administration’s Section 401 Certification Rule under the Clean Water Act to prevent state actions from unreasonably blocking projects by delaying issuing or denying Section 401 Certifications. Requires states denying Section 401 Certifications to do so solely on the basis of the impacts of discharges to waters of the US and not unrelated policy matters such as political objections to the type of projects or climate change. A state may affirmatively waive its 401 Certification review and that waiver is not subject to judicial review.

Sec. 4. Definition of Navigable Waters.

This section codifies the Trump Administration’s Navigable Waters Protection Rule’s definition of “waters of the United States” under the Clean Water Act by amending the definition in the Clean Water Act. The definition of “waters of the United States” sets the jurisdictional boundaries for when federal dredge and fill or discharge permits are required under the Clean Water Act.

Sec. 5. Providing Regulatory Certainty Under the Federal Water Pollution Control Act.

This section codifies Nationwide Permits issued in 2021 that streamline Section 404 permitting for the development of critical energy projects and other activities under the Clean Water Act. This section expands the available approval term of delegated state discharge permit programs from five to ten years. This section ensures that a general discharge permits remain in effect until the date on which the Administrator revises or reissues that general permit. This section clarifies that federal land management agencies, states, and tribes are not required to

obtain a discharge permit to use aerial fire retardant when responding to a wildfire within their jurisdiction.

Sec. 6. Prohibition on Retroactive Permit Vetoes.

This section clarifies existing law to promote timely and thorough consideration of Clean Water Act Section 404 permits, and eliminates unfair and confusing permitting revocations after a permit has been issued.

Sec. 7. Efficient Consultations Under the Endangered Species Act of 1973.

This section shortens timelines for Section 7 consultations under the Endangered Species Act of 1973 (ESA). This section directs the Secretary of the Interior to establish a program that allows a state agency with the requisite resources and expertise to assume responsibility for Section 7 consultations under the ESA.

Sec. 8. New Source Review Permitting.

This section reforms the New Source Review (NSR) program under the Clean Air Act. The current NSR program prevents industry from making upgrades to existing facilities that would improve efficiency and reduce emissions. Provides greater regulatory certainty about when facility upgrades require a permit.

Sec. 9. Prohibition on Use of Social Cost of Greenhouse Gas Estimates.

This section prohibits the use of a series of cost metrics, collectively known as the social cost of greenhouse gases, for regulations, guidance, or agency actions if the use of the metrics increases the cost of energy, as determined by the Energy Information Administration, or prolongs the time to promulgate regulations, guidance, or take agency actions.

Sec. 10. Policy Review Under the Clean Air Act.

This section strikes the statutory mandate under the Clean Air Act Section 309 that EPA review and comment on newly authorized federal projects for construction or any major federal action that falls under NEPA for environmental review as well as agency regulations.

Sec. 11. Domestic Energy Independence Report.

This section requires EPA, in consultation with the Department of Energy, to provide a report to Congress that identifies regulations finalized by EPA that have impacted US energy independence and increased costs for consumers.

Sec. 12. State Primary Enforcement Responsibility.

This section streamlines state primacy applications for Class VI wells that are used to store carbon dioxide and established under the Safe Drinking Water Act's Underground Injection Control program. This section requires EPA to report to Congress on any staff and resources needed to promptly carry out the Class VI wells program.

Sec. 13. Expediting Completion of Mountain Valley Pipeline.

This section requires agencies to issue final permits and authorizations for the Mountain Valley Pipeline within 21 days of enactment of the RESTART Act.