

H. R. 1937

IN THE SENATE OF THE UNITED STATES

October 26, 2015

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To require the Secretary of the Interior and the Secretary of Agriculture to more efficiently develop domestic sources of the minerals and mineral materials of strategic and critical importance to United States economic and national security and manufacturing competitiveness.

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 “National Strategic and Critical Minerals Production Act of 2015”.

SEC. 2. Findings.

Congress finds the following:

- (1) The industrialization of developing nations has driven demand for nonfuel minerals necessary for telecommunications, military technologies, healthcare technologies, and conventional and renewable energy technologies.
- (2) The availability of minerals and mineral materials are essential for economic growth, national security, technological innovation, and the manufacturing and agricultural supply chain.
- (3) The exploration, production, processing, use, and recycling of minerals contribute significantly to the economic well-being, security, and general welfare of the Nation.
- (4) The United States has vast mineral resources, but is becoming increasingly dependent upon foreign sources of these mineral materials, as demonstrated by the following:
 - (A) Twenty-five years ago the United States was dependent on foreign sources for 45 nonfuel mineral materials, 8 of which the United States imported 100 percent of the Nation’s requirements, and for another 19 commodities the United States imported more than 50 percent of the Nation’s needs.
 - (B) By 2014 the United States import dependence for nonfuel mineral materials increased from 45 to 65 commodities, 19 of which the United States imported for 100 percent of the Nation’s requirements, and an additional 24 of which the United States imported for more than 50 percent of the Nation’s needs.

(C) The United States share of worldwide mineral exploration dollars was 7 percent in 2014, down from 19 percent in the early 1990s.

(D) In the 2014 Ranking of Countries for Mining Investment (out of 25 major mining countries), found that 7- to 10-year permitting delays are the most significant risk to mining projects in the United States.

SEC. 3. Definitions.

In this Act:

(1) STRATEGIC AND CRITICAL MINERALS.—The term “strategic and critical minerals” means minerals that are necessary—

(A) for national defense and national security requirements;

(B) for the Nation’s energy infrastructure, including pipelines, refining capacity, electrical power generation and transmission, and renewable energy production;

(C) to support domestic manufacturing, agriculture, housing, telecommunications, healthcare, and transportation infrastructure; or

(D) for the Nation’s economic security and balance of trade.

(2) AGENCY.—The term “agency” means any agency, department, or other unit of Federal, State, local, or tribal government, or Alaska Native Corporation.

(3) MINERAL EXPLORATION OR MINE PERMIT.—The term “mineral exploration or mine permit” includes—

(A) Bureau of Land Management and Forest Service authorizations for pre-mining activities that require environmental analyses pursuant to the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)); and

(B) plans of operation issued by the Bureau of Land Management and the Forest Service pursuant to 43 CFR 3809 and 36 CFR 228A or the authorities listed in 43 CFR 3503.13, respectively, as amended from time to time.

TITLE I—Development of Domestic Sources of Strategic and Critical Minerals

SEC. 101. Improving development of strategic and critical minerals.

Domestic mines that will provide strategic and critical minerals shall be considered an “infrastructure project” as described in Presidential order “Improving Performance of Federal Permitting and Review of Infrastructure Projects” dated March 22, 2012.

SEC. 102. Responsibilities of the lead agency.

(a) In general.—The lead agency with responsibility for issuing a mineral exploration or mine permit shall appoint a project lead within the lead agency who shall coordinate and consult with cooperating agencies and any other agency involved in the permitting process, project proponents and contractors to ensure that agencies minimize delays, set and adhere to timelines and schedules for completion of the permitting process, set clear permitting goals and track progress against those goals.

(b) Determination under NEPA.—

(1) IN GENERAL.—To the extent that the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) applies to the issuance of any mineral exploration or mine permit, the requirements of such Act shall be deemed to have been procedurally and substantively satisfied if the lead agency determines that any State and/or Federal agency acting pursuant to State or Federal (or both) statutory or procedural authorities, has addressed or will address the following factors:

(A) The environmental impact of the action to be conducted under the permit.

(B) Possible adverse environmental effects of actions under the permit.

(C) Possible alternatives to issuance of the permit.

(D) The relationship between local long- and short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(E) Any irreversible and irretrievable commitment of resources that would be involved in the proposed action.

(F) That public participation will occur during the decisionmaking process for authorizing actions under the permit.

(2) WRITTEN REQUIREMENT.—In reaching a determination under paragraph (1), the lead agency shall, by no later than 90 days after receipt of an application for the permit, in a written record of decision—

(A) explain the rationale used in reaching its determination;

(B) state the facts in the record that are the basis for the determination; and

(C) show that the facts in the record could allow a reasonable person to reach the same determination as the lead agency did.

(c) Coordination on permitting process.—The lead agency with responsibility for issuing a mineral exploration or mine permit shall enhance government coordination for the permitting process by avoiding duplicative reviews, minimizing paperwork, and engaging other agencies

and stakeholders early in the process. For purposes of this subsection, the lead agency shall consider the following practices:

(1) Deferring to and relying upon baseline data, analyses and reviews performed by State agencies with jurisdiction over the proposed project.

(2) Conducting any consultations or reviews concurrently rather than sequentially to the extent practicable and when such concurrent review will expedite rather than delay a decision.

(d) Memorandum of agency agreement.—If requested at any time by a State or local planning agency, the lead agency with responsibility for issuing a mineral exploration or mine permit, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, State and local governments, and other appropriate entities to accomplish the early coordination activities described in subsection (c).

(e) Schedule for permitting process.—For any project for which the lead agency cannot make the determination described in 102(b), at the request of a project proponent the lead agency, cooperating agencies, and any other agencies involved with the mineral exploration or mine permitting process shall enter into an agreement with the project proponent that sets time limits for each part of the permitting process, including for the following:

(1) The decision on whether to prepare a document required under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)).

(2) A determination of the scope of any document required under the National Environmental Policy Act of 1969.

(3) The scope of and schedule for the baseline studies required to prepare a document required under the National Environmental Policy Act of 1969.

(4) Preparation of any draft document required under the National Environmental Policy Act of 1969.

(5) Preparation of a final document required under the National Environmental Policy Act of 1969.

(6) Consultations required under applicable laws.

(7) Submission and review of any comments required under applicable law.

(8) Publication of any public notices required under applicable law.

(9) A final or any interim decisions.

(f) Time limit for permitting process.—In no case should the total review process described in subsection (d) exceed 30 months unless extended by the signatories of the agreement.

(g) Limitation on addressing public comments.—The lead agency is not required to address agency or public comments that were not submitted during any public comment periods or consultation periods provided during the permitting process or as otherwise required by law.

(h) Financial assurance.—The lead agency will determine the amount of financial assurance for reclamation of a mineral exploration or mining site, which must cover the estimated cost if the lead agency were to contract with a third party to reclaim the operations according to the reclamation plan, including construction and maintenance costs for any treatment facilities necessary to meet Federal, State or tribal environmental standards.

(i) Application to existing permit applications.—This section shall apply with respect to a mineral exploration or mine permit for which an application was submitted before the date of the enactment of this Act if the applicant for the permit submits a written request to the lead agency for the permit. The lead agency shall begin implementing this section with respect to such application within 30 days after receiving such written request.

(j) Strategic and critical minerals within National Forests.—With respect to strategic and critical minerals within a federally administered unit of the National Forest System, the lead agency shall—

(1) exempt all areas of identified mineral resources in Land Use Designations, other than Non-Development Land Use Designations, in existence as of the date of the enactment of this Act from the procedures detailed at and all rules promulgated under part 294 of title 36, Code of Federal Regulations;

(2) apply such exemption to all additional routes and areas that the lead agency finds necessary to facilitate the construction, operation, maintenance, and restoration of the areas of identified mineral resources described in paragraph (1); and

(3) continue to apply such exemptions after approval of the Minerals Plan of Operations for the unit of the National Forest System.

SEC. 103. Conservation of the resource.

In evaluating and issuing any mineral exploration or mine permit, the priority of the lead agency shall be to maximize the development of the mineral resource, while mitigating environmental impacts, so that more of the mineral resource can be brought to the marketplace.

SEC. 104. Federal register process for mineral exploration and mining projects.

(a) Preparation of Federal Notices for Mineral Exploration and Mine Development Projects.—The preparation of Federal Register notices required by law associated with the issuance of a mineral exploration or mine permit shall be delegated to the organization level within the agency responsible for issuing the mineral exploration or mine permit. All Federal Register notices regarding official document availability, announcements of meetings, or notices of intent to undertake an action shall be originated and transmitted to the Federal Register from the office where documents are held, meetings are held, or the activity is initiated.

(b) Departmental Review of Federal Register Notices for Mineral Exploration and Mining Projects.—Absent any extraordinary circumstance or except as otherwise required by any Act of Congress, each Federal Register notice described in subsection (a) shall undergo any required reviews within the Department of the Interior or the Department of Agriculture and be

published in its final form in the Federal Register no later than 30 days after its initial preparation.

TITLE II—Judicial review of agency actions relating to Exploration and Mine Permits

SEC. 201. Definitions for title.

In this title the term “covered civil action” means a civil action against the Federal Government containing a claim under section 702 of title 5, United States Code, regarding agency action affecting a mineral exploration or mine permit.

SEC. 202. Timely filings.

A covered civil action is barred unless filed no later than the end of the 60-day period beginning on the date of the final Federal agency action to which it relates.

SEC. 203. Right to intervene.

The holder of any mineral exploration or mine permit may intervene as of right in any covered civil action by a person affecting rights or obligations of the permit holder under the permit.

SEC. 204. Expedition in hearing and determining the action.

The court shall endeavor to hear and determine any covered civil action as expeditiously as possible.

SEC. 205. Limitation on prospective relief.

In a covered civil action, the court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of a legal requirement, and is the least intrusive means necessary to correct that violation.

SEC. 206. Limitation on attorneys’ fees.

Section 504 of title 5, United States Code, and section 2412 of title 28, United States Code (together commonly called the Equal Access to Justice Act) do not apply to a covered civil action, nor shall any party in such a covered civil action receive payment from the Federal Government for their attorneys’ fees, expenses, and other court costs.

TITLE III—Miscellaneous provisions

SEC. 301. Secretarial order not affected.

This Act shall not apply to any mineral described in Secretarial Order No. 3324, issued by the Secretary of the Interior on December 3, 2012, in any area to which the order applies.

Passed the House of Representatives October 22, 2015.