JULY 5, 2012

RULES COMMITTEE PRINT 112-26

TEXT OF H.R. 4402, NATIONAL STRATEGIC AND CRITICAL MINERALS PRODUCTION ACT OF 2012

[Showing the text of H.R. 4402, as ordered reported by the Committee on Natural Resources]

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Strategic and Critical Minerals Production Act of 2012”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The industrialization of China and India has driven demand for nonfuel mineral commodities, sparking a period of resource nationalism exemplified by China’s reduction in exports of rare-earth elements 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 signifi-
cantly 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 30 nonfuel mineral materials, 6 of which the United States imported 100 percent of the Nation’s requirements, and for another 16 commodities the United States imported more than 60 percent of the Nation’s needs.

(B) By 2011 the United States import dependence for nonfuel mineral materials had more than doubled from 30 to 67 commodities, 19 of which the United States imported 100 percent of the Nation’s requirements, and for another 24 commodities, imported more than 50 percent of the Nation’s needs.

(C) The United States share of world wide mineral exploration dollars was 8 percent in 2011, down from 19 percent in the early 1990s.

(D) In the 2012 Ranking of Countries for Mining Investment, out of 25 major mining
countries, the United States ranked last with Papua New Guinea in permitting delays, and towards the bottom regarding government take and social issues affecting mining.

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; and

(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 plans of operation issued by the Bureau of Land Management and the Forest Service pursuant to 43 CFR 3809 and 36 CFR 228A respectively.

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 who shall coordinate and consult with other agencies, cooperating agencies, project proponents and contractors to ensure that agencies minimize delays, set and adhere to timelines and schedules for com-
pletion of reviews, set clear permitting goals and track progress against those goals.

(b) The lead agency with responsibility for issuing a mineral exploration or mine permit shall determine any such action would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 if the procedural and substantive safeguards of the lead agency’s permitting process alone, any applicable State permitting process alone, or a combination of the two processes together provide an adequate mechanism to ensure that environmental factors are taken into account.

c) The lead agency with responsibility for issuing a mineral exploration or mine permit shall enhance government coordination on permitting and review by avoiding duplicative reviews, minimizing paperwork and engaging other agencies and stakeholders early in the process. The lead agency shall consider the following best practices:

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

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

(d) At the request of a project proponent, the project
lead of the agency with responsibility for issuing a mineral
exploration or mine permit shall enter into an agreement
with the project proponent and other cooperating agencies
that sets time limits for each part of the permit review
process including the following:

(1) The decision on whether to prepare a docu-
ment required under the National Environmental

(2) A determination of the scope of any docu-
ment required under the National Environmental

(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.

(e) In no case should the total review process described in subsection (d) exceed 30 months unless agreed to by the signatories of the agreement.

(f) The lead agency is not required to address agency or public comments that were not submitted during the public comment periods provided by the lead agency or otherwise required by law.

(g) 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.

SEC. 103. CONSERVATION OF THE RESOURCE.

In developing the 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 market place.

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 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. EXPEDITION IN HEARING AND DETERMINING THE ACTION.

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

SEC. 204. 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. 205. LIMITATION ON ATTORNEYS' FEES.

Sections 504 of title 5, United States Code, and 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.