

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]**

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The industrialization of China and India
7 has driven demand for nonfuel mineral commodities,
8 sparking a period of resource nationalism exempli-
9 fied by China’s reduction in exports of rare-earth
10 elements necessary for telecommunications, military
11 technologies, healthcare technologies, and conven-
12 tional and renewable energy technologies.

13 (2) The availability of minerals and mineral
14 materials are essential for economic growth, national
15 security, technological innovation, and the manufac-
16 turing and agricultural supply chain.

17 (3) The exploration, production, processing,
18 use, and recycling of minerals contribute signifi-

1 cantly to the economic well-being, security and gen-
2 eral welfare of the Nation.

3 (4) The United States has vast mineral re-
4 sources, but is becoming increasingly dependent
5 upon foreign sources of these mineral materials, as
6 demonstrated by the following:

7 (A) Twenty-five years ago the United
8 States was dependent on foreign sources for 30
9 nonfuel mineral materials, 6 of which the
10 United States imported 100 percent of the Na-
11 tion's requirements, and for another 16 com-
12 modities the United States imported more than
13 60 percent of the Nation's needs.

14 (B) By 2011 the United States import de-
15 pendence for nonfuel mineral materials had
16 more than doubled from 30 to 67 commodities,
17 19 of which the United States imported 100
18 percent of the Nation's requirements, and for
19 another 24 commodities, imported more than
20 50 percent of the Nation's needs.

21 (C) The United States share of world wide
22 mineral exploration dollars was 8 percent in
23 2011, down from 19 percent in the early 1990s.

24 (D) In the 2012 Ranking of Countries for
25 Mining Investment, out of 25 major mining

1 countries, the United States ranked last with
2 Papua New Guinea in permitting delays, and
3 towards the bottom regarding government take
4 and social issues affecting mining.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) STRATEGIC AND CRITICAL MINERALS.—The
8 term “strategic and critical minerals” means min-
9 erals that are necessary—

10 (A) for national defense and national secu-
11 rity requirements;

12 (B) for the Nation’s energy infrastructure,
13 including pipelines, refining capacity, electrical
14 power generation and transmission, and renew-
15 able energy production;

16 (C) to support domestic manufacturing,
17 agriculture, housing, telecommunications,
18 healthcare, and transportation infrastructure;
19 and

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

22 (2) AGENCY.—The term “agency” means any
23 agency, department, or other unit of Federal, State,
24 local, or tribal government, or Alaska Native Cor-
25 poration.

1 pletion of reviews, set clear permitting goals and track
2 progress against those goals.

3 (b) The lead agency with responsibility for issuing a
4 mineral exploration or mine permit shall determine any
5 such action would not constitute a major Federal action
6 significantly affecting the quality of the human environ-
7 ment within the meaning of the National Environmental
8 Policy Act of 1969 if the procedural and substantive safe-
9 guards of the lead agency's permitting process alone, any
10 applicable State permitting process alone, or a combina-
11 tion of the two processes together provide an adequate
12 mechanism to ensure that environmental factors are taken
13 into account.

14 (c) The lead agency with responsibility for issuing a
15 mineral exploration or mine permit shall enhance govern-
16 ment coordination on permitting and review by avoiding
17 duplicative reviews, minimizing paperwork and engaging
18 other agencies and stakeholders early in the process. The
19 lead agency shall consider the following best practices:

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

23 (2) Conducting reviews concurrently rather
24 than sequentially to the extent practicable and when

1 such concurrent review will expedite rather than
2 delay a decision.

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

9 (1) The decision on whether to prepare a docu-
10 ment required under the National Environmental
11 Policy Act of 1969.

12 (2) A determination of the scope of any docu-
13 ment required under the National Environmental
14 Policy Act of 1969.

15 (3) The scope of and schedule for the baseline
16 studies required to prepare a document required
17 under the National Environmental Policy Act of
18 1969.

19 (4) Preparation of any draft document required
20 under the National Environmental Policy Act of
21 1969.

22 (5) Preparation of a final document required
23 under the National Environmental Policy Act of
24 1969.

1 (6) Consultations required under applicable
2 laws.

3 (7) Submission and review of any comments re-
4 quired under applicable law.

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

7 (9) A final or any interim decisions.

8 (e) In no case should the total review process de-
9 scribed in subsection (d) exceed 30 months unless agreed
10 to by the signatories of the agreement.

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

15 (g) The lead agency will determine the amount of fi-
16 nancial assurance for reclamation of a mineral exploration
17 or mining site, which must cover the estimated cost if the
18 lead agency were to contract with a third party to reclaim
19 the operations according to the reclamation plan, includ-
20 ing construction and maintenance costs for any treatment
21 facilities necessary to meet Federal, State or tribal envi-
22 ronmental standards.

23 **SEC. 103. CONSERVATION OF THE RESOURCE.**

24 In developing the mineral exploration or mine permit,
25 the priority of the lead agency shall be to maximize the

1 development of the mineral resource, while mitigating en-
2 vironmental impacts, so that more of the mineral resource
3 can be brought to the market place.

4 **SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EX-**
5 **PLORATION AND MINING PROJECTS.**

6 (a) PREPARATION OF FEDERAL NOTICES FOR MIN-
7 ERAL EXPLORATION AND MINE DEVELOPMENT
8 PROJECTS.—The preparation of Federal Register notices
9 required by law associated with the issuance of a mineral
10 exploration or mine permit shall be delegated to the orga-
11 nization level within the agency responsible for issuing the
12 mineral exploration or mine permit. All Federal Register
13 notices regarding official document availability, announce-
14 ments of meetings, or notices of intent to undertake an
15 action shall be originated and transmitted to the Federal
16 Register from the office where documents are held, meet-
17 ings are held, or the activity is initiated.

18 (b) DEPARTMENTAL REVIEW OF FEDERAL REG-
19 ISTER NOTICES FOR MINERAL EXPLORATION AND MIN-
20 ING PROJECTS.—Absent any extraordinary circumstance
21 or except as otherwise required by any Act of Congress,
22 each Federal Register notice described in subsection (a)
23 shall undergo any required reviews within the Department
24 of the Interior or the Department of Agriculture and be

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

3 **TITLE II—JUDICIAL REVIEW OF**
4 **AGENCY ACTIONS RELATING**
5 **TO EXPLORATION AND MINE**
6 **PERMITS**

7 **SEC. 201. DEFINITIONS FOR TITLE.**

8 In this title the term “covered civil action” means a
9 civil action containing a claim under section 702 of title
10 5, United States Code, regarding agency action affecting
11 a mineral exploration or mine permit.

12 **SEC. 202. TIMELY FILINGS.**

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

16 **SEC. 203. EXPEDITION IN HEARING AND DETERMINING THE**
17 **ACTION.**

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

20 **SEC. 204. LIMITATION ON PROSPECTIVE RELIEF.**

21 In a covered civil action, the court shall not grant
22 or approve any prospective relief unless the court finds
23 that such relief is narrowly drawn, extends no further than
24 necessary to correct the violation of a legal requirement,

1 and is the least intrusive means necessary to correct that
2 violation.

3 **SEC. 205. LIMITATION ON ATTORNEYS' FEES.**

4 Sections 504 of title 5, United States Code, and 2412
5 of title 28, United States Code (together commonly called
6 the Equal Access to Justice Act) do not apply to a covered
7 civil action, nor shall any party in such a covered civil ac-
8 tion receive payment from the Federal Government for
9 their attorneys' fees, expenses, and other court costs.

