

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4402

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IN THE SENATE OF THE UNITED STATES

JULY 16, 2012

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

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## 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.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7        Congress finds the following:

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

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

19            (3) The exploration, production, processing,  
20            use, and recycling of minerals contribute signifi-  
21            cantly to the economic well-being, security and gen-  
22            eral welfare of the Nation.

23            (4) The United States has vast mineral re-  
24            sources, but is becoming increasingly dependent

1 upon foreign sources of these mineral materials, as  
2 demonstrated by the following:

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

10 (B) By 2011 the United States import de-  
11 pendence for nonfuel mineral materials had  
12 more than doubled from 30 to 67 commodities,  
13 19 of which the United States imported 100  
14 percent of the Nation's requirements, and for  
15 another 24 commodities, imported more than  
16 50 percent of the Nation's needs.

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

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

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

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

6 (A) for national defense and national secu-  
7 rity requirements;

8 (B) for the Nation’s energy infrastructure,  
9 including pipelines, refining capacity, electrical  
10 power generation and transmission, and renew-  
11 able energy production;

12 (C) to support domestic manufacturing,  
13 agriculture, housing, telecommunications,  
14 healthcare, and transportation infrastructure;  
15 and

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

18 (2) AGENCY.—The term “agency” means any  
19 agency, department, or other unit of Federal, State,  
20 local, or tribal government, or Alaska Native Cor-  
21 poration.

22 (3) MINERAL EXPLORATION OR MINE PER-  
23 MIT.—The term “mineral exploration or mine per-  
24 mit” includes plans of operation issued by the Bu-  
25 reau of Land Management and the Forest Service

1       pursuant to 43 CFR 3809 and 36 CFR 228A re-  
2       spectively.

3       **TITLE I—DEVELOPMENT OF DO-**  
4       **MESTIC SOURCES OF STRA-**  
5       **TEGIC AND CRITICAL MIN-**  
6       **ERALS**

7       **SEC. 101. IMPROVING DEVELOPMENT OF STRATEGIC AND**  
8       **CRITICAL MINERALS.**

9       Domestic mines that will provide strategic and crit-  
10      ical minerals shall be considered an “infrastructure  
11      project” as described in Presidential Order “Improving  
12      Performance of Federal Permitting and Review of Infra-  
13      structure Projects” dated March 22, 2012.

14      **SEC. 102. RESPONSIBILITIES OF THE LEAD AGENCY.**

15      (a) IN GENERAL.—The lead agency with responsi-  
16      bility for issuing a mineral exploration or mine permit  
17      shall appoint a project lead who shall coordinate and con-  
18      sult with other agencies, cooperating agencies, project pro-  
19      ponents and contractors to ensure that agencies minimize  
20      delays, set and adhere to timelines and schedules for com-  
21      pletion of reviews, set clear permitting goals and track  
22      progress against those goals.

23      (b) The lead agency with responsibility for issuing a  
24      mineral exploration or mine permit shall determine any  
25      such action would not constitute a major Federal action

1 significantly affecting the quality of the human environ-  
2 ment within the meaning of the National Environmental  
3 Policy Act of 1969 if the procedural and substantive safe-  
4 guards of the lead agency's permitting process alone, any  
5 applicable State permitting process alone, or a combina-  
6 tion of the two processes together provide an adequate  
7 mechanism to ensure that environmental factors are taken  
8 into account.

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

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

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

22 (d) At the request of a project proponent, the project  
23 lead of the agency with responsibility for issuing a mineral  
24 exploration or mine permit shall enter into an agreement  
25 with the project proponent and other cooperating agencies

1 that sets time limits for each part of the permit review  
2 process including the following:

3 (1) The decision on whether to prepare a docu-  
4 ment required under the National Environmental  
5 Policy Act of 1969.

6 (2) A determination of the scope of any docu-  
7 ment required under the National Environmental  
8 Policy Act of 1969.

9 (3) The scope of and schedule for the baseline  
10 studies required to prepare a document required  
11 under the National Environmental Policy Act of  
12 1969.

13 (4) Preparation of any draft document required  
14 under the National Environmental Policy Act of  
15 1969.

16 (5) Preparation of a final document required  
17 under the National Environmental Policy Act of  
18 1969.

19 (6) Consultations required under applicable  
20 laws.

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

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

25 (9) A final or any interim decisions.

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

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

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

16 (h) This section shall apply with respect to a mineral  
17 exploration or mine permit for which an application was  
18 submitted before the date of the enactment of this Act  
19 if the applicant for the permit submits a written request  
20 to the lead agency for the permit. The lead agency shall  
21 begin implementing this section with respect to such appli-  
22 cation within 30 days after receiving such written request.

23 (i) With respect to strategic and critical materials  
24 within a federally administered unit of the National Forest  
25 System, the lead agency shall—

1           (1) exempt all areas of identified mineral re-  
2           sources in Land Use Designations, other than Non-  
3           Development Land Use Designations, in existence as  
4           of the date of the enactment of this Act from the  
5           procedures detailed at and all rules promulgated  
6           under part 294 of title 36, Code for Federal Regula-  
7           tions;

8           (2) apply such exemption to all additional  
9           routes and areas that the lead agency finds nec-  
10          essary to facilitate the construction, operation, main-  
11          tenance, and restoration of the areas of identified  
12          mineral resources described in paragraph (1); and

13          (3) continue to apply such exemptions after ap-  
14          proval of the Minerals Plan of Operations for the  
15          unit of the National Forest System.

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

17          In developing the mineral exploration or mine permit,  
18          the priority of the lead agency shall be to maximize the  
19          development of the mineral resource, while mitigating en-  
20          vironmental impacts, so that more of the mineral resource  
21          can be brought to the market place.

22 **SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EX-**  
23 **PLORATION AND MINING PROJECTS.**

24          (a) PREPARATION OF FEDERAL NOTICES FOR MIN-  
25          ERAL EXPLORATION AND MINE DEVELOPMENT

1 PROJECTS.—The preparation of Federal Register notices  
2 required by law associated with the issuance of a mineral  
3 exploration or mine permit shall be delegated to the orga-  
4 nization level within the agency responsible for issuing the  
5 mineral exploration or mine permit. All Federal Register  
6 notices regarding official document availability, announce-  
7 ments of meetings, or notices of intent to undertake an  
8 action shall be originated and transmitted to the Federal  
9 Register from the office where documents are held, meet-  
10 ings are held, or the activity is initiated.

11 (b) DEPARTMENTAL REVIEW OF FEDERAL REG-  
12 ISTER NOTICES FOR MINERAL EXPLORATION AND MIN-  
13 ING PROJECTS.—Absent any extraordinary circumstance  
14 or except as otherwise required by any Act of Congress,  
15 each Federal Register notice described in subsection (a)  
16 shall undergo any required reviews within the Department  
17 of the Interior or the Department of Agriculture and be  
18 published in its final form in the Federal Register no later  
19 than 30 days after its initial preparation.

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

5 **SEC. 201. DEFINITIONS FOR TITLE.**

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

10 **SEC. 202. TIMELY FILINGS.**

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

14 **SEC. 203. EXPEDITION IN HEARING AND DETERMINING THE**  
15 **ACTION.**

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

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

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

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

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

      Passed the House of Representatives July 12, 2012.

Attest:

KAREN L. HAAS,

*Clerk.*