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1ST SESSION

# H. R. 1937

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IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2015

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 2015”.

6 **SEC. 2. FINDINGS.**

7        Congress finds the following:

8            (1) The industrialization of developing nations  
9        has driven demand for nonfuel minerals necessary  
10       for telecommunications, military technologies,  
11       healthcare technologies, and conventional and renew-  
12       able 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-  
19       cantly to the economic well-being, security, and gen-  
20       eral welfare of the Nation.

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

1 (A) Twenty-five years ago the United  
2 States was dependent on foreign sources for 45  
3 nonfuel mineral materials, 8 of which the  
4 United States imported 100 percent of the Na-  
5 tion's requirements, and for another 19 com-  
6 modities the United States imported more than  
7 50 percent of the Nation's needs.

8 (B) By 2014 the United States import de-  
9 pendence for nonfuel mineral materials in-  
10 creased from 45 to 65 commodities, 19 of which  
11 the United States imported for 100 percent of  
12 the Nation's requirements, and an additional 24  
13 of which the United States imported for more  
14 than 50 percent of the Nation's needs.

15 (C) The United States share of worldwide  
16 mineral exploration dollars was 7 percent in  
17 2014, down from 19 percent in the early 1990s.

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

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

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

4           (A) for national defense and national secu-  
5 rity requirements;

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

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

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

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

20           (3) MINERAL EXPLORATION OR MINE PER-  
21 MIT.—The term “mineral exploration or mine per-  
22 mit” includes—

23           (A) Bureau of Land Management and For-  
24 est Service authorizations for pre-mining activi-  
25 ties that require environmental analyses pursu-

1 ant to the National Environmental Policy Act  
2 of 1969 (42 U.S.C. 4321 et seq.); and

3 (B) plans of operation issued by the Bu-  
4 reau of Land Management and the Forest Serv-  
5 ice pursuant to 43 CFR 3809 and 36 CFR  
6 228A or the authorities listed in 43 CFR  
7 3503.13, respectively, as amended from time to  
8 time.

9 **TITLE I—DEVELOPMENT OF DO-**  
10 **MESTIC SOURCES OF STRA-**  
11 **TEGIC AND CRITICAL MIN-**  
12 **ERALS**

13 **SEC. 101. IMPROVING DEVELOPMENT OF STRATEGIC AND**  
14 **CRITICAL MINERALS.**

15 Domestic mines that will provide strategic and crit-  
16 ical minerals shall be considered an “infrastructure  
17 project” as described in Presidential order “Improving  
18 Performance of Federal Permitting and Review of Infra-  
19 structure Projects” dated March 22, 2012.

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

21 (a) IN GENERAL.—The lead agency with responsi-  
22 bility for issuing a mineral exploration or mine permit  
23 shall appoint a project lead within the lead agency who  
24 shall coordinate and consult with cooperating agencies and  
25 any other agency involved in the permitting process,

1 project proponents and contractors to ensure that agencies  
2 minimize delays, set and adhere to timelines and schedules  
3 for completion of the permitting process, set clear permit-  
4 ting goals and track progress against those goals.

5 (b) DETERMINATION UNDER NEPA.—

6 (1) IN GENERAL.—To the extent that the Na-  
7 tional Environmental Policy Act of 1969 (42 U.S.C.  
8 4321 et seq.) applies to the issuance of any mineral  
9 exploration or mine permit, the requirements of such  
10 Act shall be deemed to have been procedurally and  
11 substantively satisfied if the lead agency determines  
12 that any State and/or Federal agency acting pursu-  
13 ant to State or Federal (or both) statutory or proce-  
14 dural authorities, has addressed or will address the  
15 following factors:

16 (A) The environmental impact of the ac-  
17 tion to be conducted under the permit.

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

20 (C) Possible alternatives to issuance of the  
21 permit.

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

1           (E) Any irreversible and irretrievable com-  
2           mitment of resources that would be involved in  
3           the proposed action.

4           (F) That public participation will occur  
5           during the decisionmaking process for author-  
6           izing actions under the permit.

7           (2) WRITTEN REQUIREMENT.—In reaching a  
8           determination under paragraph (1), the lead agency  
9           shall, by no later than 90 days after receipt of an  
10          application for the permit, in a written record of de-  
11          cision—

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

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

16           (C) show that the facts in the record could  
17           allow a reasonable person to reach the same de-  
18           termination as the lead agency did.

19          (c) COORDINATION ON PERMITTING PROCESS.—The  
20          lead agency with responsibility for issuing a mineral explo-  
21          ration or mine permit shall enhance government coordina-  
22          tion for the permitting process by avoiding duplicative re-  
23          views, minimizing paperwork, and engaging other agencies  
24          and stakeholders early in the process. For purposes of this

1 subsection, the lead agency shall consider the following  
2 practices:

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

6           (2) Conducting any consultations or reviews  
7           concurrently rather than sequentially to the extent  
8           practicable and when such concurrent review will ex-  
9           pedite rather than delay a decision.

10          (d) MEMORANDUM OF AGENCY AGREEMENT.—If re-  
11          quested at any time by a State or local planning agency,  
12          the lead agency with responsibility for issuing a mineral  
13          exploration or mine permit, in consultation with other  
14          Federal agencies with relevant jurisdiction in the environ-  
15          mental review process, may establish memoranda of agree-  
16          ment with the project sponsor, State and local govern-  
17          ments, and other appropriate entities to accomplish the  
18          early coordination activities described in subsection (c).

19          (e) SCHEDULE FOR PERMITTING PROCESS.—For any  
20          project for which the lead agency cannot make the deter-  
21          mination described in 102(b), at the request of a project  
22          proponent the lead agency, cooperating agencies, and any  
23          other agencies involved with the mineral exploration or  
24          mine permitting process shall enter into an agreement

1 with the project proponent that sets time limits for each  
2 part of the permitting process, including for the following:

3 (1) The decision on whether to prepare a docu-  
4 ment required under the National Environmental  
5 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

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           (f) TIME LIMIT FOR PERMITTING PROCESS.—In no  
2 case should the total review process described in sub-  
3 section (d) exceed 30 months unless extended by the sig-  
4 natories of the agreement.

5           (g) LIMITATION ON ADDRESSING PUBLIC COM-  
6 MENTS.—The lead agency is not required to address agen-  
7 cy or public comments that were not submitted during any  
8 public comment periods or consultation periods provided  
9 during the permitting process or as otherwise required by  
10 law.

11          (h) FINANCIAL ASSURANCE.—The lead agency will  
12 determine the amount of financial assurance for reclama-  
13 tion of a mineral exploration or mining site, which must  
14 cover the estimated cost if the lead agency were to con-  
15 tract with a third party to reclaim the operations accord-  
16 ing to the reclamation plan, including construction and  
17 maintenance costs for any treatment facilities necessary  
18 to meet Federal, State or tribal environmental standards.

19          (i) APPLICATION TO EXISTING PERMIT APPLICA-  
20 TIONS.—This section shall apply with respect to a mineral  
21 exploration or mine permit for which an application was  
22 submitted before the date of the enactment of this Act  
23 if the applicant for the permit submits a written request  
24 to the lead agency for the permit. The lead agency shall

1 begin implementing this section with respect to such appli-  
2 cation within 30 days after receiving such written request.

3 (j) STRATEGIC AND CRITICAL MINERALS WITHIN  
4 NATIONAL FORESTS.—With respect to strategic and crit-  
5 ical minerals within a federally administered unit of the  
6 National Forest System, the lead agency shall—

7 (1) exempt all areas of identified mineral re-  
8 sources in Land Use Designations, other than Non-  
9 Development Land Use Designations, in existence as  
10 of the date of the enactment of this Act from the  
11 procedures detailed at and all rules promulgated  
12 under part 294 of title 36, Code of Federal Regula-  
13 tions;

14 (2) apply such exemption to all additional  
15 routes and areas that the lead agency finds nec-  
16 essary to facilitate the construction, operation, main-  
17 tenance, and restoration of the areas of identified  
18 mineral resources described in paragraph (1); and

19 (3) continue to apply such exemptions after ap-  
20 proval of the Minerals Plan of Operations for the  
21 unit of the National Forest System.

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

23 In evaluating and issuing any mineral exploration or  
24 mine permit, the priority of the lead agency shall be to  
25 maximize the development of the mineral resource, while

1 mitigating environmental impacts, so that more of the  
2 mineral resource can be brought to the marketplace.

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

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

17 (b) DEPARTMENTAL REVIEW OF FEDERAL REG-  
18 ISTER NOTICES FOR MINERAL EXPLORATION AND MIN-  
19 ING PROJECTS.—Absent any extraordinary circumstance  
20 or except as otherwise required by any Act of Congress,  
21 each Federal Register notice described in subsection (a)  
22 shall undergo any required reviews within the Department  
23 of the Interior or the Department of Agriculture and be  
24 published in its final form in the Federal Register no later  
25 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 against the Federal Government containing a  
8 claim under section 702 of title 5, United States Code,  
9 regarding agency action affecting a mineral exploration or  
10 mine permit.

11 **SEC. 202. TIMELY FILINGS.**

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

15 **SEC. 203. RIGHT TO INTERVENE.**

16 The holder of any mineral exploration or mine permit  
17 may intervene as of right in any covered civil action by  
18 a person affecting rights or obligations of the permit hold-  
19 er under the permit.

20 **SEC. 204. EXPEDITION IN HEARING AND DETERMINING THE**  
21 **ACTION.**

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

1 **SEC. 205. LIMITATION ON PROSPECTIVE RELIEF.**

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

8 **SEC. 206. LIMITATION ON ATTORNEYS' FEES.**

9 Section 504 of title 5, United States Code, and sec-  
10 tion 2412 of title 28, United States Code (together com-  
11 monly called the Equal Access to Justice Act) do not apply  
12 to a covered civil action, nor shall any party in such a  
13 covered civil action receive payment from the Federal Gov-  
14 ernment for their attorneys' fees, expenses, and other  
15 court costs.

16 **TITLE III—MISCELLANEOUS**  
17 **PROVISIONS**

18 **SEC. 301. SECRETARIAL ORDER NOT AFFECTED.**

19 This Act shall not apply to any mineral described in  
20 Secretarial Order No. 3324, issued by the Secretary of

- 1 the Interior on December 3, 2012, in any area to which
- 2 the order applies.

Passed the House of Representatives October 22,  
2015.

Attest:

KAREN L. HAAS,

*Clerk.*