

JULY 3, 2013

RULES COMMITTEE PRINT 113-17
H.R. 761, THE NATIONAL STRATEGIC AND
CRITICAL MINERALS PRODUCTION ACT OF 2013

**[Showing the bill 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 2013”.

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 worldwide
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 or

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 (3) MINERAL EXPLORATION OR MINE PER-
2 MIT.—The term “mineral exploration or mine per-
3 mit” includes plans of operation issued by the Bu-
4 reau of Land Management and the Forest Service
5 pursuant to 43 C.F.R. 3809 and 36 C.F.R. 228A or
6 the authorities listed in 43 C.F.R. 3503.13, respec-
7 tively.

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

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

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

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

20 (a) IN GENERAL.—The lead agency with responsi-
21 bility for issuing a mineral exploration or mine permit
22 shall appoint a project lead who shall coordinate and con-
23 sult with cooperating agencies and any other agency in-
24 volved in the permitting process, project proponents and
25 contractors to ensure that agencies minimize delays, set

1 and adhere to timelines and schedules for completion of
2 the permitting process, set clear permitting goals and
3 track progress against those goals.

4 (b) DETERMINATION UNDER NEPA.—To the extent
5 that the National Environmental Policy Act of 1969 ap-
6 plies to any mineral exploration or mine permit, the lead
7 agency with responsibility for issuing a mineral explo-
8 ration or mine permit shall determine that the action to
9 approve the exploration or mine permit does not constitute
10 a major Federal action significantly affecting the quality
11 of the human environment within the meaning of the Na-
12 tional Environmental Policy Act of 1969 if the procedural
13 and substantive safeguards of the permitting process
14 alone, any applicable State permitting process alone, or
15 a combination of the two processes together provide an
16 adequate mechanism to ensure that environmental factors
17 are taken into account.

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

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

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

8 (d) SCHEDULE FOR PERMITTING PROCESS.—At the
9 request of a project proponent, the lead agency, cooper-
10 ating agencies and any other agencies involved with the
11 mineral exploration or mine permitting process shall enter
12 into an agreement with the project proponent that sets
13 time limits for each part of the permitting process includ-
14 ing the following:

15 (1) The decision on whether to prepare a docu-
16 ment required under the National Environmental
17 Policy Act of 1969.

18 (2) A determination of the scope of any docu-
19 ment required under the National Environmental
20 Policy Act of 1969.

21 (3) The scope of and schedule for the baseline
22 studies required to prepare a document required
23 under the National Environmental Policy Act of
24 1969.

1 (4) Preparation of any draft document required
2 under the National Environmental Policy Act of
3 1969.

4 (5) Preparation of a final document required
5 under the National Environmental Policy Act of
6 1969.

7 (6) Consultations required under applicable
8 laws.

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

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

13 (9) A final or any interim decisions.

14 (e) TIME LIMIT FOR PERMITTING PROCESS.—In no
15 case should the total review process described in sub-
16 section (d) exceed 30 months unless agreed to by the sig-
17 natories of the agreement.

18 (f) LIMITATION ON ADDRESSING PUBLIC COM-
19 MENTS.—The lead agency is not required to address agen-
20 cy or public comments that were not submitted during any
21 public comment periods or consultation periods provided
22 during the permitting process or as otherwise required by
23 law.

24 (g) FINANCIAL ASSURANCE.—The lead agency will
25 determine the amount of financial assurance for reclama-

1 tion of a mineral exploration or mining site, which must
2 cover the estimated cost if the lead agency were to con-
3 tract with a third party to reclaim the operations accord-
4 ing to the reclamation plan, including construction and
5 maintenance costs for any treatment facilities necessary
6 to meet Federal, State or tribal environmental standards.

7 (h) APPLICATION TO EXISTING PERMIT APPLICA-
8 TIONS.—This section shall apply with respect to a mineral
9 exploration or mine permit for which an application was
10 submitted before the date of the enactment of this Act
11 if the applicant for the permit submits a written request
12 to the lead agency for the permit. The lead agency shall
13 begin implementing this section with respect to such appli-
14 cation within 30 days after receiving such written request.

15 (i) STRATEGIC AND CRITICAL MINERALS WITHIN
16 NATIONAL FORESTS.—With respect to strategic and crit-
17 ical minerals within a federally administered unit of the
18 National Forest System, the lead agency shall—

19 (1) exempt all areas of identified mineral re-
20 sources in Land Use Designations, other than Non-
21 Development Land Use Designations, in existence as
22 of the date of the enactment of this Act from the
23 procedures detailed at and all rules promulgated
24 under part 294 of title 36, Code for Federal Regula-
25 tions;

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

6 (3) continue to apply such exemptions after ap-
7 proval of the Minerals Plan of Operations for the
8 unit of the National Forest System.

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

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

15 **SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EX-**
16 **PLORATION AND MINING PROJECTS.**

17 (a) PREPARATION OF FEDERAL NOTICES FOR MIN-
18 ERAL EXPLORATION AND MINE DEVELOPMENT
19 PROJECTS.—The preparation of Federal Register notices
20 required by law associated with the issuance of a mineral
21 exploration or mine permit shall be delegated to the orga-
22 nization level within the agency responsible for issuing the
23 mineral exploration or mine permit. All Federal Register
24 notices regarding official document availability, announce-
25 ments of meetings, or notices of intent to undertake an

1 action shall be originated and transmitted to the Federal
2 Register from the office where documents are held, meet-
3 ings are held, or the activity is initiated.

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

13 **TITLE II—JUDICIAL REVIEW OF**
14 **AGENCY ACTIONS RELATING**
15 **TO EXPLORATION AND MINE**
16 **PERMITS**

17 **SEC. 201. DEFINITIONS FOR TITLE.**

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

1 **SEC. 202. TIMELY FILINGS.**

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

5 **SEC. 203. RIGHT TO INTERVENE.**

6 The holder of any mineral exploration or mine permit
7 may intervene as of right in any covered civil action by
8 a person affecting rights or obligations of the permit hold-
9 er under the permit.

10 **SEC. 204. EXPEDITION IN HEARING AND DETERMINING THE**
11 **ACTION.**

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

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

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

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

22 Sections 504 of title 5, United States Code, and 2412
23 of title 28, United States Code (together commonly called
24 the Equal Access to Justice Act) do not apply to a covered
25 civil action, nor shall any party in such a covered civil ac-

1 tion receive payment from the Federal Government for
2 their attorneys' fees, expenses, and other court costs.

