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117TH CONGRESS
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H. R. 2604

To improve the permitting process for critical mineral projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2021

Mr. STAUBER (for himself, Mr. NEWHOUSE, Mr. WESTERMAN, Mrs. CAMMACK, Ms. TENNEY, Mr. LAMALFA, Mr. MCKINLEY, Mr. GROTHMAN, Mr. EMMER, Mrs. MILLER of Illinois, Mr. ROSENDALE, Mr. STEWART, Mr. BAIRD, and Mr. TIFFANY) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To improve the permitting process for critical mineral projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Accessing America's Critical Minerals Act of 2021".

SEC. 2. PERMITTING.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) critical minerals are fundamental to the economy, competitiveness, and security of the United States;

(2) to the maximum extent practicable, the critical mineral needs of the United States should be satisfied by minerals, elements, substances, and materials responsibly produced and recycled in the United States; and

(3) the current Federal permitting process is an impediment to mineral production and the mineral security of the United States.

(b) COORDINATION ON PERMITTING PROCESS.—

(1) IN GENERAL.—The Secretary, in consultation with appropriate Federal agencies, shall, to the maximum extent practicable, with respect to the Federal permitting and review process for critical mineral projects on Federal land—

(A) establish and adhere to timelines and schedules for the consideration of, and final decisions regarding, applications, operating plans, leases, licenses, permits, and other use authorizations for mineral-related activities on Federal land;

(B) establish clear, quantifiable, and temporal permitting performance goals and tracking progress against those goals;

(C) engage in early collaboration among agencies, project sponsors, and affected stakeholders—

(i) to incorporate and address the interests of each such agency, sponsor, and stakeholder; and

(ii) to minimize delays;

(D) ensure transparency and accountability by using cost-effective information technology to collect and disseminate information regarding individual critical mineral projects and agency performance;

(E) engage in early and active consultation with State and local governments and Indian Tribes to avoid conflicts or duplication of effort, resolve concerns, and allow for concurrent, rather than sequential, State, local, Tribal, and Federal environmental and regulatory reviews;

(F) meet or exceed the performance metrics contained in subsection (g);

(G) expand and institutionalize permitting and review process improvements that have proven effective;

(H) develop mechanisms to better communicate priorities and resolve disputes among agencies at the national, regional, State, and local levels; and

(I) develop other practices to improve the regulatory processes, such as preapplication procedures.

(2) CONSIDERATIONS.—In carrying out paragraph (1), the lead agency shall consider deferring to, and relying on, baseline data, analyses, and reviews performed by State agencies with jurisdiction over the proposed critical mineral project.

(3) MEMORANDUM OF AGREEMENT.—The lead agency with respect to a critical mineral project on Federal land, in consultation with any other Federal agency with jurisdiction over such project, shall, upon request of the project sponsor, a State or local government, an Indian Tribe, or other entity such lead agency determines appropriate, establish a memorandum of agreement with the project sponsor, a State or local government, an Indian Tribe, or another entity such lead agency determines appropriate

to carry out the activities described in this subsection.

(4) TIME LIMIT FOR PERMITTING PROCESS.—Notwithstanding any other provision of law, and except with agreement of the project sponsor, the total period for all necessary Federal reviews and permit consideration for a critical mineral project on Federal land reasonably expected to produce critical minerals may not exceed—

(A) with respect to a project that requires an environmental assessment under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(2)(C)), 18 months; or

(B) with respect to a project that requires an environmental impact statement under such section, 24 months.

(c) DETERMINATION UNDER NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) IN GENERAL.—To the extent that the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) applies to the issuance of any mineral exploration or mine permit relating to a critical mineral project, the lead agency may deem the requirements of such Act satisfied if the lead agency deter-

mines that a State or Federal agency acting under State or Federal law has addressed the following factors:

(A) The environmental impact of the action to be conducted under the permit.

(B) Possible alternatives to issuance of the permit.

(C) The relationship between long- and short-term uses of the local environment and the maintenance and enhancement of long-term productivity.

(D) Any irreversible and irretrievable commitment of resources that would be involved in the proposed action.

(2) PUBLICATION.—The lead agency shall publish a determination under paragraph (1) not later than 90 days after receipt of an application for the permit.

(3) VERIFICATION.—The lead agency shall publish a determination that the factors under paragraph (1) have been sufficiently addressed and public participation has occurred with regard to any authorizing actions before issuing any mineral exploration or mine permit for a critical mineral project.

(d) SCHEDULE FOR PERMITTING PROCESS.—For any critical mineral project for which the lead agency cannot make the determination described in subsection (c), at the request of a project sponsor, the lead agency, cooperating agencies, and any other agencies involved with the mineral exploration or mine permitting process shall enter into an agreement with the project sponsor that sets time limits for each part of the permitting process, including—

(1) the decision on whether to prepare an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) a determination of the scope of any environmental impact statement or similar analysis required under such Act;

(3) the scope of, and schedule for, the baseline studies required to prepare an environmental impact statement or similar analysis required under such Act;

(4) preparation of any draft environmental impact statement or similar analysis required under such Act;

(5) preparation of a final environmental impact statement or similar analysis required under such Act;

(6) any consultations required under applicable law;

(7) submission and review of any comments required under applicable law;

(8) publication of any public notices required under applicable law; and

(9) any final or interim decisions.

(e) ADDRESSING PUBLIC COMMENTS.—As part of the review process of a critical mineral project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the lead agency may not address any agency or public comments that were not submitted—

(1) during a public comment period or consultation period provided during the permitting process; or

(2) as otherwise required by law.

(f) REVIEW AND REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of Agriculture shall submit to Congress a report that—

(1) identifies additional measures (including regulatory and legislative proposals, as appropriate)

that would increase the timeliness of permitting activities for the exploration and development of domestic critical minerals;

(2) identifies options (including cost recovery paid by permit applicants, as appropriate) for ensuring adequate staffing and training of Federal entities and personnel responsible for the consideration of applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral projects on Federal land;

(3) quantifies the amount of time typically required (including a range derived from minimum and maximum durations, mean, median, variance, and any other statistical measure or representation the Secretary and the Secretary of Agriculture determine appropriate) to complete each step (including those aspects outside the control of the executive branch, such as judicial review, applicant decisions, or State and local government involvement) associated with the development and processing of applications, operating plans, leases, licenses, permits, and other use authorizations for a mineral exploration or mine permit for a critical mineral project; and

(4) describes actions carried out pursuant to subsection (b).

(g) PERFORMANCE METRIC.—Not later than 90 days after the date of submission of the report under subsection (e), the Secretary and the Secretary of Agriculture, after providing public notice and an opportunity to comment, shall develop and publish a performance metric for evaluating the progress made by the executive branch to expedite the permitting of critical mineral projects.

(h) ANNUAL REPORTS.—Beginning with the first budget submission by the President under section 1105 of title 31, United States Code, after publication of the performance metric required under subsection (f), and annually thereafter, the Secretary and the Secretary of Agriculture shall jointly submit to Congress a report that—

(1) summarizes the implementation of recommendations, measures, and options identified in paragraphs (1) and (2) of subsection (f);

(2) using the performance metric under subsection (d), describes progress made by the executive branch, as compared to the baseline established pursuant to subsection (c)(3), on expediting the permitting of activities that will increase exploration for, and development of, domestic critical minerals; and

(3) compares the United States to other countries in terms of permitting efficiency and any other

criteria relevant to the globally competitive critical minerals industry.

(i) INDIVIDUAL PROJECTS.—Using data from the Secretary of Agriculture and the Secretary generated under subsection (g), the Director of the Office of Management and Budget shall prioritize inclusion of individual critical mineral projects on the website operated by the Office of Management and Budget in accordance with section 1122 of title 31, United States Code.

(j) REPORT OF SMALL BUSINESS ADMINISTRATION.—Not later than 1 year and 300 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall submit to the Committees on Small Business and Natural Resources of the House of Representatives and Small Business and Entrepreneurship and Energy and Natural Resources of the Senate a report that assesses the performance of Federal agencies with respect to—

(1) complying with chapter 6 of title 5, United States Code, in promulgating regulations applicable to the critical minerals industry; and

(2) performing an analysis of regulations applicable to the critical minerals industry that may be outmoded, inefficient, duplicative, or excessively burdensome.

(k) DEFINITIONS.—In this section:

(1) BYPRODUCT.—The term ''byproduct'' has the meaning given such term in section 7002 of the Consolidated Appropriations Act, 2021 (Public Law 116–260).

(2) CRITICAL MINERAL.—The term ''critical mineral'' has the meaning given such term in section 7002 of the Consolidated Appropriations Act, 2021 (Public Law 116–260) except that such term shall not exclude materials described in subsection (a)(3)(B)(iii) of such section.

(3) CRITICAL MINERAL PROJECT.—The term ''critical mineral project'' means a project—

(A) located on—

(i) a mining claim, millsite claim, or tunnel site claim for any locatable mineral;

(ii) lands open to mineral entry; or

(iii) a Federal mineral lease; and

(B) for the purpose of producing a critical mineral, including—

(i) as a byproduct, or a product of a host mineral, or from tailings; or

(ii) through an exploration project with respect to which the presence of a by-product is a reasonable expectation, based

on known mineral companionality, geologic formation, mineralogy, or other factors.

(4) INDIAN TRIBE.—The term ''Indian Tribe'' has the meaning given such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—The term ''State'' means—

(A) a State;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico;

(D) Guam;

(E) American Samoa;

(F) the Commonwealth of the Northern Mariana Islands; and

(G) the United States Virgin Islands.

(7) LEAD AGENCY.—The term ''lead agency'' means the agency with primary responsibility for issuing a mineral exploration or mine permit for a project.

(8) MINERAL EXPLORATION OR MINE PERMIT.—The term ''mineral exploration or mine permit'' means—

(A) an authorization of the Bureau of Land Management or the Forest Service, as applicable, for a premining activity that requires analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) a plan of operations issued by the Bureau of Land Management or the Forest Service; and

(C) a permit for a project located in an area for which a hardrock mineral permit or lease is available.

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