

113TH CONGRESS  
1ST SESSION

# H. R. 761

---

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2013

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

---

## 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 2013”.

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 worldwide  
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 or

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 or the  
2       authorities listed in 43 CFR 3503.13, respectively.

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 cooperating agencies and any other agency in-  
19      volved in the permitting process, project proponents and  
20      contractors to ensure that agencies minimize delays, set  
21      and adhere to timelines and schedules for completion of  
22      the permitting process, set clear permitting goals and  
23      track progress against those goals.

24      (b) DETERMINATION UNDER NEPA.—To the extent  
25      that the National Environmental Policy Act of 1969 ap-

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

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

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

23 (2) Conducting any consultations or reviews  
24 concurrently rather than sequentially to the extent

1       practicable and when such concurrent review will ex-  
2       pedite rather than delay a decision.

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

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

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

16           (3) The scope of and schedule for the baseline  
17           studies required to prepare a document required  
18           under the National Environmental Policy Act of  
19           1969.

20           (4) Preparation of any draft document required  
21           under the National Environmental Policy Act of  
22           1969.

23           (5) Preparation of a final document required  
24           under the National Environmental Policy Act of  
25           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) TIME LIMIT FOR PERMITTING PROCESS.—In no  
9 case should the total review process described in sub-  
10 section (d) exceed 30 months unless agreed to by the sig-  
11 natories of the agreement.

12          (f) LIMITATION ON ADDRESSING PUBLIC COM-  
13 MENTS.—The lead agency is not required to address agen-  
14 cy or public comments that were not submitted during any  
15 public comment periods or consultation periods provided  
16 during the permitting process or as otherwise required by  
17 law.

18          (g) FINANCIAL ASSURANCE.—The lead agency will  
19 determine the amount of financial assurance for reclama-  
20 tion of a mineral exploration or mining site, which must  
21 cover the estimated cost if the lead agency were to con-  
22 tract with a third party to reclaim the operations accord-  
23 ing to the reclamation plan, including construction and  
24 maintenance costs for any treatment facilities necessary  
25 to meet Federal, State or tribal environmental standards.



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

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

13           (1) exempt all areas of identified mineral re-  
14 sources in Land Use Designations, other than Non-  
15 Development Land Use Designations, in existence as  
16 of the date of the enactment of this Act from the  
17 procedures detailed at and all rules promulgated  
18 under part 294 of title 36, Code for Federal Regula-  
19 tions;

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

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

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

5           In evaluating and issuing any mineral exploration or  
6 mine permit, the priority of the lead agency shall be to  
7 maximize the development of the mineral resource, while  
8 mitigating environmental impacts, so that more of the  
9 mineral resource can be brought to the market place.

10 **SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EX-**  
11 **PLORATION AND MINING PROJECTS.**

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

24           (b) DEPARTMENTAL REVIEW OF FEDERAL REG-  
25 ISTER NOTICES FOR MINERAL EXPLORATION AND MIN-

1 ING PROJECTS.—Absent any extraordinary circumstance  
2 or except as otherwise required by any Act of Congress,  
3 each Federal Register notice described in subsection (a)  
4 shall undergo any required reviews within the Department  
5 of the Interior or the Department of Agriculture and be  
6 published in its final form in the Federal Register no later  
7 than 30 days after its initial preparation.

8 **TITLE II—JUDICIAL REVIEW OF**  
9 **AGENCY ACTIONS RELATING**  
10 **TO EXPLORATION AND MINE**  
11 **PERMITS**

12 **SEC. 201. DEFINITIONS FOR TITLE.**

13 In this title the term “covered civil action” means a  
14 civil action against the Federal Government containing a  
15 claim under section 702 of title 5, United States Code,  
16 regarding agency action affecting a mineral exploration or  
17 mine permit.

18 **SEC. 202. TIMELY FILINGS.**

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

22 **SEC. 203. RIGHT TO INTERVENE.**

23 The holder of any mineral exploration or mine permit  
24 may intervene as of right in any covered civil action by

1 a person affecting rights or obligations of the permit hold-  
2 er under the permit.

3 **SEC. 204. EXPEDITION IN HEARING AND DETERMINING THE**  
4 **ACTION.**

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

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

8 In a covered civil action, the court shall not grant  
9 or approve any prospective relief unless the court finds  
10 that such relief is narrowly drawn, extends no further than  
11 necessary to correct the violation of a legal requirement,  
12 and is the least intrusive means necessary to correct that  
13 violation.

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

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

21 **TITLE III—MISCELLANEOUS**  
22 **PROVISIONS**

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

24 Nothing in this Act shall be construed as to affect  
25 any aspect of Secretarial Order 3324, issued by the Sec-

1 retary of the Interior on December 3, 2012, with respect  
2 to potash and oil and gas operators.

Passed the House of Representatives September 18,  
2013.

Attest:

KAREN L. HAAS,

*Clerk.*