



H.R. 1937 - National Strategic and Critical Minerals Production Act of 2015 (Rep. Amodei, R-NV)

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FLOOR SCHEDULE:

Scheduled for consideration on October 22, 2015, under a closed [rule](#)

TOPLINE SUMMARY:

[H.R. 1937](#) would require the Secretary of the Interior and the Secretary of Agriculture to simplify processes involved in the extraction of minerals and mineral materials critical to national security and economic competitiveness.

COST:

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 1937 would have no significant effect on the federal budget. Because enacting the bill could reduce mandatory payments for attorneys' fees over the 2016-2025 period, pay-as-you-go procedures apply.

CONSERVATIVE CONCERNS:

There are no substantive concerns regarding the resolution.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 1937 would deem domestic mines that will provide strategic and critical minerals as “infrastructure projects” defined in the March 22, 2012 Presidential executive order “[Improving Performance of Federal Permitting and Review of Infrastructure Projects](#)”. The bill would further direct the lead agency responsible for issuing mineral exploration or mine permits to appoint a project lead to coordinate and consult with agencies involved in the permitting process, and to set and track goals and timelines. H.R. 1937 would deem the requirements of [National Environmental Policy Act of 1969](#) (NEPA) to have been satisfied if the lead agency determines that any state or federal agency has addressed the following factors of the proposed action: (1) the environmental; (2) possible adverse environmental effects; (3) possible alternatives to issuance of the permit; (4) the relationship between local long and short-term uses of the environment; (5) any irreversible and irretrievable commitment of resources; (6) and that public participation would occur during the decision-making process for authorizing actions under the permit.

Once a determination is reached no later than 90 days after receipt of a permit application, the lead agency would be required to: (1) explain the rationale used in reaching its determination; (2) state the facts in the

record that are the basis for the determination; and (3) show that the facts in the record could allow a reasonable person to reach the same determination as the lead agency did. The bill stipulates that the lead agency responsible for issuing a mineral exploration or mine permit would be directed to enhance government coordination for the permitting process by avoiding duplicative reviews, minimizing paperwork, and engaging other agencies and stakeholders early in the process. In doing so, the lead agency would be authorized to establish memoranda of agreement with the project sponsor, state and local governments, to accomplish the early coordination activities. For any project for which the lead agency cannot make a determination, the lead agency, and any other agencies involved with the mineral exploration or mine permitting process would be allowed to enter into an agreement with the project proponent that sets time limits for each part of the permitting process. The total review process would not be authorized to exceed 30 months unless extended by the signatories of the agreement.

The bill would require a lead agency dealing with strategic and critical minerals within a federally administered unit of the National Forest System to: (1) exempt from federal regulations governing Special Areas all areas of identified mineral resources in Land Use Designations; (2) apply such exemption to all additional routes and areas that the lead agency finds necessary to facilitate the construction, operation, maintenance, and restoration of identified mineral resources areas; and (3) continue to apply such exemptions after the approval of the Minerals Plan of Operations for the unit of the National Forest System. The bill would further mandate that the Federal Register notice process for mineral exploration and mining projects be delegated to the organization level within the agency responsible for issuing the permit. Each Federal Register notice would be required to be published in its final form in the Federal Register no later than 30 days after its initial preparation.

Title II of the bill would require any civil action against a permit to be filed within the 60-day period after the final Federal agency action to which it relates. The bill would additionally authorize the holder of any mineral exploration or mine permit to intervene as of right in any covered civil action by a person affecting rights or obligations of the permit holder under the permit. In dealing with the judicial review process, the bill would require the court to hear and determine any covered civil action as expeditiously as possible, and would prohibit it from granting or approving any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of a legal requirement, and is the least intrusive means necessary to correct that violation. The bill would stipulate that the Equal Access to Justice Act would not apply to a covered civil action, and that any party in such a covered civil action would be prohibited from receiving payment from the federal government for attorneys' fees, expenses, and other court costs.

Title III of the bill would clarify that the bill would not be construed as to affect any aspect of [Secretarial Order 3324](#), issued by the Secretary of the Interior on December 3, 2012, with respect to potash and oil and gas operators.

The House report (H. Rept. 114-253) accompanying H.R. 1937 can be found [here](#).

More information on rare-earth minerals can be found [here](#) from the Congressional Research Service.

AMENDMENTS MADE IN ORDER:

- [#5 Cartwright \(D-PA\)](#): would strike title II of the bill regarding judicial review over covered civil actions and would allow the Equal Access to Justice Act to apply to such legal civil action.
- [#4 Dingell \(D-MI\)](#): would strike the provision on permits satisfying NEPA requirements and would stipulate that the issuance of a mineral exploration or mine permit would be treated as a major federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969.
- [#1 Hastings \(D-FL\)](#): would mandate that the bill not apply to a proposed strategic and critical minerals mining project unless the project proponent demonstrates that the combined capacity of existing mining operations in the United States producing the same mineral product that will be

produced by the project, is less than 80 percent of the demand for that mineral product in the United States. The amendment would require the publication of intent to transport or sell strategic and critical mineral intermediate and final products outside of the United States unless the domestic capacity exceeds 80 percent.

- [#3 Lowenthal \(D-CA\)](#): would strike the bill’s definition of “strategic and critical minerals” and would define these minerals and mineral groups according to the National Research Council’s 2008 report entitled “[Minerals, Critical Minerals, and the U.S Economy](#)”, and according to the Secretary of the Interior based on the National Research Council criteria.
- [#10 Pearce \(R-NM\)](#): would strike title III and would clarify that the bill would not apply to any mineral described in [Secretarial Order 3324](#), issued by the Secretary of the Interior on December 3, 2012, in any area to which the order applies.

COMMITTEE ACTION:

The legislation was introduced on April 22, 2015 and was referred to the House Committees on Natural Resources.

ADMINISTRATION POSITION:

The statement of administration policy can be found [here](#). According to the statement, the Administration strongly opposes H.R. 1937.

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: The constitutional authority of Congress to enact this legislation is provided by Article I, Section 8 of the United States Constitution, specifically clause 1 (relating to providing for the general welfare of the United States) and clause 18 (relating to the power to make all laws necessary and proper for carrying out the powers vested in Congress), and Article IV, Section 3, Clause 2 (relating to the power of Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States).

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