

United States Senate
WASHINGTON, DC 20510

November 14, 2022

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

The Honorary Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave, SW
Washington, DC 20250

Dear Secretaries Haaland and Vilsack:

On November 15, 2021, Congress enacted the final component of the American Mineral Security Act through Section 40206 of the Infrastructure Investment and Jobs Act. As the sponsor and cosponsors of the American Mineral Security Act, we are writing to ensure this key provision, concerning federal permitting and review performance improvements, is met in accordance with the strict timeline that Congress mandated on a strong bipartisan basis.

As you may know, Section 40206 requires the Departments of the Interior (DOI) and Agriculture (USDA), acting through the Bureau of Land Management and the U.S. Forest Service, to improve the quality and timeliness of the federal permitting and review process for critical mineral production on certain federal lands.

The section lays out nine ways to improve permitting, including by establishing and adhering to timelines and schedules for the consideration and final decisions on application, operating plans, leases, license, permits, and other use authorizations; establishing clear, quantifiable, and temporary permitting performance goals and tracking progress against those goals; engaging in early collaborations among federal agencies, project sponsors, and stakeholders to minimize delays; ensuring transparency and accountability through cost-effective information technology; engaging in early and active consultation with state, local and tribal authorities; providing demonstrable improvements; institutionalizing permitting and review process improvements; and developing better communications.

Next, Section 40206 establishes a deadline of one year from enactment for your Departments to issue a new report that identifies additional regulatory and legislative measures that would increase the timeliness of permitting, ensure adequate staffing for the timely consideration of authorizations on federal land, and quantify the period of time required to complete each step of the permitting process.

The nine improvement priorities and the report are the basis of a new performance metric required under Section 40206 to meet the permitting and review process improvements it requires and will serve as the basis of new annual reporting to Congress to accompany the President's budget.

These are serious and substantial requirements that represent a first step to address serious deficiencies in the federal permitting process. Yet DOI and USDA have outwardly paid little attention to them, and internally appear to have devoted critical resources to discretionary projects that trace back to Executive Orders, rather than legally binding federal statutes. For example, in March 2022, DOI voluntarily established an Interagency Working Group (IWG) on federal hardrock mining laws, regulations, and permitting to gather public comment on 12 topics related to hardrock mining. DOI received public comment on these topics through the end of August.

While a few topics listed by the IWG related to the federal permitting process, they do not closely track the requirements of Section 40206. We are accordingly writing to ensure that the report that section requires by November 15, 2022 is the DOI's principal priority. We are concerned that the upcoming report, if it is released on time, will at best partially address the improvements specifically called for in Section 40206. We are also concerned that discussion of these improvements may be folded into the IWG's work, instead of released as a separate and independent report, as required by a provision of law enacted with bipartisan support.

As our mineral security and foreign mineral dependence become more important at a time of rising global demand, Congress remains focused on a variety of means to encourage new domestic production. To exercise oversight of the implementation of Section 40206, we request that you answer the following questions:

- Will DOI and USDA issue the full report required by Section 40206 by November 15, 2022?
- Will the report be separate and apart from the activities of the IWG, which is focusing on additional topics that are not related to Section 40206?
- Will the report include a comprehensive discussion of the nine ways the statute requires DOI and USDA to evaluate permitting improvements and reforms?
- How have DOI and USDA used stakeholders to gather information for the Section 40206 report?
- Are DOI and USDA on track to meet the further requirements of Section 40206, including the establishment of a new performance metric that requires annual reporting to Congress?

Thank you for your attention and prompt response to this oversight request. We look forward to a full report pursuant to Section 40206, and continue to urge the administration to improve the federal mine permitting process to help meet growing supply constraints and improve U.S. competitiveness in strategic mineral production.

Sincerely,



Lisa Murkowski
United States Senator



Dan Sullivan
United States Senator



James E. Risch
United States Senator



Mike Crapo
United States Senator



Kevin Cramer
United States Senator

SEC. 40206. CRITICAL MINERALS SUPPLY CHAINS AND RELIABILITY.

(a) DEFINITION OF CRITICAL MINERAL.—In this section, the term “critical mineral” has the meaning given the term in section 7002(a) of the Energy Act of 2020 (30 U.S.C. 1606(a)).

(b) 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) many critical minerals are only economic to recover when combined with the production of a host mineral;
- (3) to the maximum extent practicable, the critical mineral needs of the United States should be satisfied by minerals responsibly produced and recycled in the United States; and
- (4) the Federal permitting process has been identified as an impediment to mineral production and the mineral security of the United States.

(c) FEDERAL PERMITTING AND REVIEW PERFORMANCE IMPROVEMENTS.—To improve the quality and timeliness of Federal permitting and review processes with respect to critical mineral production on Federal land, the Secretary of the Interior, acting through the Director of the Bureau of Land Management, and the Secretary of Agriculture, acting through the Chief of the Forest Service (referred to in this section as the “Secretaries”), to the maximum extent practicable, shall complete the Federal permitting and review processes with maximum efficiency and effectiveness, while supporting vital economic growth, by—

- (1) establishing and adhering to timelines and schedules for the consideration of, and final decisions regarding, applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land;
- (2) establishing clear, quantifiable, and temporal permitting performance goals and tracking progress against those goals;
- (3) engaging in early collaboration among agencies, project sponsors, and affected stakeholders—
 - (A) to incorporate and address the interests of those parties; and
 - (B) to minimize delays;
- (4) ensuring transparency and accountability by using cost-effective information technology to collect and disseminate information regarding individual projects and agency performance;
- (5) engaging in early and active consultation with State, local, and Tribal governments—

- (A) to avoid conflicts or duplication of effort;
- (B) to resolve concerns; and
- (C) to allow for concurrent, rather than sequential, reviews;

(6) providing demonstrable improvements in the performance of Federal permitting and review processes, including lower costs and more timely decisions;

(7) expanding and institutionalizing Federal permitting and review process improvements that have proven effective;

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

(9) developing other practices, such as preapplication procedures.

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

(1) identifies additional measures, including regulatory and legislative proposals, if 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, 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-related activities on Federal land;

(3) quantifies the period of time typically required to complete each step associated with the development and processing of applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land, including by—

(A) calculating the range, the mean, the median, the variance, and other statistical measures or representations of the period of time; and

(B) taking into account other aspects that affect the period of time that are outside the control of the Executive branch, such as judicial review, applicant decisions, or State and local government involvement; and

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

(e) PERFORMANCE METRIC.—Not later than 90 days after the date of submission of the report under subsection (d), and after providing public notice and an opportunity to comment, the Secretaries, using as a baseline the period of time quantified under paragraph (3) of that subsection, shall develop and publish a performance metric for evaluating the progress made by the Executive branch to expedite the permitting of activities that will increase exploration for, and development of, domestic critical minerals, while maintaining environmental standards.

(f) ANNUAL REPORTS.—Not later than the date on which the President submits the first budget of the President under section 1105 of title 31, United States Code, after publication of the performance metric required under subsection (e), and annually thereafter, the Secretaries shall submit to Congress a report that—

- (1) summarizes the implementation of recommendations, measures, and options identified in paragraphs (1) and (2) of subsection (d);
- (2) using the performance metric developed under subsection (e), describes progress made by the Executive branch, as compared to the baseline developed pursuant to subsection (d)(3), in 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.

(g) INDIVIDUAL PROJECTS.—Each year, using data contained in the reports submitted under subsection (f), 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.