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H. R. 4866

To reestablish a competitive domestic rare earths minerals production industry; a domestic rare earth processing, refining, purification, and metals production industry; a domestic rare earth metals alloying industry; and a domestic rare earth based magnet production industry and supply chain in the United States.

IN THE HOUSE OF REPRESENTATIVES

March 17, 2010

Mr. COFFMAN of Colorado introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Ways and Means and Financial Services, 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

A BILL

To reestablish a competitive domestic rare earths minerals production industry; a domestic rare earth processing, refining, purification, and metals production industry; a domestic rare earth metals alloying industry; and a domestic rare earth based magnet production industry and supply chain in the United States.

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 'Rare Earths Supply-Chain Technology and Resources Transformation Act of 2010' or the 'RESTART Act'.

SEC. 2. FINDINGS.

Congress finds that:

(1) Many modern defense technologies such as radar and sonar systems, precision-guided weapons, cruise missiles, and lasers cannot be built, as designed and specified, without the use of rare earth elements ('REEs') and materials produced from them.

(2) Significant quantities of REE are used in the production of renewable energy technologies, including advanced automotive propulsion batteries, electric motors, high-efficiency light bulbs, solar panels, and wind turbines. These technologies are used to advance the United States energy policy of reducing dependence on foreign oil and decreasing greenhouse gas emissions through expansion of

renewable sources of energy.

(3) Though the United States owns at least 15 percent of the world's REEs reserves, it now depends nearly 100 percent upon imports for rare earth elements, oxides, and alloys because there are virtually no active REE producers in the United States. More than 97 percent of all REEs for world consumption are produced in China.

(4) China's ability--and willingness--to export REEs is eroding due to its growing domestic demand, its enforcement of environmental law on current producers, and its mandate to consolidate the industry by decreasing its number of mining permits. The Chinese Ministry of Industry and Information Technology draft rare earths plan for 2009 to 2015 proposes an immediate ban on the export of dysprosium, terbium, thulium, lutetium and yttrium, the 'heavy' REE and a restriction on the exports of all the other, light, rare earth metals to a level well below that of Japan's 2008 demand alone.

(5) Furthermore, the United States has no active heavy group rare earth production capabilities or refining capabilities for heavy rare earth elements. Thus, should the United States begin to mine its heavy rare earth oxides, it would still be dependent on overseas refineries for further elemental and alloy processing. Nor does the United States currently maintain a 'strategic reserve' of rare earth compounds, metals or alloys.

(6) REEs should qualify as materials either strategic or critical to national security. The United States Government should take measures to reintroduce a globally competitive domestic strategic materials industry that is self-sufficient in the United States domestic market with multiple sources of mining, processing, alloying and manufacturing.

(7) This self-sufficiency requires an uninterrupted supply of strategic materials critical to national security and innovative commercial product development, including rare earth materials, to support the defense supply chain.

(8) The United States currently cannot reclaim valuable rare earth resources and permanent magnets from scrapped military or consumer products, industrial materials or equipment, which allows entities in overseas nations to identify and recover such materials for resale to United States manufacturers at considerable cost.

(9) There is an urgent need to identify the current global market situation regarding rare earth materials, the strategic value placed on them by foreign nations including China, and the Department of Defense's and domestic manufacturing industry's supply-chain vulnerability related to rare earths and end items containing rare earths such as neodymium iron boron and other specialty magnets, and rare earth 'doped' lasers.

(10) It is the policy of the United States to take any and all actions necessary to ensure the reintroduction of a competitive domestic rare earth supply chain, to include the reintroduction of the capacity to conduct mining, refining/processing, alloying and manufacturing operations using domestic suppliers to provide a secure source of rare earth materials as a vital component of national security and economic policy.

SEC. 3. REQUIREMENT TO ESTABLISH EXECUTIVE AGENTS FOR RARE EARTH RELATED MATTERS.

No later than 30 days after the enactment of this Act--

(1) the Secretaries of Commerce, Defense, Energy, Interior, and State shall appoint an Executive Agent, at the Assistant Secretary level of each affected agency, to serve as a representative on an interagency working group for the purposes of reestablishing a competitive domestic rare earth supply chain; and

(2) the United States Trade Representative and the Office of Science and Technology Policy shall appoint representation to the interagency working group in paragraph (1) above.

SEC. 4. REQUIREMENT TO ESTABLISH A BASELINE FOR RARE EARTH MATERIAL SUPPLY-CHAIN VULNERABILITY.

No later than 180 days after the enactment of this Act, the Secretaries of Commerce, Defense, Energy, Interior, and State shall undertake an assessment of the rare earth supply chain and determine which rare earth elements are critical to national and economic security and submit the findings of the review to Congress. Such assessment shall be in coordination with the United States Trade Representative and the Executive Office of the President's Office of Science and Technology Policy.

SEC. 5. REQUIREMENT TO ESTABLISH A NATIONAL STOCKPILE FOR RARE EARTH MATERIALS.

(a) In accordance with 50 U.S.C. 98 et seq., the Secretary of Defense shall commence the procurement of rare earth materials designated as 'critical' in section 4 of this Act and place such rare earth materials in the national stockpile within one year after enactment of this Act.

(b) The Defense Logistics Agency, Defense National Stockpile Center, shall serve as Administrator of the rare earth stockpile and shall issue an annual report to Congress describing which rare earth materials shall be added to or subtracted from the stockpile.

(c) In accordance with section 98h-6 of title 50, United States Code, the Administrator shall purchase, or make a commitment to purchase, rare earth materials or for the processing or refining of rare earth materials, to support national defense and the economic needs of the United States.

(d) Notwithstanding any other provision of law, for a period of five years after the date of enactment of this Act, the Administrator shall be authorized to purchase necessary rare earth materials from the People's Republic of China, if required to meet national security and economic needs of the United States.

(e) Upon the joint determination of the Secretaries of Commerce, Defense, Energy, Interior, and State, in coordination with the United States Trade Representative and the Executive Office of the President's Office of Science and Technology Policy, that rare earth materials are no longer critical to supporting national defense or the economic well-being of the United States, the requirement to stockpile rare earth materials shall terminate by issuing a report of such determination to Congress. Such report shall be submitted to Congress no earlier than April 1, 2015.

SEC. 6. ESTABLISHMENT OF FAIR MARKET CONDITIONS FOR THE REESTABLISHMENT OF A DOMESTIC RARE EARTH SUPPLY CHAIN.

(a) Not later than 30 days after the enactment of the Act, the United States Trade Representative shall initiate a comprehensive review of international trade practices in the rare earth materials market. Such review shall include actions by foreign producers of rare earth elements, rare earth metals, rare earth alloys and components used in the defense or energy markets containing rare earth elements, as it relates to dumping, export quotas and other relevant mechanisms used to manipulate the rare earth market.

(b) Upon completion of the review, the United States Trade Representative shall--

(1) initiate an action before the World Trade Organization; or

(2) issue a report to Congress describing the results of the comprehensive review and why it was determined that international markets are free from market manipulation such as dumping or export quotas.

SEC. 7. CONSIDERATION OF LOAN GUARANTEES FOR RARE EARTH SUPPLY-CHAIN DEVELOPMENT.

Not later than 90 days after the enactment of the Act--

(1) the Secretaries of Commerce, Interior, and State shall issue a report to industry describing mechanisms for obtaining current and future year government loan guarantees to reestablish a domestic rare earth supply chain;

(2) the Secretary of Defense shall issue guidance for the rare earth industry related to obtaining loan guarantees under 50 U.S.C. 98 and any other available mechanism for obtaining loan guarantees to support the reestablishment of mining, refining, alloying and manufacturing operations in the United States that will support the domestic defense supply chain; and

(3) the Secretary of Energy shall issue guidance for the rare earth industry related to obtaining loan guarantees under the American Recovery and Reinvestment Act of 2009, Energy Efficiency and Renewable Energy sponsored programs and any other available mechanism for obtaining loan guarantees to support the reestablishment of mining, refining, alloying and manufacturing operations in the United States that will support the domestic supply chain.

SEC. 8. DEFENSE PRODUCTION ACT PRIORITY FOR RARE EARTH SUPPLY-CHAIN DEVELOPMENT.

(a) It is the sense of Congress that the urgent need to reintroduce a domestic rare earth supply chain warrants a prioritization of such Defense Production Act projects. The United States faces a shortage of key materials that form the backbone of both the defense and energy supply chains.

(b) Not later than 180 days after the enactment of this Act, the Secretary of Defense shall issue a report describing past, current and future Defense Production Act projects to address the domestic

rare earth supply chain. If no rare earth supply-chain Defense Production Act projects are in process or planned, the report shall justify the lack of action to support establishment of domestic rare earth supply-chain initiatives, particularly those to establish domestic manufacturing capability in critical segments of the rare earth market.

SEC. 9. RESEARCH AND DEVELOPMENT TO SUPPORT THE DOMESTIC RARE EARTH SUPPLY CHAIN.

It is the sense of Congress that, in order to reestablish the United States as the preeminent supplier of rare earth materials, components and associated technologies, there is a pressing need to support innovation, training and workforce development of the rare earth supply chain. Therefore, base budget funding should be provided by the Secretaries of Commerce, Defense, Energy, and Interior to fund academic institutions, Government laboratories, corporate research and development, not-for-profit research and development, and industry associations.

SEC. 10. RESTRICTIONS.

(a) Limitation on Divestment of Facilities Created- No recipient of United States Government appropriated funds, for the purposes of supporting the reestablishment of a domestic rare earth supply chain, may divest resources funded, in whole or in part, to any foreign-owned or controlled entity without the concurrence of the Secretaries of Energy, Commerce, and Defense.

(b) Enhancing National Security- Any recipient of United States Government appropriated funds obtained in connection with the reestablishment of a domestic rare earth supply chain shall be subject to the restrictions of 10 U.S.C. 2538. In order to ensure the availability of rare earth materials for Department of Defense needs, this obligation extends to all materials sold by such recipients in the commercial marketplace.

SEC. 11. DEFINITIONS.

In this Act:

(1) RARE EARTH- The term 'rare earth' means the chemical elements, all metals, beginning with lanthanum, atomic number 57, and including all of the natural chemical elements in the periodic table following lanthanum up to and including lutetium, element number 71. The definition shall further include the elements yttrium and scandium, which are usually found with the rare earth elements in nature.

(2) REFINE- The reestablishment of a domestic rare earth element refinery capabilities within the United States whereby rare earths, once extracted from rock, are separated and purified to commercial grades of oxides or other salts such as oxalates or chlorides.

(3) PROCESS- The support of heavy rare earth processing and production facilities capable of converting rare earth oxides into usable rare earth metals and specialty alloys and powders for domestic magnet and other manufacturing within the United States.

(4) PRODUCE- The advancement of domestic manufacturing efforts of U.S. magnet producers and other domestic innovation industries that rely on rare earth materials.

(5) RECYCLE- The establishment of an initiative to recycle and strip used consumer products, and used or obsolete declassified military products, of rare earth elements and strategic magnets within the United States for eventual reuse by domestic manufacturers.

(6) STOCKPILE- The creation and maintenance of a `strategic reserve' of rare earth oxides, and storable forms of rare earth elements, and alloys for national defense purposes.

(7) ALLOY AND ALLOYING- An alloy is a partial or complete solid solution of one or more elements in a metallic matrix. Alloying is the process of melting of metals to create the metallic matrix.

(8) SINTERING- Sintering is a method for making objects from powder, by heating the material in a sintering furnace below its melting point (solid state sintering) until its particles adhere to each other.

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