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118TH CONGRESS
2D SESSION

H. R. 9898

To amend the Department of Energy Organization Act to secure midstream processing of critical materials, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 2024

Mr. GUTHRIE (for himself, Mr. FULCHER, Mr. NEWHOUSE, Mr. BILIRAKIS, Mr. BUCSHON, Mr. PFLUGER, Mr. WEBER of Texas, Mr. WITTMAN, Mr. MOORE of Utah, Mr. BACON, and Mrs. MILLER-MEEKS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Department of Energy Organization Act to secure midstream processing of critical materials, 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 ''Securing America's Midstream Critical Materials Processing of 2024''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) midstream separation, processing, refining, alloying, concentration, smelting, and beneficiation of critical materials represent a linchpin in efforts to secure domestic supply chains and reduce our dependence on foreign adversaries;

(2) unreasonable environmental regulations covering midstream critical materials processors has deterred necessary investment and driven industry towards foreign countries;

(3) reshoring domestic industries and their supply chains improves economic prosperity for American communities, creates stable employment opportunities, and protects national security interests;

(4) our next generation economy and domestic manufacturing industry will significantly increase demand for critical material inputs;

(5) the lack of sufficient domestic midstream critical material processing capacity presents a vulnerability to our economic and national security;

(6) China and other geopolitical adversaries of the United States have dominated critical material processing markets, which represents a threat to America's next generation economy;

(7) China and other geopolitical adversaries of the United States purposefully exploit critical mate-

rial processing markets through unfair trade practices, such as dumping and price manipulation, in an attempt to maintain their control and undermine competing investment opportunities;

(8) the United States needs to expand its technical workforce expertise and experience in critical material processing and address workforce challenges to bolster domestic opportunities supported by a domestic supply chain for critical materials;

(9) foreign investment from allied nations and Free Trade Agreement countries presents an opportunity to reshore domestic midstream critical material processing capacity;

(10) the challenges of navigating burdensome permitting processes act as a hindrance to further investment in midstream critical material processing capacity;

(11) midstream critical material processing facilities require access to reliable and affordable electricity and will require increased generation and transmission infrastructure to meet projected future demands; and

(12) the United States retains some of the highest environmental and labor standards compared

to adversarial nations that dominate the midstream critical material processing industry, such as China.

SEC. 3. NATIONAL ROADMAP ON DOMESTIC OPPORTUNITIES FOR MIDSTREAM CRITICAL MATERIAL PROCESSING.

(a) IN GENERAL.—In carrying out the requirements of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the Secretary of Energy, in consultation with the Secretary of Commerce and the heads of other appropriate Federal agencies, representatives of the critical material processing industry, and members of academia covering critical materials processing industries, shall—

(1) analyze and report to Congress regarding the current state of midstream processing of critical materials; and

(2) identify those places where the United States-based supply chain for critical materials is insufficient to allow for the appropriate and necessary development of United States-midstream processing of critical materials, including opportunities for foreign direct investment from allied nations and Free Trade Agreement countries.

(b) MEMBERSHIP.—The Secretary of Energy shall convene an interagency task force comprised of—

(1) the Secretary of Commerce;

(2) the Secretary of the Treasury;

(3) the Secretary of Defense;

(4) the Secretary of State;

(5) the Secretary of the Interior; and

(6) the Administrator of the Environmental Protection Agency.

(c) REPORT TIMING.—Not later than 1 year after the enactment of this Act, the task force shall issue the report required under subsection (a).

(d) REPORT CONTENTS.—The report required under subsection (a) shall include—

(1) whether there is an adequate supply of critical materials to meet current and projected domestic needs that be processed in the United States;

(2) the status of global midstream critical materials processing industry;

(3) the status of domestic midstream critical materials processing industry, including its ability to handle the supply described in paragraph (1);

(4) an analysis of how and why the United States domestic critical materials processing industry began and continues to outsource operations to other countries;

(5) a review of the existing regulatory and permitting apparatus covering midstream critical materials processing facilities, including requirements under the Clean Air Act (42 U.S.C. 7401 et seq.), the Comprehensive Environmental Response, Liability, and Compensation Act of 1980 (42 U.S.C. 9601 et seq.), and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or other laws, and how regulatory compliance under these requirements influence potential investments into new facilities;

(6) the economic impact of critical materials processing to the overall United States economy and its welfare;

(7) barriers to investment into domestic critical materials processing, including—

(A) the workforce and educational needs of expanding critical materials processing;

(B) infrastructure requirements to build out critical materials processing; and

(C) permitting inefficiencies for domestic midstream critical materials processing, including compliance with the Clean Air Act (42 U.S.C. 7401 et seq.), the Comprehensive Environmental Response, Liability, and Compensation Act of 1980 (42 U.S.C. 9601 et seq.), and

the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and other relevant Federal laws;

(8) the cost-effectiveness, growth potential, and viability of secondary or alternative critical materials processing to help meet expected domestic demand for processed critical materials, including reprocessing or recycling of—

(A) coal or coal waste;

(B) mine tailings;

(C) post-consumer electronic waste devices;

(D) smelter and refinery slags and residuals; and

(E) materials or waste recovered from sites designated as Superfunds pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(9) a review of the existing efforts by the Department of Energy's Office of Manufacturing and Energy, or other efforts within the membership of the interagency task force convened under subsection (b), to advancing secondary or alternative critical materials processing;

(10) how the expected trend in the demand for processed critical materials is affected by the role

that midstream critical material processing in the United States plays in aiding domestic manufacturing;

(11) barriers to foreign direct investment from allied nations and Free Trade Agreement countries into the United States for critical material processing, including workforce challenges, infrastructure needs, permitting timeframes, and pricing transparency risks;

(12) an identification and measure of the control the Peoples' Republic of China and the Russian Federation have of processed critical materials for countries that are parties with the United States in a free trade agreement;

(13) the national security implications posed to the United States by continued control of midstream critical material processing industry by the Peoples' Republic of China or other geopolitical adversaries; and

(14) any anti-competitive practices by the Peoples' Republic of China and any other geopolitical adversaries of the United States, and other non-market state owned enterprises to control the midstream critical materials processing industry by—

(A) depressing domestic prices through dumping refined critical materials onto United States markets;

(B) manipulating critical material prices to discourage United States investment and undermine long-term stability for United States markets;

(C) purposefully disrupting supply chains for United States industries;

(D) manipulation of greenfield investment into Free Trade Agreement countries; and

(E) establishment of commodity-specific trading platforms to further entrench the Peoples' Republic of China's market dominance.

(e) ADVISORY PANEL.—

(1) IN GENERAL.—The Secretary of Energy shall establish an advisory panel to provide input, technical analysis, and feedback for and on the report required under subsection (a).

(2) MEMBERSHIP.—The advisory panel shall include—

(A) 5 representatives from the domestic critical materials processing industry, including—

(i) a diversity of processed critical materials; and

(ii) participants in critical material reprocessing or recycling; and

(B) 5 individuals from academia that have a diversity of perspectives and relevant expertise in—

(i) in domestic critical materials processing industries; and

(ii) research into national security implications of the impact of the Peoples' Republic of China and other foreign adversaries' engaging in anti-competitive behaviors in the critical materials processing industry.

(3) MEETINGS.—The advisory panel shall meet not less than 2 times before the task force issues the report required under subsection (a).

SEC. 4. GAO REPORT.

The Comptroller General of the United States shall submit to Congress a report regarding how current Federal policies and permitting processes inhibit investment in midstream critical materials processing, including—

(1) how Public Law 117–169 (commonly known as the ''Inflation Reduction Act'') may have affected

greenfield foreign-directed investments in free trade agreement countries from the Peoples' Republic of China;

(2) how regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or other relevant laws inhibit new investments into midstream critical materials processing;

(3) the role of regulation and permitting, including that of litigation, in inhibiting and discouraging investment;

(4) a review of—

(A) the effectiveness of Federal policies in encouraging the utilization of secondary or alternative critical materials sources, including material re-use, recycling, and materials or waste recovered from sites identified on the National Priorities List as subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); and

(B) whether Federal investments allow for commercialization by private industry;

(5) a review of the policies of comparable allied nations that have midstream critical materials proc-

essing industries to site, permit, and regulate facilities;

(6) a review of the benefits to producers and consumers of materials used in United States manufacturing and finished goods, including—

(A) minerals included on the list published by the United States Geological Survey pursuant to section 7002(c) of the Energy Act of 2020 (30 U.S.C. 1606(c));

(B) materials included on the list of critical materials published by the Department of Energy pursuant to section 7002(a) of the Energy Act of 2020 (30 U.S.C. 1606(a)); and

(C) materials of interest designated as such by the Defense Logistics Agency; and

(7) a review of the role of all Federal agencies engaged in midstream critical materials processing and opportunities to improve interagency collaboration and create synergies to leverage individual expertise.

SEC. 5. DEFINITIONS.

(a) DEFINITIONS.—In this Act:

(1) ADVISORY PANEL.—The term ''advisory panel'' means the advisory panel established under section 3(e).

(2) CRITICAL MATERIAL.—The term ''critical material'' has the meaning given the term in section 7002(a)(2) of the Energy Act of 2020 (30 U.S.C. 1606(a)(2)).

(3) CRITICAL MATERIAL PROCESSING.—The term ''critical material processing'' means any process that transforms, refines, separates, alloys, concentrates, smelts, or beneficiates raw extracted critical materials into value added inputs.

(4) TASK FORCE.—The term ''task force'' means the interagency task force convened under section 3(b).

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