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sent via electronic mail:
<https://www.regulations.gov>
Docket No. FS-20018-005283

October 12, 2018

USDA-Forest Service
Attn: Director – MGM Staff
1617 Cole Blvd, Building 17
Lakewood CO 80401

RE: Advanced Notice of Proposed Rulemaking, 36 CFR Part 228, Subpart A Locatable Minerals, Federal Register Vol. 83, No. 178, 46451-46458

Dear Director – MGM Staff:

Introduction

The Women's Mining Coalition (WMC) applauds the U.S. Department of Agriculture's (USDA's)/Forest Service's initiative to evaluate and update its surface management regulations for locatable minerals at 36 CFR Part 228, Subpart A ("228A regulations"). This letter provides WMC's suggestions in response to the Advance Notice of Proposed Rulemaking (ANPR) that was published in the Federal Register, Vol. 83, Number 178, Pages 46451 – 46458 seeking comments to update and modify these regulations.

WMC's comments and suggestions are based on our members' extensive experience in conducting locatable mineral exploration and development activities pursuant to the 228A regulations on National Forest System lands in numerous locations. Based on this experience, WMC members have firsthand knowledge of the costs, complexities, delays, and uncertainties typically associated with seeking authorizations under these regulations. From the perspective of a project applicant, securing a permit under the 228A regulations can be fraught with uncertainties and a source of intolerable delays that chill investment in U.S. projects. As discussed in detail below, these delays could be substantially reduced if the Forest Service were to develop a streamlined process for approving projects that affect fewer modeled after the Bureau of Land Management's (BLM's) bonded notice procedures at 43 CFR §§ 3809.300 – 3809.336.

The Forest Service's proposed rulemaking is a much-needed and long overdue proposal to respond to an important recommendation that the National Research Council/National Academy of Science made in its 1999 report entitled, *Hardrock Mining on Federal Land* (NRC Report). Although almost twenty years have passed since publication of this report, the Forest Service has yet to implement changes to the 228A regulations to implement the NRC's recommendation for an expedited approval process for initial exploration projects that disturb fewer than five acres of National Forest System lands:

NRC Report Recommendation 3: “Forest Service regulation should allow exploration disturbing less than 5 acres to be approved or denied expeditiously, similar to notice-level exploration activities on BLM lands” (NRC Report at 97);

Modification of the 228A provisions to mirror the Bureau of Land Management’s (BLM’s) three-tiered classification of locatable minerals operations at 43 CFR 3809.10 is the most important and most easily accomplished revision to the regulation. BLM’s 43 CFR § 3809.10 mineral operations classification scheme is shown below:

- (a) Casual use, for which an operator need not notify BLM. (You must reclaim any casual-use disturbance that you create. If your operations do not qualify as casual use, you must submit a notice or plan of operations, whichever is applicable. See §§3809.11 and 3809.21.);
- (b) Notice-level operations, for which an operator must submit a notice (except for certain suction-dredging operations covered by §3809.31(b)); and
- (c) Plan-level operations, for which an operator must submit a plan of operations and obtain BLM's approval.

In particular, the use of the Notice-level procedures at 43 CFR §§ 3809.300 – 3809.336 for authorizing initial exploration activities that involve five acres or less of disturbance provides the best example of how permit streamlining can be achieved. Projects which disturb five acres or less are exploration programs with short duration and a limited number of drilling and/or trenching locations. A program proposed at this level on BLM-managed land will typically require a few months to review the Notice as submitted and secure an appropriate bond. The local office of the agency reviews potential issues and provides guidelines for implementing the activities proposed in the Notice to protect the environment and prevent undue and unnecessary degradation in compliance with 43 CFR § 3809.415 and 43 CFR § 3809.420.

As specified at 43 CFR §3809.332, a Notice lasts for two years and can be extended for subsequent two-year periods pursuant to 43 CFR § 3809.333 so long as the surface disturbance remains under the five-acre threshold that triggers the need for a Plan of Operations. A similar initial exploration proposal under Forest Service regulations can require more than two years to review, depending on the local Forest workload and process, necessitate an environmental assessment or environmental impact statement under NEPA rules and similar bonding requirements. The proponent then has only a one-year time frame for completion of the program.

The “Bonded Notice” Proposal (73 Fed. Reg. 15694) put forward by the Forest Service in 2008 is an ideal plan for exploration activities disturbing less than five acres on National Forest lands. Implementation of reform that allows activities at this small disturbance level to be completed through a Bonded Notice will achieve manpower efficiencies for the Forest Service by giving Forest Service resource specialists more time to focus their energies on other land management projects. It will also enable proponents to invest their time, talent and resources in an area and provide stimulus to the local economy while still ensuring that the programs are completed in an environmentally responsible manner. Exploration of our public lands is the research and development arm of the resource industry and is crucial in the effort to identify sources of critical minerals.

As an operator reaches the five-acre threshold and the need to submit a Plan of Operations for proposed disturbance over five acres, the proposal to include a mandatory pre-plan meeting with the local Forest personnel is applauded. However, even with this provision in place, the Forest Service should provide specific and consistent guidelines for the information required for a Plan to be deemed complete analogous to BLM’s regulations at 43 CFR § 3809.401.

Adoption of the changes proposed to the 228A regulations will provide consistency across agencies that will enable operators to more effectively provide the information that each agency requires in their reviews of project proposals at all levels. As operators, small miners and exploration companies seek to work within the parameters of various regulations, a common thread to requirements for similar activities across variously

managed public lands will provide a tool for working together toward the goal of exploring and developing US minerals for the 21st century in an environmentally responsible manner.

It is important for the Forest Service to make these policy changes as expeditiously as possible in order to comply with President Trump's December 2017 Critical Minerals Executive Order, Executive Order ("EO") No. 13817, "Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals." This Critical Minerals EO establishes:

"It shall be the policy of the Federal Government to reduce the Nation's vulnerability to disruptions in the supply of critical minerals, which constitutes a strategic vulnerability for the security and prosperity of the United States. The United States will further this policy for the benefit of the American people and in a safe and environmentally responsible manner, by...(d) streamlining leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals."

The Forest Service's rulemaking for the 228A regulations will be an important step in fulfilling the permit streamlining directive in President Trump's Critical Minerals EO. An expedited approval process for initial exploration projects analogous to BLM's bonded notice process would be a significant step in stimulating and facilitating mineral exploration on National Forest System Lands that could lead to discoveries of important critical mineral deposits that would reduce our Nation's reliance on foreign sources of minerals.

About WMC

WMC is a grassroots organization with over 200 members nationwide. Our members work in all sectors of the mining industry including hardrock, industrial minerals, and coal; energy generation and mining-related distribution, manufacturing, transportation, and service industries. We hold annual Washington, DC Fly-Ins to meet with members of Congress and their staff, and federal land management and regulatory agencies to discuss issues of importance to both the hardrock and coal mining sectors.

For many years, WMC has been concerned about the protracted permitting processes for mineral projects on National Forest System Lands and BLM-managed public lands. The delays associated with these processes are a major factor in contributing to the country's steadily increasing reliance on foreign minerals.

During the last several Fly-In's we have presented the charts shown in Exhibit I from the 1996¹ and 2017² USGS' Mineral Commodity Summaries. These charts document a shocking increase in the net mineral import reliance in the 21-year period from 1995 to 2016. Our Nation's increasing reliance on imported minerals is not due to a lack of domestic mineral targets warranting exploration and potential development. Rather, WMC believes that the rapid growth in the nation's foreign mineral reliance is due in large part to unfavorable federal policies including the protracted 228A permitting process that impedes mineral exploration and development.

Given our focus on this important issue, we would fully support a Forest Service initiative to update its 228A regulations in a manner that expedites approval of mineral exploration and development projects while at the same time maintains a very high level of environmental protection on National Forest System Lands.

Conclusions

¹ U.S. Geological Survey, 1996, Mineral commodity summaries 1995: U.S. Geological Survey, <https://minerals.usgs.gov/minerals/pubs/mcs/1996/nir.gif>.

² U.S. Geological Survey, 2017, Mineral commodity summaries 2017: U.S. Geological Survey, 202 p., <https://doi.org/10.3133/70180197>

We very much appreciate the Forest Service's outreach efforts to obtain public comments in this ANPR and look forward to working with the Forest Service throughout the rulemaking process. Please do not hesitate to contact us if you have any questions about these comments.

Respectfully submitted:



Barbara Coppola

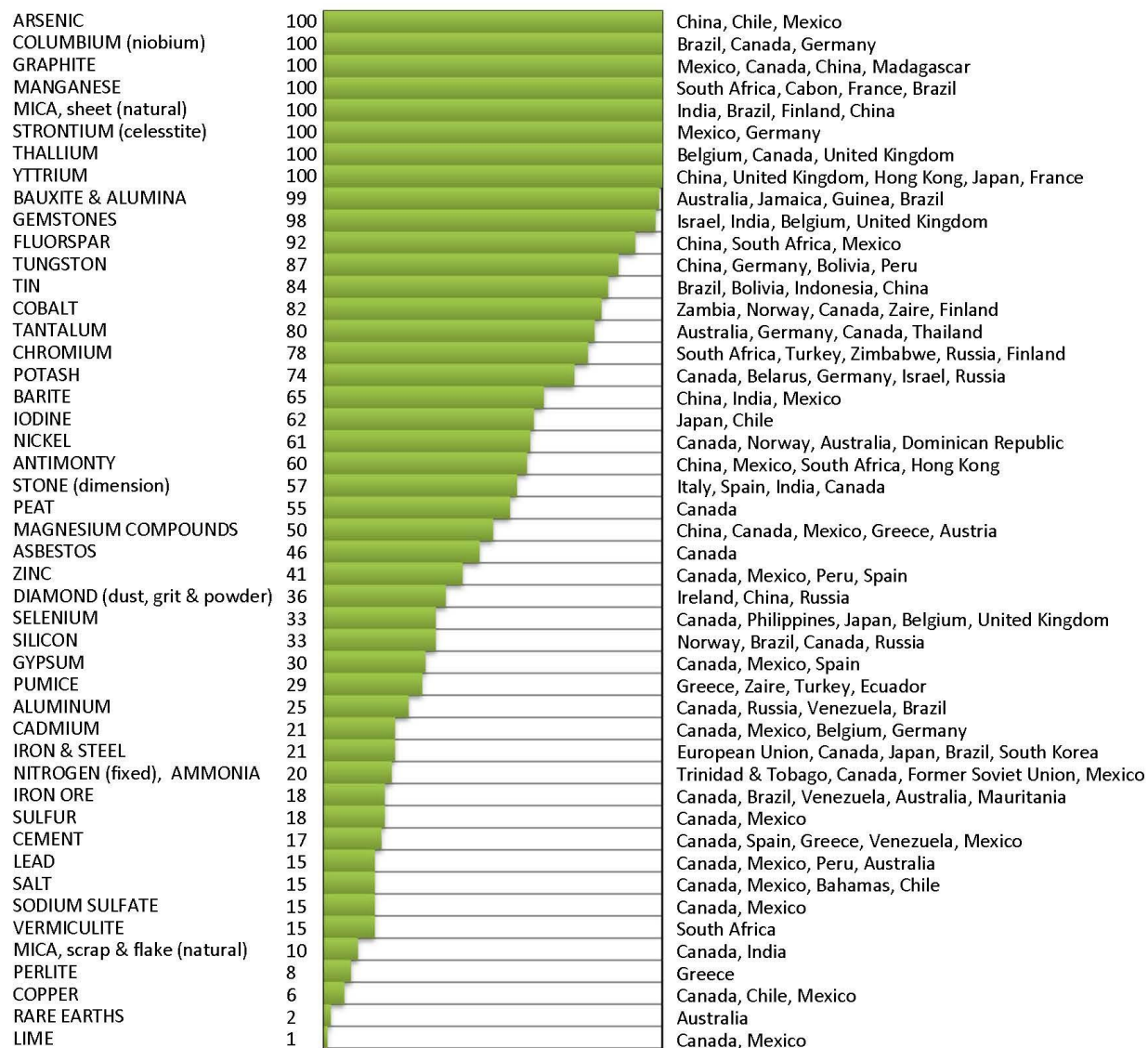
WMC President

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Attachment: Exhibit I – 1995 and 2017 USGS Net Mineral Import Reliance Charts

EXHIBIT 1
1995 and 2016 U.S. Net Import Reliance Charts
Sources: 1996 and 2017 USGS Mineral Commodity Surveys

1995 U.S. NET IMPORT RELIANCE FOR SELECTED NONFUEL MINERAL MATERIALS

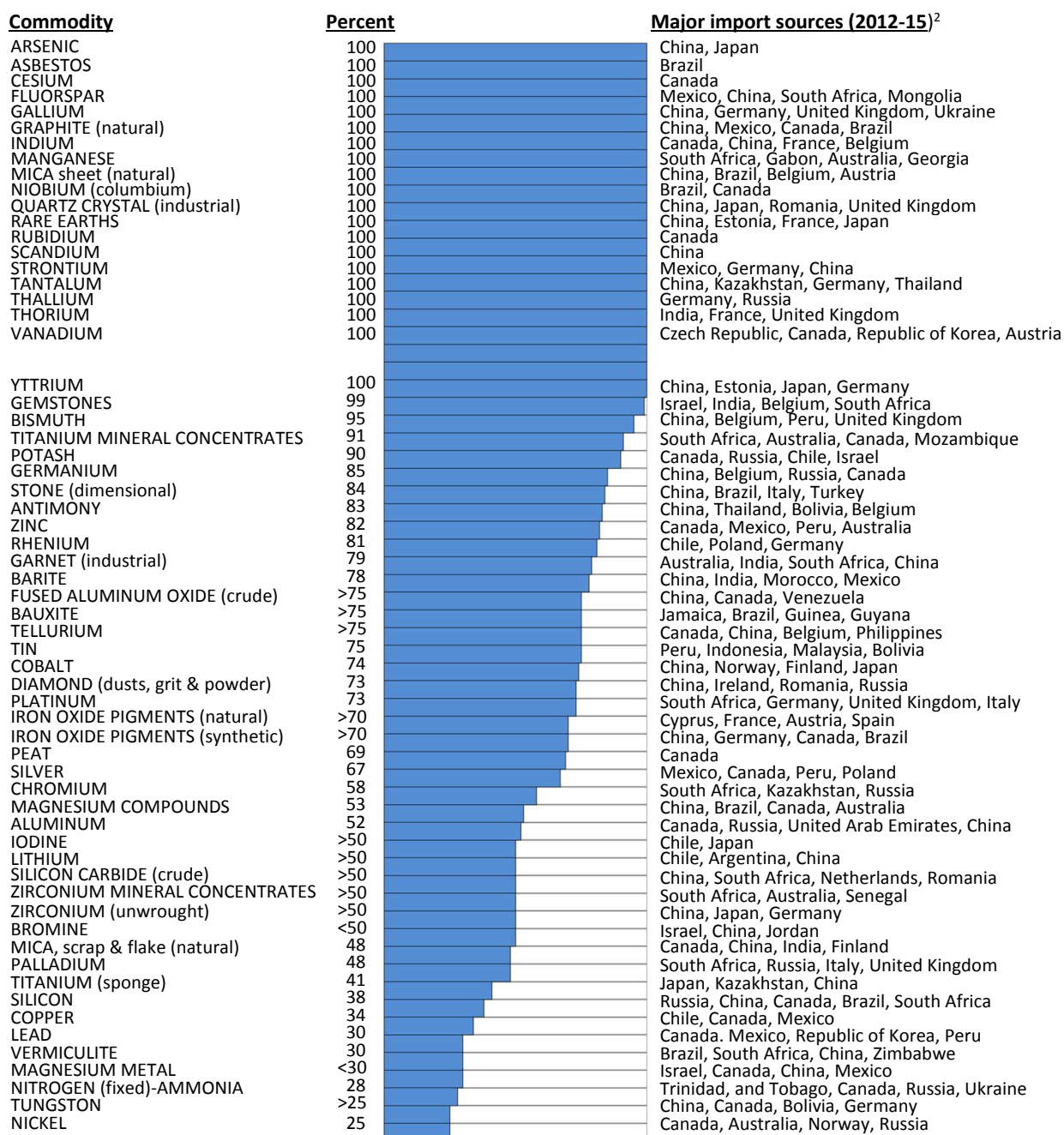


Additional commodities for which there is some import dependency include:

Bismuth	Mexico, Belgium, China, Peru
Gallium	France, Germany, Russia, United Kingdom, Hungary
Ilmenite	South Africa, Australia, Canada
Indium	Canada, France, Italy, Belgium, Russia
Iron & steel slag	Canada, Japan
Kyanite	South Africa, France
Mercury	Canada, Russia, Germany

Platinum	South Africa, United Kingdom, Belgium, Germany
Rhenium	Chile, Germany, United Kingdom, Russia, Kazakhstan
Rutrium	Australia, Sierra Leone, South Africa
Silver	Mexico, Canada, Peru, Chile
Thorium	Australia
Titanium (sponge)	Russia, Japan, China
Vanadium	Russia, South Africa, Canada, Mexico
Zirconium	Australia, South Africa

2016 U.S. NET IMPORT RELIANCE¹



¹Not all mineral commodities covered in this publication are listed here. Those not shown include mineral commodities for which the United States is a net exporter (alumina; boron; clays; diatomite; helium; iron and steel scrap; iron ore; kyanite; molybdenum; sand and gravel, industrial; selenium; soda ash; titanium dioxide pigment; wollastonite; and zeolites) or less than 25% import reliant (abrasives, metallic; beryllium; cadmium; cement; diamond, industrial stones; feldspar; gypsum; iron and steel; iron and steel slag; lime; perlite; phosphate rock; pumice; sand and gravel, construction; salt; stone, crushed; sulfur and talc). For some mineral commodities (gold, hafnium, and mercury), not enough information is available to calculate the exact percentage of import reliance.

²In descending order of import share.

³Data include lanthanides