

117TH CONGRESS
2D SESSION

S. 5128

To designate phosphate and potash as critical minerals, to approve the use of phosphogypsum in government road projects, to amend the Food Security Act of 1985 to provide for the certification of certified crop advisors for conservation technical assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2022

Mr. MARSHALL introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To designate phosphate and potash as critical minerals, to approve the use of phosphogypsum in government road projects, to amend the Food Security Act of 1985 to provide for the certification of certified crop advisors for conservation technical assistance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fertilizer Stewardship,
5 Utilization, Sustainability, Technology, Access, Innova-

tion, and Nourishment Act” or the “Fertilizer SUSTAIN Act”.

**SEC. 2. DESIGNATION OF PHOSPHATE AND POTASH AS
CRITICAL MINERALS.**

(a) DESIGNATION.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior shall—

(1) designate potash and phosphates as critical minerals under section 7002(c)(4) of the Energy Act of 2020 (30 U.S.C. 1606(c)(4)); and

(2) conduct an evaluation of other minerals necessary for the production of fertilizer and other agricultural products used to promote crop development for designation as critical minerals under that section.

(b) RECOMMENDATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior shall—

(1) evaluate any policies relating to permitting and leasing of projects to develop the minerals described in paragraphs (1) and (2) of subsection (a); and

(2) submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representa-

1 tives recommendations to support domestic produc-
2 tion of the minerals described in paragraphs (1) and
3 (2) of subsection (a).

4 **SEC. 3. FEDERAL REGISTER AND NEPA PROCESS FOR**
5 **PHOSPHATE AND POTASH EXPLORATION OR**
6 **MINE PERMITS.**

7 (a) FEDERAL REGISTER PROCESS.—

8 (1) DEPARTMENTAL REVIEW.—Absent any ex-
9 traordinary circumstance, and except as otherwise
10 required by law, the Secretary of the Interior and
11 the Secretary of Agriculture shall ensure that each
12 Federal Register notice described in paragraph (2)
13 shall be—

14 (A) subject to any required reviews within
15 the Department of the Interior or the Depart-
16 ment of Agriculture; and

17 (B) published in final form in the Federal
18 Register not later than 45 days after the date
19 of initial preparation of the notice.

20 (2) PREPARATION.—The preparation of Federal
21 Register notices required by law associated with the
22 issuance of a potash or phosphate exploration or
23 mine permit shall be delegated to the organizational
24 level within the Federal agency responsible for

1 issuing the potash or phosphate exploration or mine
2 permit.

3 (3) TRANSMISSION.—All Federal Register no-
4 tices relating to official document availability, an-
5 nouncements of meetings, or notices of intent to un-
6 dertake an activity described in paragraph (2) shall
7 be originated in, and transmitted to the Federal
8 Register from, the office in which, as applicable—

9 (A) the documents or meetings are held; or

10 (B) the activity is initiated.

11 (b) ENVIRONMENTAL DOCUMENTS; RECORD OF DE-
12 CISION.—

13 (1) DEFINITION OF COVERED PROJECT.—In
14 this subsection, the term “covered project” means a
15 project for the exploration or mining of potash or
16 phosphate for which a Federal permit is required.

17 (2) PREPARATION OF ENVIRONMENTAL DOCU-
18 MENT BY PROJECT SPONSORS AND QUALIFIED 3RD
19 PARTIES.—Notwithstanding any other provision of
20 law, the head of a Federal agency may, on request
21 of a project sponsor for a covered project, authorize
22 a qualified third party or the project sponsor for the
23 covered project to prepare an environmental docu-
24 ment intended to be adopted by a Federal agency as
25 the environmental impact statement, environmental

1 assessment, or other environmental document for a
2 covered project.

3 (3) DEADLINE FOR RECORD OF DECISION.—

4 Notwithstanding any other provision of law, the
5 record of decision for a covered project shall be com-
6 pleted by not later than 30 months after the date on
7 which the proposal for the covered project was sub-
8 mitted.

9 **SEC. 4. APPROVAL OF USE OF PHOSPHOGYPSUM IN GOV-**
10 **ERNMENT ROAD PROJECTS.**

11 The Administrator of the Environmental Protection
12 Agency shall issue an approval of the use of
13 phosphogypsum in government road projects that is iden-
14 tical to the approval described in the notice of the Envi-
15 ronmental Protection Agency entitled “Approval of the
16 Request for Other Use of Phosphogypsum by the Fer-
17 tilizer Institute” (85 Fed. Reg. 66550 (October 20,
18 2020)).

19 **SEC. 5. CERTIFICATION OF CERTIFIED CROP ADVISORS**
20 **FOR CONSERVATION TECHNICAL ASSIST-**
21 **ANCE.**

22 Section 1242 of the Food Security Act of 1985 (16
23 U.S.C. 3842) is amended—

1 (1) in subsection (a)(2), by inserting “an indi-
 2 vidual certified crop advisor described in subsection
 3 (e)(6),” after “nonprofit entity,”; and

4 (2) in subsection (e), by adding at the end the
 5 following:

6 “(6) CERTIFIED CROP ADVISORS.—An indi-
 7 vidual possessing a current registration and creden-
 8 tials as a certified crop advisor—

9 “(A) shall be exempt from obtaining a cer-
 10 tification under paragraph (4); and

11 “(B) may provide assistance to an eligible
 12 participant with respect to conservation prac-
 13 tices within the scope of the registration of the
 14 individual.”.

15 **SEC. 6. INCREASED COST-SHARE PAYMENTS FOR PRECI-**
 16 **SION AGRICULTURE AND NUTRIENT MAN-**
 17 **AGEMENT UNDER ENVIRONMENTAL QUALITY**
 18 **INCENTIVES PROGRAM.**

19 Section 1240B(d) of the Food Security Act of 1985
 20 (16 U.S.C. 3839aa–2(d)) is amended by adding at the end
 21 the following:

22 “(8) INCREASED PAYMENTS FOR PRECISION AG-
 23 RICULTURE AND NUTRIENT MANAGEMENT.—Not-
 24 withstanding paragraph (2), the Secretary may in-
 25 crease the amount that would otherwise be provided

1 for a practice under this subsection to not more than
 2 90 percent of the costs associated with—

3 “(A) adopting precision agriculture or nu-
 4 trient management practices; and

5 “(B) acquiring precision agriculture or nu-
 6 trient management equipment and technology.”.

7 **SEC. 7. ELIGIBILITY OF AGRICULTURE RETAILERS AS RE-**
 8 **GIONAL CONSERVATION PARTNERSHIP PRO-**
 9 **GRAM PARTNERS.**

10 Section 1271A(4) of the Food Security Act of 1985
 11 (16 U.S.C. 3871a(4)) is amended by adding at the end
 12 the following:

13 “(K) An agriculture retailer.”.

14 **SEC. 8. REVIEW OF CONSERVATION PRACTICE STANDARDS**
 15 **RELATING TO PLANT BIOSTIMULANTS.**

16 Section 1242(h) of the Food Security Act of 1985
 17 (16 U.S.C. 3842(h)) is amended by adding at the end the
 18 following:

19 “(5) REVIEW RELATING TO PLANT BIOSTIMU-
 20 LANTS.—

21 “(A) DEFINITION OF PLANT BIOSTIMU-
 22 LANT.—In this paragraph, the term ‘plant bio-
 23 stimulant’ means a substance, micro-organism,
 24 or mixture of a substance and a micro-orga-
 25 nism, that, when applied to seeds, plants, the

rhizosphere, soil, or other growth media, acts to support the natural processes of a plant independently of the nutrient content of that substance, micro-organism, or mixture, including by improving—

“(i) nutrient availability;

“(ii) uptake or use efficiency;

“(iii) tolerance to abiotic stress; and

“(iv) consequent growth, development, quality, or yield.

“(B) REVIEW REQUIRED.—The Secretary shall conduct a review of nutrient management practice standards to determine if plant biostimulants should be approved for use in appropriate conservation practice standards.”.

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