

JUNE 2025
VOL. 25-6



PRATT'S

ENERGY LAW

REPORT



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ISBN: 978-1-6328-0836-3 (print)
ISBN: 978-1-6328-0837-0 (ebook)
ISSN: 2374-3395 (print)
ISSN: 2374-3409 (online)

Cite this publication as:

[author name], [article title], [vol. no.] PRATT’S ENERGY LAW REPORT [page number] (LexisNexis A.S. Pratt);

Ian Coles, *Rare Earth Elements: Deep Sea Mining and the Law of the Sea*, 14 PRATT’S ENERGY LAW REPORT 4 (LexisNexis A.S. Pratt)

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230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
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POSTMASTER: Send address changes to *Pratt's Energy Law Report*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

From Extraction to Smelting: President Trump Issues Executive Order Aiming to Increase American Mineral Production

*By Meaghan Connors, Warren S. Payne, Brian A. Cohen and Sara M. Baldazo**

In this article, the authors review the Trump administration's recent efforts with respect to the critical minerals industry that may be the kick-start the U.S. critical minerals sector needs to strengthen the supply chain and build domestic resiliency.

Those in the critical minerals industry have been waiting to see what President Donald Trump's next move would be after his "Unleashing American Energy" executive order on January 20, 2025 (the January Executive Order),¹ the recent executive order launching the 232 investigation to determine the effect that copper imports have on national security,² and the potential 25% proposed copper tariff on copper imports.

Then, on March 20, two months after the January executive order, the White House released a new executive order, "Immediate Measures to Increase American Mineral Production" (the EO),³ leaving no doubt about President Trump's plans (and ability) to spur domestic critical mineral production and reduce reliance on foreign critical minerals and processing capabilities. Importantly, the EO requires *immediate* action to "facilitate domestic mineral production to the maximum possible extent."

The first major item to note is that the EO confirms what industry players have been demanding for several years; the EO includes copper as a "mineral" and supports the development of US copper projects. Those following this topic will be aware that copper was not deemed a "critical mineral" by the Secretary of the Interior in its 2022 Critical Mineral List,⁴ and was only deemed a "critical material" by the Department of Energy in 2023. Because copper is so vital to the energy infrastructure and energy technology, this inclusion by

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¹ <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/>.

² <https://www.whitehouse.gov/presidential-actions/2025/02/addressing-the-threat-to-nationalsecurity-from-imports-of-copper/>.

³ <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/>.

⁴ <https://www.congress.gov/crs-product/R47982>.

President Trump is critical when focusing on U.S. mineral production and supply chain resiliency.

This EO also defined “mineral” to include “a critical mineral, as defined by 30 U.S.C. 1606(a)(3), as well as includes uranium, copper, potash, gold, and any other element, compound or material as determined by the chair of the National Energy Dominance Council (NEDC).” The EO specifically identifies uranium, potash, and gold as minerals, which were all excluded from the 2022 Critical Mineral List.

Also, this definition of “mineral” allows the Trump administration flexibility in determining which minerals are included under the act as the chair of the NEDC or the Secretary of the Interior (using power under 30 U.S.C. 1606(c)) can determine which mineral productions should be increased.

Notably, despite the inclusion of copper, gold, potash, and uranium as “minerals” under the EO, the EO does not amend the Secretary of the Interior’s 2022 Critical Mineral List to include these additional minerals as “critical minerals” thereunder, nor does it allow for these minerals to otherwise qualify for eligibility under Section 45X of the Internal Revenue Code (a means by which critical mineral producers and others in the critical mineral space can monetize tax credits for certain eligible components).

The EO also defined “mineral production” as “the mining, processing, refining, and smelting of minerals, and the production of processed critical minerals and other derivative products.” This broad definition of mineral production suggests that the Trump administration intends to increase and support mining at all stages, from the extraction phase – which was not supported under the Inflation Reduction Act until October of 2024 – to the refining and smelting phases, processes in which the United States is severely lacking.

CREATING PRIORITY PROJECTS LISTS

The Trump administration instructed the head of each executive department and agency involved in the permitting of mineral production in the United States to provide, within 10 days of the EO, a list of all mineral production projects for which a plan of operation, permit application, or other application for approval has been submitted to that agency. 10 days after these first lists are submitted, those same agency heads must work with the chair of the NEDC to make a “priority list of projects,” and must take all necessary or appropriate actions to expedite and issue the relevant permits or approvals.

15 days later, the chair of the NEDC must submit, to the executive director of the Permitting Council, mining projects for consideration to the FAST-41 program for expedited and transparent permitting review and approval.

FAST-41 project timelines for such project must be set forth by no later than 15 days after getting such initial list. Currently, there is only one mining project in the FAST-41 program, as it has been argued that the program's requirements for public transparency with a mining project's plans and operations discourages participation. It will be interesting to see if this new process required by this EO will encourage more participation.

While the need for efficiency and expediency with the U.S. permitting timelines is long overdue, it is unclear if these federal agencies and departments can produce these lists and ramp up their approval processes so quickly. Perhaps this is a step in the right direction to encourage that process. Finally, the EO also requested industry feedback on regulatory bottlenecks and other strategies for expediting domestic mineral production.

ADDRESSING THE MINING ACT OF 1872

The Trump administration is also proposing to address the Mining Act of 1872, by requiring recommendations to clarify the treatment of waste rock, tailings, and mine waste disposal under the Act.

LOCATING FEDERAL LAND FOR NEW LAND MINERAL PROJECTS

By no later than 10 days after the EO, the Secretary of the Interior must provide a list of all Federal lands known to currently hold mineral deposits and reserves, and then the Secretary of the Interior shall designate the mining of these minerals the primary use of such lands, and any related land use plans under the Federal Land Policy and Management Act for these designated lands shall be amended or revised if necessary, so that the intent of the EO can be carried out on such lands.

Further, the Secretary of Defense, Secretary of the Interior, Secretary of Agriculture, and Secretary of Energy are, required to, within 30 days of the EO, identify sites on federal land that may be suitable for leasing or development for the construction and operation of critical mineral projects. These sites on which these projects could be fully permitted and operational as soon as possible are to be prioritized. The EO also requires these agencies to enter into extended-use leases with private entities to advance the installation of commercial mineral production enterprises on the lands identified.⁵ The Trump administration has also instructed agencies that provide financing or capital assistance to mining companies or their project sponsors to ensure favorable terms and conditions for these parties entering into mineral production leases.

⁵ "As authorized by 10 U.S.C. 2667 or by 42 U.S.C. 7256(a) respectively, or using any other authority they deem appropriate."

FINANCING OF DOMESTIC MINING PROJECTS

The Secretary of Defense has been granted the president's authority under the Defense Production Act Section 303 – which is generally used for defense needs – and the Secretary of Defense (and in consultation with the Secretary of Energy, the Secretary of the Interior and others), can use this authority to progress the advancement of domestic critical mineral production for strategic resources. The Secretary of Defense shall also focus on pairing providers of private capital with mining companies.

Agencies empowered to make loans, equity investments, grants, etc. are instructed to rescind policies⁶ that require applicants to include disclosures required by Regulation S-K part 1300. The Trump administration has also waived the requirements of 50 U.S.C. 4531(d)(1)(a)(ii), 4332(d)(1)(B), and 4553(a)(1)-(a)(6). President Trump has also delegated to the chief executive officer of the United States International Development Finance Corporation certain authority of the president under the Defense Production Act.

Finally, the EO also requires that, within 30 days:

- (i) The DFC and the Secretary of Defense develop a proposal for a dedicated mineral production fund for domestic investments;
- (ii) The Export-Import Bank release a program for the use of mineral production financing tools to support domestic mineral production and to secure the United States' offtake of foreign raw minerals; and
- (iii) The Assistant Secretary of Defense for Industrial Base Policy is tasked with organizing mineral buyers and establishing a system for bids from critical mineral producers to supply the minerals.

The EO implements several rapidly approaching deadlines on various governmental agency heads showing that the Trump administration is highly prioritizing the domestic production of critical minerals. These requirements aim to expedite the domestic permitting process, expand the scope of minerals and types of mining processes for those critical to energy security, remove bottlenecks and barriers for the projects, and support government and private capital into the critical minerals market. It is clear the programs and timelines set forth by the Trump administration are aggressive, but it may be the kick-start the U.S. critical minerals sector needs to strengthen the supply chain and build domestic resiliency.

⁶ <https://www.ecfr.gov/current/title-17/chapter-II/part-229/subpart-229.1300>.