

Client Alert

Energy

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For more information, contact:

J. Michael Taylor
+1 202 626 2385
jmtaylor@kslaw.com

John Clay Taylor
+44 20 7551 7553
jtaylor@kslaw.com

Patrick Togni
+1 202 626 2958
ptogni@kslaw.com

James F. Bowe, Jr. (Jim)
+1 202 626 9601
jbowe@kslaw.com

Nikesh Jindal
+1 202 626 8933
njindal@kslaw.com

Dan Feldman
+971 2 596 7027
dfeldman@kslaw.com

Ryan Majerus
+1 202 626 9279
rmajerus@kslaw.com

Peter Hood
+44 20 7551 2107
phood@kslaw.com

Thomas Ewing
+1 202 626 9262
tewing@kslaw.com

King & Spalding

Washington, D.C.
1700 Pennsylvania Avenue, NW
Suite 900
Washington, D.C. 20006
T. +1 202 737 0500

London
8 Bishopsgate
London, EC2N 4BQ
United Kingdom
T. +44 20 7551 7500

Trump Administration Issues New Executive Order on Immediate Measures to Increase American Mineral Production

On March 20, 2025, President Trump signed an Executive Order (“EO”) entitled *Immediate Measures to Increase American Mineral Production*.ⁱ The EO builds on previous energy-focused actions taken by the Administration, and includes aggressive timelines in which federal agencies are to take significant measures to fast-track permitting, leasing, and financing of domestic mining projects. The EO also includes provisions designed to re-allocate existing federal funds and incentives to increase private sector investment in the mining industry.

Environmental Non-governmental Organizations (“eNGOs”) and other stakeholders may try to oppose some of these deregulatory measures, but domestic mining projects are expected to attract renewed interest and investment in the coming months and years, particularly as federal agencies implement the directives set forth in the EO. Interested parties should closely review the new policies being rolled out (as we at King & Spalding are doing) and prepare to take advantage of the new opportunities they produce.

WHY CRITICAL MINERALS MATTER

Critical minerals play a vital economic and national security role. Smartphones, semiconductors, electric vehicles, fighter jets, power grids, and many other forms of goods and infrastructure include critical minerals. These raw materials are now widely viewed as strategic assets; however, concern has grown that the United States has become too reliant on imports for many of them, especially from China. In fact, the U.S. is 100% import-dependent for at least a dozen key minerals, and over 95% dependent for dozens more – with China serving as the primary supplier for the majority of many of those, including graphite and gallium, polysilicon, lithium, and cobalt.ⁱⁱ

In recent years, ensuring access to critical minerals has become a focal point of U.S. industrial and national security policy. Congress and multiple administrations have launched initiatives to diversify supply chains away from China, invest in domestic mining and processing, and stockpile essential minerals.ⁱⁱⁱ However, these measures have not significantly revitalized the domestic minerals industry.

TRUMP'S EARLY MOVES: ENERGY EMERGENCY AND REVERSING CLIMATE RULES

Upon taking office in January 2025, President Trump moved quickly to prioritize domestic energy production, shifting policy toward energy security over climate considerations, directing agencies to use fast-tracked permitting procedures, and clearing the way for agencies to greenlight fossil fuel production and mining projects.

On January 20, 2025, his first day in office, Trump signed a “National Energy Emergency” proclamation (Executive Order 14156), signaling the Administration’s intent to use broad measures, such as fast-tracked permitting and invocation of authorities under the Defense Production Act (“DPA”), to boost U.S. energy and mining independence, including the construction of energy infrastructure and the production of critical minerals within the United States.^{iv}

In mid-March, the White House took additional action by rescinding prior climate-focused Executive Orders that it viewed as impediments to energy production. A March 14, 2025 Executive Order rolled back Biden Administration guidelines that had directed federal agencies to consider climate change and carbon emissions in their purchasing decisions.^v The same March 14 Order also revised how DPA powers could be used, removing some restrictions that had tied DPA funding to climate-oriented projects.

King & Spalding has previously published Client Alerts focused on the energy and environmental aspects of Trump’s January 20 Executive Orders, as well as their effects specifically on Critical Minerals.

MARCH 20 EXECUTIVE ORDER ON “IMMEDIATE MEASURES TO INCREASE AMERICAN MINERAL PRODUCTION”

President Trump’s latest EO recognizes that “transportation, infrastructure, defense capabilities, and the next generation of technology rely upon a secure, predictable, and affordable supply of minerals,” and seeks to increase both domestic mining and processing of critical minerals.^{vi}

KEY PROVISIONS OF THE MARCH 20 EO INCLUDE:

- **Broadening the definition of “critical minerals.”** Legally, *critical minerals* are defined by the Consolidated Appropriations Act, 2021, Pub. L. 116-260 (30 U.S.C. § 1606(a)(3)) to include those minerals the Secretary of the Interior designates as critical.^{vii} In 2022, the Secretary published the 2022 Final List of critical minerals.^{viii} This list was also incorporated into the Secretary of Energy’s 2023 Critical Materials List, which includes non-mineral critical materials.^{ix} The 2022 Final List covers elements such as lithium, rare earths, cobalt, graphite, and dozens of others – but notably excludes “fuel minerals” like coal, oil, natural gas, and uranium.

The March 20 EO incorporates this definition, and also allows for further expansion of the scope of the definition of critical minerals. For purposes of the EO, “Mineral” is defined as any critical mineral defined by the Secretary of the Interior under 30 U.S.C. § 1606(a)(3), as outlined above, **plus** several specifically named resources: uranium, copper, potash, and gold. It also includes any other element or material that the Chair of the Administration’s new National Energy Dominance Council (NEDC) – which is chaired by the Secretary of the Interior^x – adds to the list.^{xi} This action likely sets the stage for additional minerals to be considered “critical minerals.” Indeed, a subsequent fact sheet released by the White House suggests that conventional fuels such as coal could be considered critical minerals, and therefore eligible for incentives under the measures established by the March 20 EO.^{xii}

Broadening the scope of the critical minerals definition in this context is consistent with the approach that the Trump Administration has taken with respect to the additional tariffs that were imposed on Canada to address the flow of illicit drugs across the northern border. Specifically, [e]nergy or energy resources, as defined in section 8 of Executive Order 14156 of January 20, 2025 (Declaring a National Energy Emergency), currently are subject to a 10% additional tariff instead of the IEEPA 25% rate (in cases where the energy or energy resources do not qualify as originating goods under the United States-Mexico-Canada Agreement and, thus, currently would be eligible to enter the United States without the imposition of any tariff). U.S. Customs and Border Protection has now published a list that includes more than 750 energy or energy resources from Canada, including minerals, that currently are eligible for the reduced tariff rate.^{xiii}

- **Fast-tracking mining permits and projects.** The Executive Order takes an aggressive approach to streamlining the processing of permit applications and accelerating projects, mandating tight deadlines for action. For example, within 10 days following the EO's issuance, every federal agency with a regulatory oversight role is directed to submit a list of all mining projects currently awaiting approval or permits, and then, in coordination with the NEDC, identify "priority projects" that can be immediately approved.^{xiv}

Agencies are ordered to "take all necessary and appropriate actions" to expedite those permit approvals. Within 15 days, the NEDC Chair (i.e., the Secretary of the Interior) is to also nominate projects for treatment under the Fixing America's Surface Transportation ("FAST") Act – to elevate them for interagency fast-tracking through expedited environmental and permitting reviews.^{xv} The March 20 EO also calls for soliciting industry feedback on "regulatory bottlenecks" impeding minerals development, signaling that further regulatory rollbacks could be in store.^{xvi}

- **Prioritizing federal lands for mining.** The EO further directs the Department of the Interior to make federal lands available for mining. Within 10 days, the Department of the Interior must produce a list of all federal lands known to contain mineral deposits or reserves.^{xvii} Those areas are to be prioritized in land-use plans for mining as "the primary land use," to the extent allowed by law, superseding other uses such as conservation or recreation.^{xviii} Within 30 days, four agencies – Interior, Defense, Agriculture (which manages National Forests), and Energy – must identify specific sites on the lands they manage that could be leased or opened up for private commercial mining development quickly, with a focus on those sites that could be "fully permitted and operational as soon as possible" and that would have the biggest impact on U.S. supply chain security.^{xix}
- **Using leasing authorities (10 U.S.C. § 2667 and 42 U.S.C. § 7256) to facilitate rapid development on federal lands.** The EO invokes other statutory authorities to make federal lands available to private commercial mining interests. In particular:
 - 10 U.S.C. § 2667 allows the military to lease out non-excess property that the military owns but that is not being used for core needs. This is sometimes called the "*enhanced use leasing*" authority – it was previously used after World War II to enable the Department of Defense to lease industrial plant equipment and property to private companies.^{xx}
 - 42 U.S.C. § 7256 gives the Department of Energy ("DOE") broad authority to enter into contracts, leases, cooperative agreements or "other similar transactions" with private entities.^{xxi} DOE may use this authority to lease DOE-managed lands or facilities for mining and processing ventures.
 - The EO directs agencies to enter into "extended use" leases under these statutes, meaning long-term leases potentially decades in length to give companies certainty to invest in mines and processing plants.^{xxii} Furthermore, the Department of Defense and DOE are directed to coordinate with the Small Business

Administration and other agencies to ensure that any private lessees can tap into favorable financing terms and public assistance programs for mining projects on federal lands under the above-referenced provisions.^{xxiii}

- **Rapid reviews of mining regulations.** The EO also contemplates certain longer-term regulatory modifications. The NEDC chair and White House staff have 30 days to recommend updates to the Mining Law of 1872 related to how waste rock and mine tailings are handled.^{xxiv} This 150-year-old law governs mining on federal lands and incorporates provisions addressing environmental liability for mine waste. By fast-tracking recommendations relating to the handling of mine waste, the Administration may be attempting to identify ways to reconsider these issues in a way that facilitates new mining projects. While any changes to the 1872 Mining Law would require congressional action, this recommendation may signal the Administration's intent to push legislative proposals quickly.
- **Invoking the Defense Production Act (50 U.S.C. §§ 4531–4533) for funding and waiving restrictions.** Perhaps the most significant aspects of the EO involve money – using DPA authorities to finance and incentivize domestic mineral production. The DPA, a Cold War-era law, contains provisions (codified at 50 U.S.C. §§ 4531–4533) that empower the government to provide loans, loan guarantees, direct purchases, and other financial incentives to expand industrial capacity for materials deemed critical to national defense.^{xxv} Normally, there are limits and conditions on these actions – for example, the government must determine that industry cannot or will not meet the need on its own, and large projects (over \$50 million) usually require congressional notification or approval. Trump's EO is intended to streamline this process by leveraging the ongoing national emergency declared on January 20. The EO waives certain provisions of the DPA that would otherwise apply, including congressional notification requirements for grants or loans in excess of \$50 million, and other conditions related to commercial terms and Presidential determinations. In the EO, the President then delegates his DPA powers to the Secretary of Defense for the purpose of supporting mineral production. With this EO, the Department of Defense is given the green light to spend DPA funds on mining projects – including by making direct loans to mining companies, funding processing facilities, or subsidizing expansions.

The EO further directs the Secretary of Defense to add domestic mineral production as a priority area under the DoD's Industrial Base Analysis and Sustainment (IBAS) program, which has previously funded critical minerals and critical materials-related projects, further ensuring budget and attention within the DoD for these projects.

- **Empowering the IDFC and private capital to invest in mining.** The EO directs the U.S. International Development Finance Corporation ("IDFC") – an agency that has typically financed projects in developing countries – to help facilitate domestic mineral production activity. It delegates DPA authorities to the CEO of the IDFC, authorizing the IDFC to make loans, loan guarantees, equity investments, and even sign purchase agreements to bolster critical mineral supply chains.^{xxvi} While the IDFC's mandate has historically focused on foreign development, it has a special exception under the DPA to support domestic industrial base efforts when directed. In the EO, the IDFC is instructed to coordinate closely with the DoD and the NEDC, effectively acting as another arm of the U.S. government to inject financing into mines, mineral processing plants, or related projects that otherwise struggle to secure funding.

To facilitate this pivot, within 30 days of the EO, the IDFC's CEO and the Defense Secretary must present a plan to create a "dedicated mineral and mineral production fund" using IDFC's capacities and collaborating with DoD's Office of Strategic Capital ("OSC"), a recently-established DoD office meant to co-invest in critical technologies alongside private investors.^{xxvii} To further integrate private capital, the Defense Secretary is directed to use the National Security Capital Forum to "pair private capital with commercially viable domestic mineral projects to the maximum possible extent." This forum was established by Congress to bring together Department of Defense

officials, private investors, and allied nations to fund critical defense-related projects. By utilizing the forum, DoD can convene venture capital firms, miners, battery manufacturers, and others in one room – signaling to investors that the U.S. government intends to backstop or co-fund viable mineral production projects.

- **Export-Import Bank and SBA support.** The Executive Order also directs the Export-Import Bank of the U.S. (EXIM) and the Small Business Administration (SBA) to support critical minerals extraction and processing initiatives. EXIM's President has 30 days to produce guidance for using EXIM's existing programs to support critical mineral supply chains. This includes two relatively new EXIM initiatives: a Supply Chain Resiliency Initiative (meant to secure U.S. access to essential inputs, potentially by helping U.S. companies import raw minerals from abroad to feed domestic processing) and the "Make More in America" Initiative, which is a program EXIM launched to finance domestic manufacturing projects that have an export nexus. The guidance will likely encourage using EXIM loans, guarantees, or insurance for projects like building a minerals processing plant or offtake agreements. Meanwhile, the SBA is tasked (within 45 days) to draft proposals for new legislation to improve public-private financing for small businesses in the mineral sector, and to update its regulations to facilitate lending to those firms. This could involve expanding the SBA's loan guarantee programs or investment funds (such as the SBIC program) to cover mining startups or mineral processing ventures that might otherwise struggle to get bank loans.
- **Easing disclosure and compliance burdens.** The Order also intends to suspend certain regulatory and transparency requirements. It directs agencies that provide loans or grants for mineral security to rescind any policy that requires applicants to submit the disclosures that would be required under "Regulation S-K, part 1300" as part of their application. Regulation S-K 1300 is the Securities and Exchange Commission's detailed reporting standard for mining companies – it requires, among other things, extensive geological studies and resource/reserve estimates verified by qualified professionals for public company filings.^{xxviii}

By telling agencies not to require the submission of disclosures required by S-K 1300 reports, the Administration is lowering the barrier to entry for mining firms seeking federal support. Many small companies have mineral resources identified but not yet fully delineated to SEC standards; this change means they can apply for DPA funds or loans without the same level of due diligence in hand.^{xxix}

Taken together, the mineral-focused included in the March 20 EO contemplate significant actions with respect to domestic mining and mineral processing activities. By April 2025 (within 30–45 days of the EO), the White House expects to have: a list of priority mines with permits in hand; new leases offered on federal lands; dedicated funding programs taking shape at DoD, DFC, EXIM, and SBA; and even legislative proposals ready to further streamline mining. The EO positions the new NEDC, chaired by Interior Secretary (and former North Dakota Governor) Doug Burgum, as a central coordinator to coordinate and push this activity.

KEY TAKEAWAYS

For companies active in mining, manufacturing, and defense supply chains – this Executive Order sends a clear signal that U.S. policy is now firmly oriented toward "energy dominance" and resource security. The federal government is pledging fast issuance of federal permits, favorable leases, and ample financing to those willing to invest in American mineral projects. This could create new opportunities for mining companies and their suppliers: dormant mine proposals might get a second look, and projects that previously struggled to obtain capital or navigate permitting may find more receptive audiences among investors. Defense contractors and manufacturers could also benefit if more domestic sources for inputs like rare earth magnets or battery-grade lithium come online.

However, the EO's push to promote mining and mineral processing also could lead to opposition from Congressional Democrats, eNGOs and others. Some of the targeted minerals (such as lithium, copper, and rare earths) are found

in areas where Native American tribes or rural communities have opposed mining in the past. The EO does require that all actions be “consistent with applicable law” – which suggests that existing statutory and regulatory requirements (like the National Environmental Policy Act (NEPA) or the Endangered Species Act) will inform the scope of any new mineral extraction efforts that are undertaken pursuant to this Order. There are similar limitations in the Executive Order on “Immediate Expansion of American Timber Production.”^{xxx} Even so, the President’s previous declaration of an energy emergency and moves within the EO to accelerate permitting approvals are likely to increase the speed with which mining interests can expect federal action. The Administration is clearly willing to consider streamlining environmental reviews. For example, projects put on the FAST-41 Permitting Dashboard benefit from coordinated, and potentially shorter, NEPA reviews. And by waiving certain DPA requirements, the EO potentially signals that certain projects may be eligible for modified regulatory requirements.

It’s worth noting that many of the statutory tools being employed in the EO have rarely been used at this scale to promote mining and mineral processing. The DFC’s domestic DPA loan authority, for example, was first created in 2020 but has seen limited use. If the DFC and Pentagon now start deploying significant funding to support mines or mineral processing facilities, new ground will be broken in how the government partners with industry. Companies might find the federal government taking on the roles of a part-owner or customer for certain mineral projects, via DPA purchase commitments or equity stakes through the new fund. This could mitigate risk for private investors and accelerate project timelines.

With the administration’s new Executive Order, the critical minerals supply chain is being treated explicitly as a national defense issue. The primary takeaway is that projects and investments that were previously considered marginal or to have a challenging permitting path might now become viable with federal help. At the same time, businesses will need to navigate the environmental and regulatory tensions that remain – not all red tape can be cut with an Executive Order, and legal challenges to federal decisions are certain to crop up. And there is the question whether, given reductions in employee headcount the Administration has imposed at most Executive Branch agencies, the federal agencies charged with implementing the March 20 Executive Order will be equal to the task.

Notwithstanding these potential challenges, the Administration has clearly decided that the cost of inaction – continued reliance on China and other potential adversaries for critical minerals – is unacceptable. The 2010 rare earth embargo and more recent threats (such as China’s moves to cut off mineral supplies during trade disputes) have been noticed in U.S. policymaking circles. By dramatically elevating domestic mineral production as a national priority, the U.S. is signaling to global markets that it does not intend to be held hostage in the raw materials arena. The coming months will reveal how effectively these ambitious directives can be turned into shovels in the ground and new supply chains that truly reduce dependence on foreign minerals.

Our team at King & Spalding is well-versed on the full range of project development, financing, construction, offtake, tax and federal support needs for mining projects, as well as regulatory advocacy and litigation (when needed) to defend projects from opposing interests. We would be pleased to discuss opportunities in this space that will result from this EO and its implementing measures.

ABOUT KING & SPALDING

Celebrating more than 140 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 24 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

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- ⁱ <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/>.
- ⁱⁱ <https://www.miningnewsnorth.com/story/2023/09/14/critical-minerals-alliances-2023/us-minerals-reliance-raises-red-flags/8090.html#:~:text=If%20you%20count%20the%2014,are%20primarily%20sourced%20from%20China>
- ⁱⁱⁱ <https://www.miningnewsnorth.com/story/2023/09/14/critical-minerals-alliances-2023/us-minerals-reliance-raises-red-flags/8090.html#:~:text=China%27s%20gallium%20and%20germanium%20export,and%20chipmaking%20technologies%20to%20China;>
<https://www.csis.org/analysis/unpacking-trumps-new-critical-minerals-executive-order#:~:text=The%20EO%20positions%20critical%20minerals,and%20mobilizing%20existing%20funding%20expeditiously>
- ^{iv} <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/>
<https://www.kslaw.com/news-and-insights/president-trumps-day-one-executive-orders-energy-and-environment>
- ^v <https://www.whitehouse.gov/presidential-actions/2025/03/additional-recissions-of-harmful-executive-orders-and-actions/>
- ^{vi} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=,303%20of%20the%20DPA%2C%20in>
- ^{vii} https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=30-USC-185389929-22931526&term_occur=999&term_src=title:30:chapter:28:section:1606#:~:text=,stone%2C%20pumice%2C%20cinders%2C%20and%20clay
- ^{viii} <https://www.federalregister.gov/documents/2022/02/24/2022-04027/2022-final-list-of-critical-minerals>
- ^{ix} <https://www.federalregister.gov/documents/2023/08/04/2023-16611/notice-of-final-determination-on-2023-doe-critical-materials-list>
- ^x <https://www.whitehouse.gov/presidential-actions/2025/02/establishing-the-national-energy-dominance-council/>
- ^{xi} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=,NEDC>
- ^{xii} <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-takes-immediate-action-to-increase-american-mineral-production/>
- ^{xiii} See CSMS # 64514918 - UPDATE - Energy and Energy Resources from Canada Subject to Additional Duties Pursuant to Executive Order (Mar. 24, 2024), available at: https://content.govdelivery.com/bulletins/gd/USDHSCBP-3d86b66?wgt_ref=USDHSCBP_WIDGET_2
- ^{xiv} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=,NEDC>
- ^{xv} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=consultation%20with%20the%20heads%20of,establish%20schedules%20for%20expedited%20review>
- ^{xvi} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=for%20expedited%20review>
- ^{xvii} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=Sec,the%20intent%20of%20this%20order>
- ^{xviii} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=to%20the%20President%20for%20Economic,the%20intent%20of%20this%20order>
- ^{xix} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=and%20provide%20such%20list%20to,the%20domestic%20mineral%20supply%20chain>
- ^{xx} <https://www.gao.gov/products/id-81-36#:~:text=The%20Senate%20Foreign%20Relations%20Committee,military%20equipment%20to%20foreign%20countries>
- ^{xxi} https://www.energy.gov/sites/default/files/2023-08/OT%20Guide%20Aug%202023_0.pdf#:~:text=42%20U,entities%20as%20the%20Secretary%20E2%80%9Cmay
- ^{xxii} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=extended%20use%20leases%20as%20authorized,be%20compatible%20with%20commercial%20requirements>
- ^{xxiii} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=,purposes%2C%20consistent%20with%20applicable%20law>
- ^{xxiv} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=Sec,the%20Mining%20Act%20of%201872>
- ^{xxv} <https://www.findlaw.com/military/administrative-issues-benefits/the-defense-production-act-explained.html#:~:text=2,Title%20III>
- ^{xxvi} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=,K%20part%201300>
- ^{xxvii} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/#:~:text=,authorities%20in%20the%20Economy%20Act>
- ^{xxviii} <https://www.sec.gov/resources-small-businesses/small-business-compliance-guides/modernization-property-disclosures-mining-registrants-small-entity-compliance-guide#:~:text=Modernization%20of%20Property%20Disclosures%20for,to%20its%20business%20or>

^{xxix} Note that this provision of the EO does not waive the requirement for firms to submit S-K 1300 disclosures to the SEC; it only requires agencies making loans or grants rescind policies requiring an applicant to submit to that agency the disclosures that are required under S-K 1300.

^{xxx} <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-expansion-of-american-timber-production/>