

DECLARATION OF A NATIONAL EMERGENCY WITH
RESPECT TO OUR NATION'S UNDUE RELIANCE ON
CRITICAL MINERALS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A DECLARATION OF A NATIONAL EMERGENCY TO DEAL WITH
THE THREAT POSED BY OUR NATION'S UNDUE RELIANCE ON
CRITICAL MINERALS, IN PROCESSED OR UNPROCESSED FORM,
FROM FOREIGN ADVERSARIES. PURSUANT TO 50 U.S.C. 1703(b);
PUBLIC LAW 95-223, SEC. 204(b); (91 STAT. 1627) AND 50 U.S.C.
1641(b); PUBLIC LAW 94-412, SEC. 401(b); (90 STAT. 1257)



OCTOBER 1, 2020.—Message and accompanying papers referred to the
Committee on Foreign Affairs and ordered to be printed

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To the Congress of the United States:

Pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, I hereby report that I have issued an Executive Order declaring a national emergency to deal with the threat posed by our Nation's undue reliance on critical minerals, in processed or unprocessed form, from foreign adversaries.

A strong America cannot be dependent on imports from foreign adversaries for the critical minerals that are increasingly necessary to maintain our economic and military strength in the 21st century. Because of the national importance of reliable access to critical minerals, I signed Executive Order 13817 of December 20, 2017 (A Federal Strategy To Ensure Secure and Reliable Supplies of Critical Minerals), which required the Secretary of the Interior to identify critical minerals and made it the policy of the Federal Government "to reduce the Nation's vulnerability to disruptions in the supply of critical minerals." The critical minerals identified by the Secretary of the Interior are necessary inputs for the products our military, national infrastructure, and economy depend on the most. Our country needs critical minerals to make airplanes, computers, cell phones, electricity generation and transmission systems, and advanced electronics.

Though these minerals are indispensable to our country, we presently lack the capacity to produce them in processed form in the quantities we need. American producers depend on foreign countries to supply and process them. Whereas the United States recognizes the continued importance of cooperation on supply chain issues with international partners and allies, in many cases, the aggressive economic practices of certain non-market foreign producers of critical minerals have destroyed vital mining and manufacturing jobs in the United States. We must reduce our vulnerability to adverse foreign government action, natural disaster, or other supply disruptions. Our national security, foreign policy, and economy require a consistent supply of each of these minerals.

Using the authority vested in me by IEEPA, the Executive Order requires the Secretary of the Interior, in consultation with the Secretary of the Treasury, the Secretary of Defense, the Secretary of Commerce, and the heads of other executive departments and agencies, as appropriate, to investigate our Nation's undue reliance on critical minerals, in processed or unprocessed form, from foreign adversaries. Following this investigation, the Executive Order requires the Secretary of the Interior to submit a report to the President recommending additional executive action.

The Executive Order also declares that it is the policy of the United States to protect and expand the domestic supply chain for minerals. Specific executive department and agency heads, includ-

ing the Secretary of the Interior and the Secretary of Energy, are directed to take various actions to protect and expand the domestic supply chain for minerals, consistent with applicable law, such as the publication of guidance, the revision of regulations, and the acceleration of the issuance of permits.

I am enclosing a copy of the Executive Order I have issued.

DONALD J. TRUMP.

THE WHITE HOUSE, *September 30, 2020.*

EXECUTIVE ORDER

ADDRESSING THE THREAT TO THE DOMESTIC SUPPLY CHAIN FROM RELIANCE ON CRITICAL MINERALS FROM FOREIGN ADVERSARIES AND SUPPORTING THE DOMESTIC MINING AND PROCESSING INDUSTRIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code,

I, DONALD J. TRUMP, President of the United States of America, find that a strong America cannot be dependent on imports from foreign adversaries for the critical minerals that are increasingly necessary to maintain our economic and military strength in the 21st century. Because of the national importance of reliable access to critical minerals, I signed Executive Order 13817 of December 20, 2017 (A Federal Strategy To Ensure Secure and Reliable Supplies of Critical Minerals), which required the Secretary of the Interior to identify critical minerals and made it the policy of the Federal Government “to reduce the Nation’s vulnerability to disruptions in the supply of critical minerals.” Pursuant to my order, the Secretary of the Interior conducted a review with the assistance of other executive departments and agencies (agencies) that identified 35 minerals that (1) are “essential to the economic and national security of the United States,” (2) have supply chains that are “vulnerable to disruption,” and (3) serve “an essential function in the manufacturing of a product, the absence of which would have significant consequences for our economy or our national security.”

These critical minerals are necessary inputs for the products our military, national infrastructure, and economy depend on the most. Our country needs critical minerals to make airplanes, computers, cell phones, electricity generation and transmission systems, and advanced electronics. Though these minerals are indispensable to our country, we presently lack the capacity to produce them in processed form in the quantities we need. American producers depend on foreign countries to supply and process them. For 31 of the 35 critical minerals, the United States imports more than half of its annual consumption. The United States has no domestic production for 14 of the critical minerals and is completely dependent on imports to supply its demand. Whereas the United States recognizes the continued importance of cooperation on supply chain issues with international partners and allies, in many cases, the aggressive economic practices of certain non-market foreign pro-

ducers of critical minerals have destroyed vital mining and manufacturing jobs in the United States.

Our dependence on one country, the People's Republic of China (China), for multiple critical minerals is particularly concerning. The United States now imports 80 percent of its rare earth elements directly from China, with portions of the remainder indirectly sourced from China through other countries. In the 1980s, the United States produced more of these elements than any other country in the world, but China used aggressive economic practices to strategically flood the global market for rare earth elements and displace its competitors. Since gaining this advantage, China has exploited its position in the rare earth elements market by coercing industries that rely on these elements to locate their facilities, intellectual property, and technology in China. For instance, multiple companies were forced to add factory capacity in China after it suspended exports of processed rare earth elements to Japan in 2010, threatening that country's industrial and defense sectors and disrupting rare earth elements prices worldwide.

The United States also disproportionately depends on foreign sources for barite. The United States imports over 75 percent of the barite it consumes, and over 50 percent of its barite imports come from China. Barite is of critical importance to the hydraulic fracturing ("fracking") industry, which is vital to the energy independence of the United States. The United States depends on foreign sources for 100 percent of its gallium, with China producing around 95 percent of the global supply. Gallium-based semiconductors are indispensable for cellphones, blue and violet light-emitting diodes (LEDs), diode lasers, and fifth-generation (5G) telecommunications. Like for gallium, the United States is 100 percent reliant on imports for graphite, which is used to make advanced batteries for cellphones, laptops, and hybrid and electric cars. China produces over 60 percent of the world's graphite and almost all of the world's production of high-purity graphite needed for rechargeable batteries.

For these and other critical minerals identified by the Secretary of the Interior, we must reduce our vulnerability to adverse foreign government action, natural disaster, or other supply disruptions. Our national security, foreign policy, and economy require a consistent supply of each of these minerals.

I therefore determine that our Nation's undue reliance on critical minerals, in processed or unprocessed form, from foreign adversaries constitutes an unusual and extraordinary threat, which has its source in substantial part outside the United States, to the national security, foreign policy, and economy of the United States. I hereby declare a national emergency to deal with that threat.

In addition, I find that the United States must broadly enhance its mining and processing capacity, including for minerals not identified as critical minerals and not included within the national emergency declared in this order. By expanding and strengthening domestic mining and processing capacity today, we guard against the possibility of supply chain disruptions and future attempts by our adversaries or strategic competitors to harm our economy and military readiness. Moreover, additional domestic capacity will reduce United States and global dependence on minerals produced in

countries that do not endorse and pursue appropriate minerals supply chain standards, leading to human rights violations, forced and child labor, violent conflict, and health and environmental damage. Finally, a stronger domestic mining and processing industry fosters a healthier and faster-growing economy for the United States. Mining and mineral processing provide jobs to hundreds of thousands of Americans whose daily work allows our country and the world to “Buy American” for critical technology.

I hereby determine and order:

Section 1. (a) To address the national emergency declared by this order, and pursuant to subsection 203(a)(1)(B) of IEEPA (50 U.S.C. 1702(a)(1)(B)), the Secretary of the Interior, in consultation with the Secretary of the Treasury, the Secretary of Defense, the Secretary of Commerce, and the heads of other agencies, as appropriate, shall investigate our Nation’s undue reliance on critical minerals, in processed or unprocessed form, from foreign adversaries. The Secretary of the Interior shall submit a report to the President, through the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and the Assistant to the President for Trade and Manufacturing Policy, within 60 days of the date of this order. That report shall summarize any conclusions from this investigation and recommend executive action, which may include the imposition of tariffs or quotas, other import restrictions against China and other non-market foreign adversaries whose economic practices threaten to undermine the health, growth, and resiliency of the United States, or other appropriate action, consistent with applicable law.

(b) By January 1, 2021, and every 180 days thereafter, the Secretary of the Interior, in consultation with the heads of other agencies, as appropriate, shall inform the President of the state of the threat posed by our Nation’s reliance on critical minerals, in processed or unprocessed form, from foreign adversaries and recommend any additional actions necessary to address that threat.

(c) The Secretary of the Interior, in consultation with the heads of other agencies, as appropriate, is hereby authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 2. (a) It is the policy of the United States that relevant agencies should, as appropriate and consistent with applicable law, prioritize the expansion and protection of the domestic supply chain for minerals and the establishment of secure critical minerals supply chains, and should direct agency resources to this purpose, such that:

(i) the United States develops secure critical minerals supply chains that do not depend on resources or processing from foreign adversaries;

(ii) the United States establishes, expands, and strengthens commercially viable critical minerals mining and minerals processing capabilities; and

(iii) the United States develops globally competitive, substantial, and resilient domestic commercial supply chain capabilities for critical minerals mining and processing.

(b) Within 30 days of the date of this order, the heads of all relevant agencies shall each submit a report to the President, through the Director of the Office of Management and Budget, the Assistant to the President for National Security Affairs, and the Assistant to the President for Economic Policy, that identifies all legal authorities and appropriations that the agency can use to meet the goals identified in subsection (a) of this section.

(c) Within 60 days of the date of this order, the heads of all relevant agencies shall each submit a report as provided in subsection (b) of this section that details the agency's strategy for using the legal authorities and appropriations identified pursuant to that subsection to meet the goals identified in subsection (a) of this section. The report shall explain how the agency's activities will be organized and how it proposes to coordinate relevant activities with other agencies.

(d) Within 60 days of the date of this order, the Director of the Office of Science and Technology Policy shall submit a report to the President, through the Director of the Office of Management and Budget, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and the Assistant to the President for Trade and Manufacturing Policy, that describes the current state of research and development activities undertaken by the Federal Government that relate to the mapping, extraction, processing, and use of minerals and that identifies future research and development needs and funding opportunities to strengthen domestic supply chains for minerals.

(e) Within 45 days of the date of this order, the Secretary of State, in consultation with the United States Trade Representative, shall submit a report to the President, through the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and the Assistant to the President for Trade and Manufacturing Policy, that details existing and planned efforts and policy options to:

(i) reduce the vulnerability of the United States to the disruption of critical mineral supply chains through cooperation and coordination with partners and allies, including the private sector;

(ii) build resilient critical mineral supply chains, including through initiatives to help allies build reliable critical mineral supply chains within their own territories;

(iii) promote responsible minerals sourcing, labor, and business practices; and

(iv) reduce the dependence of the United States on minerals produced using methods that do not adhere to responsible mining standards.

Sec. 3. The Secretary of the Interior, in consultation with the Secretary of Defense, shall consider whether the authority delegated at section 306 of Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness) can be used to establish a program to provide grants to procure or install production equipment for the production and processing of critical minerals in the United States.

Sec. 4. (a) Within 30 days of the date of this order, the Secretary of Energy shall develop and publish guidance (and, as appropriate,

shall revoke, revise, or replace prior guidance, including loan solicitations) clarifying the extent to which projects that support domestic supply chains for minerals are eligible for loan guarantees pursuant to Title XVII of the Energy Policy Act of 2005, as amended (42 U.S.C. 16511 *et seq.*) (“Title XVII”), and for funding awards and loans pursuant to the Advanced Technology Vehicles Manufacturing incentive program established by section 136 of the Energy Independence and Security Act of 2007, as amended (42 U.S.C. 17013) (“the ATVM statute”). In developing such guidance, the Secretary:

(i) shall consider whether the relevant provisions of Title XVII can be interpreted in a manner that better promotes the expansion and protection of the domestic supply chain for minerals (including the development of new supply chains and the processing, remediation, and reuse of materials already in interstate commerce or otherwise available domestically);

(ii) shall examine the meaning of the terms “avoid, reduce, or sequester” and other key terms in section 16513(a) of title 42, United States Code, which provides that the Secretary “may make guarantees under this section only for projects that—(1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and (2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued”;

(iii) shall consider whether relevant provisions of the ATVM statute may be interpreted in a manner that better promotes the expansion and protection of the domestic supply chain for minerals (including the development of new supply chains and the processing, remediation, and reuse of materials already in interstate commerce or otherwise available domestically), including in such consideration the application of these provisions to minerals determined to be components installed for the purpose of meeting the performance requirements of advanced technology vehicles; and

(iv) shall examine the meaning of the terms “qualifying components” and other key terms in subsection 17013(a) of title 42, United States Code.

(b) Within 30 days of the date of this order, the Secretary of Energy shall review the Department of Energy’s regulations (including any preambles thereto) interpreting Title XVII and the ATVM statute, including the regulations published at 81 *Fed. Reg.* 90,699 (Dec. 15, 2016) and 73 *Fed. Reg.* 66,721 (Nov. 12, 2008), and shall identify all such regulations that may warrant revision or reconsideration in order to expand and protect the domestic supply chain for minerals (including the development of new supply chains and the processing, remediation, and reuse of materials already in interstate commerce or otherwise available domestically). Within 90 days of the date of this order, the Secretary shall propose for notice and comment a rule or rules to revise or reconsider any such regulations for this purpose, as appropriate and consistent with applicable law.

Sec. 5. The Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Administrator of the Environ-

mental Protection Agency, the Secretary of the Army (acting through the Assistant Secretary of the Army for Civil Works), and the heads of all other relevant agencies shall, as appropriate and consistent with applicable law, use all available authorities to accelerate the issuance of permits and the completion of projects in connection with expanding and protecting the domestic supply chain for minerals.

Sec. 6. The Secretary of the Interior, the Secretary of Energy, and the Administrator of the Environmental Protection Agency shall examine all available authorities of their respective agencies and identify any such authorities that could be used to accelerate and encourage the development and reuse of historic coal waste areas, material on historic mining sites, and abandoned mining sites for the recovery of critical minerals.

Sec. 7. Amendment. Executive Order 13817 is hereby amended to add the following sentence to the end of section 2(b):

“This list shall be updated periodically, following the same process, to reflect current data on supply, demand, and concentration of production, as well as current policy priorities.”

Sec. 8. Definitions. As used in this order:

(a) the term “critical minerals” means the minerals and materials identified by the Secretary of the Interior pursuant to section 2(b) of Executive Order 13817, as amended by this order; and

(b) the term “supply chain,” when used with reference to minerals, includes the exploration, mining, concentration, separation, alloying, recycling, and reprocessing of minerals.

Sec. 9. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

THE WHITE HOUSE, *September 30, 2020.*