



6450-01-P

DEPARTMENT OF ENERGY

Notice of Guidance for Potential Applicants Involving Critical Minerals and Related Activity

AGENCY: Loan Programs Office, Department of Energy.

ACTION: Notice of guidance for potential applicants involving critical minerals and related activity.

SUMMARY: The U.S. Department of Energy (“DOE”) hereby provides notice of guidance for applicants to the Loan Programs Office under Title XVII of the Energy Policy Act of 2005 (Title VXII) and the Energy Independence and Security Act of 2007 (ATVM statute). The guidance describes the types of applicants and projects that may be considered by the Loan Programs Office under Title XVII and the ATVM statute.

DATES: DOE will accept applications regarding the foregoing from **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** through **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For further information, please visit:

<https://www.energy.gov/lpo/application-process>.

ADDRESSES:

Interested parties are to submit applications electronically through the following link:

<https://www.energy.gov/lpo/application-process>. Additional guidance and information may be found at:

<https://www.energy.gov/lpo/loan-programs-office>.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to:

John Lushetsky, Senior Advisor, Loan Programs Office, (202) 586-2678, U.S. Department of Energy LP 10, 1000 Independence Avenue, S.W., Washington DC, 20585, or by e-mail to:

john.lushetsky@hq.doe.gov. *Electronic communications are recommended for correspondence and required for submission of application information.*

SUPPLEMENTARY INFORMATION: Executive Order 13953 (“Executive Order Addressing the Threat to the Domestic Supply Chain from Reliance on Critical Minerals from Foreign Adversaries,” dated September 30, 2020, establishes policy pertaining to lending activities by the U.S. Department of

Energy Loan Programs Office (“LPO”) pursuant to Title XVII of the Energy Policy Act of 2005, *as amended* (42 U.S.C. 16511, *et seq.*)(“Title XVII”), and Section 136 of the Energy Independence and Security Act of 2007, *as amended* (42 U.S.C. 17013) (the “ATVM Statute”), as they apply to “Critical Minerals,” “Critical Minerals Production,” and related activities, including activities related to minerals more broadly. *See: <https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-domestic-supply-chain-reliance-critical-minerals-foreign-adversaries>.*

“Critical Minerals” and “Critical Minerals Production,” involving thirty-five identified Critical Minerals, are further defined by Section 2(b) of Executive Order 13817 (“A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals,” dated December 20, 2017). *See: <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-federal-strategy-ensure-secure-reliable-supplies-critical-minerals>.*

Preference for Minerals, Including Critical Minerals

Pursuant to Executive Order 13953 and Executive Order 13817, it is the policy of LPO to consider all eligible projects under Title XVII and the ATVM Statute in the context of Critical Minerals and the production of Critical Minerals and other minerals. Consistent with the policies expressed in Executive Order 13953 and 13817, it is also the policy of LPO to interpret the Title XVII Program and the ATVM Program broadly to encourage applications from potential projects involving the production, manufacture, recycling, processing, recovery, or reuse of Critical Minerals and other minerals. LPO will evaluate all applications on a case-by-case basis.

Title XVII Projects

Under Title XVII, DOE may, consistent with applicable law, issue loan guarantees in support of projects (“Title XVII Eligible Projects”) that: (a) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; (b) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued; (c) attain specified emission requirements (*see* 42 U.S.C. 16513(d)); and (d) fall within the following categories (*see* 42 U.S.C. 16513(b) and (c)):

1. Renewable energy systems.
2. Advanced fossil energy technology (including coal gasification that attains specified emission requirements) (*see* 42 U.S.C.16513(d)).
3. Hydrogen fuel cell technology for residential, industrial, or transportation applications.
4. Advanced nuclear energy facilities.
5. Carbon capture and sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon.
6. Efficient electrical generation, transmission, and distribution technologies.
7. Efficient end-use energy technologies.
8. Production facilities for the manufacture of fuel-efficient vehicles or parts of those vehicles, including electric drive vehicles and advanced diesel vehicles.
9. Pollution control equipment.
10. Refineries, meaning facilities at which crude oil and other substances are refined into gasoline and other products.
11. Certain gasification projects specified in 42 U.S.C. 16513(c).

Examples of Potential Minerals Projects Under Title XVII

Minerals or Minerals Production projects that may qualify for support under Title XVII include, without limitation, the following:

1. Mining, processing, or milling of Critical Minerals utilizing efficient end-use energy technologies (Efficient end–use energy technologies);
2. Processing or refining of uranium for nuclear fuel (Advanced nuclear energy facilities);
3. Processing of zirconium for cladding of uranium fuel elements (Advanced nuclear energy facilities);
4. Processing of antimony for use as a neutron source in nuclear reactors during reactor startup (Advanced nuclear energy facilities);
5. Renewable energy projects that produce Critical Minerals as by-products of, or adjuncts to,

power generation activities, including geothermal projects that produce lithium or other Critical Minerals (Renewable energy systems);

6. Advanced fossil energy projects that produce or extract Critical Minerals, including rare earth elements, from power plant byproducts (including fly ash and coal refuse) (Advanced fossil energy projects); and

7. Other Critical Minerals projects that meet the criteria of Title XVII.

Each applicant for a loan guarantee will be required to demonstrate that the proposed project satisfies the statutory requirements necessary for the proposed project to constitute a Title XVII Eligible Project.

ATVM Projects

Under the ATVM Statute, loans may, under applicable law, be made to borrowers for projects (“ATVM Eligible Projects”) that are: (a) financially viable without the receipt of additional Federal funding associated with the proposed project; and (b) automobile manufacturers, ultra-efficient vehicle manufacturers, or component suppliers to pay the costs of: (1) reequipping, expanding, or establishing a manufacturing facility in the United States to produce qualifying advanced technology vehicles (“ATVs”) or “qualifying components” for ATVs; and (2) engineering integration performed in the United States of ATVs and qualifying components.

Under the applicable provisions of the ATVM statute, DOE must limit its relevant support to “manufacturing facilities” producing ATVs and “qualifying components” – which are defined as products or equipment designed for, and installed in, ATVs for the purpose of meeting ATV performance requirements.

Examples of Potential Minerals Projects Under the ATVM Statute

Minerals or Minerals Production projects that may qualify for support under the ATVM Statute include, without limitation, the following:

1. Processing of Critical Minerals, including lithium, nickel, manganese, graphite, or cobalt, for use in electric vehicle battery systems for ATVs;
2. Processing or refining of aluminum, chromium, manganese, vanadium, or tin used for the light-

weighting of ATVs;

3. Processing or refining of platinum group metals (“PGMs”), and the PGM catalysts from which they are derived, for use in hydrogen fuel cells and fuel cell electric vehicles that are ATVs; and
4. Processing of Critical Minerals (to include neodymium, praseodymium, dysprosium, and terbium), for use in permanent magnets and permanent magnet electric motors for application in electric drive motors for qualifying ATVs; and
5. Other Critical Minerals projects that meet the criteria of the ATVM statute.

Early Discussion with LPO Regarding Potential Projects is Encouraged

It is the preference of LPO to become involved with potential applicants as early as possible in the development of Title XVII and ATVM Eligible Projects. Therefore, potential applicants are encouraged to contact LPO before making a formal application, and as early as possible in the development of a potential project. The foregoing does not change or modify that current application process. LPO will respond in writing to any inquiry from the applicant regarding the status of an application within ten (10) business days after the date of such inquiry.

Potential applicants may inquire with LPO about opportunities for emerging areas involving Critical Minerals and other minerals by contacting LPO. For further information on the application process for either program, please see: <https://www.energy.gov/lpo/loan-programs-office>.

Preference for American Made Products

A preference will be given to those projects with a plan to utilize American made products and employ American workers.

Early Engagement with LPO

Potential applicants may inquire with LPO about opportunities for emerging areas involving Critical Minerals and other minerals by contacting LPO. For further information on the application process for either program, please see: <https://www.energy.gov/lpo/loan-programs-office>.

Disclaimer Regarding Agency Guidance

In accordance with Executive Order 13891 (“Promoting the Rule of Law Through Improved Agency

Guidance Documents,” dated October 9, 2019), the information contained in this guidance:

- (i) does not have the force and effect of law and is not meant to bind the public in any way;
- (ii) is intended only to provide clarity to the public regarding existing requirements under the law or agency policies, except as authorized by law or as incorporated into a contract; and
- (iii) will not be relied on by DOE as an independent basis for an enforcement action or other administrative penalty. Agencies may impose legally binding requirements on the public only through regulations and on parties on a case-by-case basis through adjudications, and only after appropriate process, except as authorized by law or as incorporated into a contract.

Signing Authority

This document of the Department of Energy was signed on November 24, 2020, by Dong Kim, Executive Director, Loan Programs Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC on November 24, 2020.

Treana V. Garrett,

Federal Register Liaison Officer,

U.S. Department of Energy.