

Five Recommendations for the President's Nuclear Fuel Working Group

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KEY TAKEAWAYS

No government program to artificially inflate uranium demand can outrun market realities. Indeed, the federal government tried before—without success.

The Trump Administration should protect defense objectives and resources from diversion that would likely reduce military capabilities and resources.

Repeal or programmatic National Environmental Policy Act reform by Congress is needed and should be encouraged by the Trump Administration.

In July, President Trump appropriately concluded that trade barriers on uranium imports were not warranted as a matter of national security under Section 232 of the Trade Expansion Act. National security requirements for domestic uranium are not immanent, and commercial markets are abundantly supplied with inexpensive uranium and reserves.¹

No government program to artificially inflate uranium demand can outrun market realities. Indeed, the federal government tried before—to the long-term harm of the uranium mining industry. Even so, government also should not obstruct the industry's ability to compete.

Rather, the President created a Nuclear Fuel Working Group to examine “the entire fuel supply chain, consistent with United States national security and nonproliferation goals” and “develop recommendations for reviving and expanding domestic nuclear fuel production.”² To that

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end, the Trump Administration has accomplished or begun important work to right-size the scope and implementation of the Endangered Species Act, Waters of the U.S. rule,³ and redundant groundwater regulations on uranium mines, and has made Wyoming the 38th Agreement State assuming certain regulatory authority from the Nuclear Regulatory Commission.

The working group should also address the following five issues:

1. Protect and Plan for Defense Infrastructure Needs. The U.S. military requires domestically sourced uranium, tritium, processing, and enrichment facilities that are not “obligated”—that is, restricted by international nonproliferation agreements or peaceful-use requirements. Anticipated defense needs and timelines for domestic capabilities are well-known and should be addressed in time with careful attention from Congress.⁴ Currently, there are no domestically owned enrichment facilities that meet defense restrictions, and the sole domestic conversion facility suspended operations in 2017 until demand increases.⁵

National defense needs must not be conflated with commercial civilian desires. Unlike the military, the civilian nuclear energy sector can and does shop domestically and abroad for competitive services. However, recent pressure from industry, Congress, and civilian offices in the Department of Energy have advanced superficial national security arguments to subsidize and stimulate civilian research and development, fuel cycle infrastructure, and uranium production.⁶

The federal government has one responsibility in providing for domestic nuclear fuel services—to meet national security requirements. The Trump Administration should protect defense objectives and resources from diversion that would likely reduce military capabilities and resources.⁷ Similarly, any uses of the Defense Production Act to acquire fuel services should meet a clear defense requirement according to the three-part criteria established in Section 303.⁸ The Administration should also determine whether the 1958 Agreement for Cooperation on the Uses of Atomic Energy for Mutual Defense Purposes could provide additional resources.⁹

2. Restore the Compromise of the 1984 Arizona Wilderness Act. The Arizona Wilderness Act¹⁰ clarified federal land management on the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) lands in northern Arizona holding extensive, high-grade uranium deposits. An all-but-universally satisfying compromise was reached after extensive discussions between Arizona’s federal delegation, local chambers of commerce, Energy Fuels Corporation, Western Nuclear Corps, the Wilderness Society, National Parks Conservation Association, National Wildlife Federation, Sierra Club, Grazing Advisory Board, the BLM, and the USFS.

The compromise created nine wilderness areas (the most restrictive federal land-use designation), including the BLM's first designated wilderness areas. It also allowed for uranium mining and timber production within painstakingly negotiated boundaries. It represents the concept of multi-use lands enshrined in the Federal Land Policy and Management Act¹¹ and is itself, in the words of BLM's then-Director Robert Burford, a "unique piece of legislation" of hard-won consensus among competing interests. The National Parks Conservation Association described the Act as an "exciting adventure in the democratic process," which it was pleased with in substance and process.¹²

Subsequent federal land management plans by the BLM and the USFS reflected this compromise. However, the Obama Administration unilaterally rescinded this arrangement in 2009 and formally withdrew over *1 million acres* from mining activities in a 2012 public land order by the Secretary of Interior.¹³

The Arizona Wilderness Act compromise should be restored to allow mining companies to again access uranium deposits on these federal lands. The USFS included this recommendation in response to President Trump's Executive Order 13817, which is also consistent with the Department of Interior's recommendations.¹⁴

3. Review NEPA Implementation in the BLM and the USFS. The National Environmental Policy Act (NEPA) is routinely identified as a reason for costly delay and uncertainty. This affects not just federal actions like issuing necessary permits for a mining project, but also long-term regional land management plans defining parameters for mining and other activities on federal lands.¹⁵ While states can assume much of these responsibilities on state and private lands via agreements with the Nuclear Regulatory Commission and Environmental Protection Agency, problems with NEPA are more pronounced on federal lands, where many uranium assets are located.

Permitting takes on average two years in Canada and Australia, which are two of the three largest uranium suppliers to the U.S. In contrast, environmental review in the U.S. has evolved from assessments of a dozen pages to thousands of pages today—taking an average of seven to 10 years to complete.¹⁶ According to one analysis, this is the longest process among the top 25 mining countries.¹⁷

Repeal or programmatic NEPA reform by Congress is needed and should be encouraged by the Trump Administration. Reforms already made for infrastructure should be extended to other activities, most notably decreasing the window for judicial review of federal approvals from

six years to 150 days. Though objectors can play an important oversight role, 150 days is itself generous compared to the one month afforded in Germany.¹⁸

Several of President Trump's Executive Orders have directed departments to reduce regulatory burdens and have helpfully revealed opportunities for reform. For example, the National Mining Association identified nearly a year-long delay from an Interior Department policy to first review regional NEPA permit notices for the *Federal Register*.¹⁹ The White House should determine whether efficiencies have been *made* and not simply identified, with particular attention to reforms in the BLM and the USFS, which manage the federal lands most relevant to uranium mining.

4. Present a United Front with Allies Through the World Trade Organization. The Trump Administration wisely rejected trade barriers on all uranium imports. To the extent that there are legitimate, provable violations of international agreements by trading partners, the Office of the United States Trade Representative should file country-specific disputes through the World Trade Organization, an avenue through which the U.S. has had overwhelming success.²⁰ In doing so, the U.S. should present a united front with allies like Australia and Canada. Unlike Section 232, this approach distinguishes companies and countries that have competed in good faith to win American customers.

5. Avoid Protectionist Mistakes of the Past. Past protectionist policies may have had short-term benefits for U.S. uranium miners, but ultimately harmed the industry and mobilized foreign competitors. Through 1984, Congress effectively prevented imported uranium from entering U.S. markets by denying enrichment services for imported uranium to be made into nuclear fuel.²¹ The expressed purpose of these policies was to temporarily block competition in order to help launch a civilian nuclear industry independent from strategic wartime infrastructure.

Instead, these policies distorted markets and grossly misinformed the domestic uranium mining industry about actual customer demand. Domestic uranium prices ballooned and ultimately created uranium stockpiles large enough to cover years' worth of demand. Protectionism also pushed the limits of reciprocal trade agreements with allies, mobilizing nations like France, Great Britain, Germany, and the Netherlands to break the U.S. monopoly on enrichment. While protectionism may have appeared to help the domestic uranium mining industry, it had the long-term effect of contributing to its current woes.

Conclusion

The Trump Administration has struck the right approach by preserving access to competition and international markets, correctly framing national security issues, and forgoing quotas and tariffs. Protectionism and subsidies to industry cannot overcome market realities and would have had long-term negative consequences.

Unfortunately, American uranium miners have often faced their own government as an obstacle to being competitive. The federal government has made it exceedingly difficult for mining in the U.S. by blocking access and defeat-by-delay regulatory structures, in stark contrast to countries like Canada and Australia. The Trump Administration should use this opportunity to continue its work to correct wrongs from the previous Administration and right-size regulation.

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Endnotes

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