



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

The U.S. Department of the Interior Should Comply with Requirements in Infrastructure Investment and Jobs Act Section 40206, “Critical Minerals Supply Chains and Reliability”

This is a revised version of the report prepared for public release.



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INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

MAR 29 2024

Memorandum

To: Deb Haaland
Secretary, Department of the Interior

From: Mark Greenblatt 
Inspector General

Subject: Final Inspection Report – *The U.S. Department of the Interior Should Comply With Requirements in Infrastructure Investment and Jobs Act Section 40206, “Critical Minerals Supply Chains and Reliability”*
Report No. 2023-ISP-013

This report transmits the results from our inspection of the Department of the Interior’s (DOI’s) compliance with Section 40206 of the Infrastructure Investment and Jobs Act (IIJA)¹ related to critical minerals supply chains and reliability. See Attachment 1 for our scope and methodology.

Background

Critical minerals—which have important uses and no viable substitutes—are vital to the United States’ economic and national security.² In 2022, DOI presented a final list of critical minerals, including aluminum, cobalt, graphite, lithium, titanium, and zinc.³ Because many U.S. technologies rely on imported critical minerals, disruptions in the global mineral supply chain could seriously affect U.S. energy production, aviation, and other industries.⁴

Executive Order No. 14017, *America’s Supply Chains*

In response, Executive Order No. 14017, *America’s Supply Chains*, cited the need for the United States to have what it described as “resilient, diverse, and secure” supply chains to “ensure economic prosperity and national security.”⁵ The executive order required specified agencies to review both risks and steps needed to strengthen and secure supply chains in four

¹ IIJA, Pub. L. No. 117-58, 135 Stat. 429, § 40206 (2021).

² U.S. Geological Survey, “Critical Minerals of the United States: 23 Minerals You Need in Your Life” (December 2017), <https://www.usgs.gov/news/featured-story/critical-minerals-united-states>.

³ 2022 Final List of Critical Minerals, 87 Fed. Reg. 10381 (Feb. 24, 2022).

⁴ U.S. Gov’t. Accountability Office, GAO-22-104824, *Critical Minerals: Building on Federal Efforts to Advance Recovery and Substitution Could Help Address Supply Risks* (June 2022), <https://www.gao.gov/products/gao-22-104824>.

⁵ Exec. Order No. 14017, 86 Fed. Reg. 11849 (Feb. 24, 2021).

categories,⁶ including critical minerals and other strategic materials. The White House issued a report⁷ in June 2021 transmitting the results of those efforts. The report included a recommendation for relevant agencies to establish an interagency team with expertise in mine permitting and environmental law to identify gaps in statutes and regulations that may need to be updated to ensure new production meets strong environmental, labor, community engagement, and sustainability standards before, during, and after the mining process.

IIJA Section 40206, “Critical Minerals Supply Chains and Reliability”

On November 15, 2021, the IIJA was enacted. IIJA Section 40206, “Critical Minerals Supply Chains and Reliability,” focused on the need to issue timely permits to explore for and develop domestic critical minerals. IIJA Section 40206 directed the Secretary of the Interior, acting through the Director of the Bureau of Land Management (BLM), and the Secretary of Agriculture, acting through the Chief of the U.S. Forest Service, to comply with several requirements. Specifically, Section 40206 required submission of a report to Congress on November 15, 2022,⁸ which was to include regulatory and legislative proposals intended to improve the timeliness of permitting activities.⁹ Additionally, Section 40206 required the development and publication of a performance metric for evaluating the progress made in expediting permitting activities.¹⁰ Once the performance metric is developed, DOI must submit annual reports to Congress, which should address the status of the performance metric.¹¹

IIJA Section 40206 Requirements



Submit report to Congress by November 15, 2022



Develop and publish a performance metric



Submit annual progress reports to Congress

Interagency Working Group on Mining Regulations, Laws, and Permitting

In response to the June 2021 White House report and the IIJA, on February 22, 2022, DOI announced the launch of an interagency working group (IWG) that included officials from the U.S. Department of Agriculture’s Forest Service and experts in mine permitting and environmental law from across the Federal Government. The DOI Deputy Secretary served as the chair.

⁶ Executive Order No. 14017, *America’s Supply Chains*, assesses supply chain vulnerabilities. Four agencies took the lead in drafting each of the reports: the U.S. Department of Commerce addressed semiconductor manufacturing and advanced packaging; the U.S. Department of Energy addressed large capacity batteries; the U.S. Department of Defense addressed critical materials and minerals; and the U.S. Department of Health and Human Services, particularly the U.S. Food and Drug Administration, addressed pharmaceuticals.

⁷ White House, *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth, 100-Day Reviews under Executive Order 14017* (June 2021), [whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf).

⁸ IIJA, Pub. L. No. 117-58, 135 Stat. 962, § 40206(d) (2021).

⁹ *Id.* § 40206(d).

¹⁰ *Id.* § 40206(e).

¹¹ *Id.* § 40206(d).

Pursuant to the White House’s recommendation, the IWG was charged with reviewing laws, regulations, policies, and permitting processes pertaining to critical minerals development. To initiate updates to mining regulations, the IWG hosted public input and comment sessions and coordinated with the relevant agencies, such as the U.S. Department of Agriculture’s Forest Service, the U.S. Department of Energy, the U.S. Environmental Protection Agency, and mining industry stakeholders. According to a senior DOI official—namely, the Principal Deputy Assistant Secretary Exercising the Delegated Authority of the Assistant Secretary, Land and Minerals Management (ASLM)—the decision was made that the IWG’s efforts and conclusions would be presented in a report with recommendations.

The senior DOI official added that the IWG report would fulfill the IJA Section 40206 reporting requirement and that, once the report was published, the IWG would be disbanded. At that point, individual agencies would be responsible for implementing recommendations. The official stated that the ASLM would lead work on the implementation plan for DOI-related actions and engage with other agencies as needed. According to the official, as of December 10, 2023, there was no formal implementation plan.

Results of Inspection

IJA Section 40206 required submission of a report to Congress by November 15, 2022, that addressed specific requirements¹². The IWG delivered a final report to Congress on September 12, 2023, with 60 recommendations for reforming mining laws, regulations, and the permitting process.¹³ We found that, although the IWG report addressed many of the IJA Section 40206 requirements, several were not included, and the report did not explain those omissions. Further, we found that it was difficult to assess whether the IWG report met the requirements of Section 40206 because the report was responsive to both Section 40206 and Executive Order No. 14017.¹⁴ Additionally, DOI did not publish a performance metric to evaluate progress expediting permitting activities, which was due on December 11, 2023. We also note that the IWG report was submitted almost 10 months past the IJA deadline. As a result, Congress and relevant Federal agencies were delayed in their ability to consider the recommendations in the IWG report and may not be able to gauge progress in expediting permitting activities. Because the report did not address all statutory topics, Congress and relevant Federal agencies also may not have all the information needed to determine whether or how to modify mining laws, regulations, and the permitting process.

In addition, we found that the DOI will need to prepare to address the IJA Section 40206 annual reporting requirement. Attachment 2 outlines the Section 40206 reporting requirements and whether the IWG report met these requirements.

¹² IJA, Pub. L. No. 117-58, 135 Stat. 962, § 40206(d) (2021).

¹³ IWG, Final Report, *Recommendations to Improve Mining on Public Lands: Developed by the Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting* (Sept. 12, 2023).

¹⁴ Due to the technical nature of the report, we did not assess whether the IWG report addressed the intent of the Section 40206 requirements. Instead, we analyzed only if the required topics were included in the report. For example, in Attachment 2, we note that Section 40206 requirement (c)(1) “identifies additional measures, including regulatory and legislative proposals, if appropriate, that would increase the timeliness of permitting activities for the exploration and development of domestic critical minerals” was addressed in the IWG report, but we did not assess whether the intent of requirement was met.

Figure 1 shows the timeline of events leading to the formation of the IWG, IWG activities, and the eventual publication of the IWG Report.

Figure 1: Timeline of IWG Activity



The IWG Report Does Not Fully Address IIJA Section 40206 Reporting Areas

IIJA Section 40206(d) required the report to:

1. Identify measures, including regulatory and legislative proposals, that would increase the timeliness of permitting activities for exploring and developing domestic critical minerals.
2. Identify options for ensuring adequate staffing and training of Federal entities and personnel responsible for considering applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land.
3. Quantify the period of time typically required to complete each step associated with developing and processing applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land, including by multiple different measures.
4. Describe actions carried out for Federal permitting and a review of performance improvements, which contains nine specific components that must be addressed.¹⁵

¹⁵ IIJA Section 40206(c), “Federal Permitting and Review Performance Improvements,” lays out the nine required components. See Attachment 2 for a list of all nine components related to this requirement.

We analyzed the IWG report and found that it addressed the first two areas. The report did not, however, fully address the third area because it did not include all periods of time required to complete each step in the mining process. We also found that the IWG report did not fully address the fourth area because it did not include three of the nine components related to Federal permitting and review performance improvements specified in IIJA Section 40206(c):

1. “[E]stablishing and adhering to timelines and schedules for the consideration of, and final decisions regarding, applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land”;
2. “[E]stablishing clear, quantifiable, and temporal permitting performance goals and tracking progress against those goals”; and
3. “[P]roviding demonstrable improvements in the performance of Federal permitting and review processes, including lower costs and more timely decisions.”

The senior DOI official agreed with our assessment but explained that the three components were not included because they are inapplicable at this time. The IWG report did not make this point, however, or state that these components were not contained within the report.

DOI Did Not Meet the IIJA Section 40206 Performance Metric Deadline

IIJA Section 40206 also required the development and publication of a performance metric for evaluating the progress made to expedite permitting activities.¹⁶ This was to occur 90 days after the Secretaries submitted the report to Congress; therefore, the performance metric should have been published by December 11, 2023. Although BLM and DOI’s Office of Planning and Performance Management developed three performance metrics, according to the IIJA, the metrics cannot be finalized until the public has an opportunity to provide comments. The senior DOI official stated that, as of December 10, 2023, the metrics still require public notice and an opportunity to comment. The official added that the goal is to post the metrics for public comment on the BLM website as soon as possible but did not provide information as to when this might occur.

DOI Did Not Meet the IIJA Section 40206 Reporting Deadline

We also found that the IWG submitted its report nearly 10 months after the IIJA deadline of November 15, 2022. According to the senior DOI official, the delay was primarily attributable to the breadth of the report and the IWG’s interest in ensuring that it conducted “robust stakeholder outreach” and appropriately consulted with Tribes. For example, the same official told us the IWG held numerous meetings and reviewed approximately 126 letters with recommendations in response to a request for information. Additionally, subgroups held meetings to discuss certain report sections in more detail; the information discussed in these meetings provided content for the respective report sections. The IWG also engaged with DOI’s Office of Policy Analysis on financial calculations and with DOI’s Office of Planning and Performance Management to analyze in depth BLM permitting times for mines.

¹⁶ IIJA, Pub. L. No. 117-58, 135 Stat. 962 § 40206(e) (2021).

Additionally, the IWG faced some limitations accessing data that contributed to the delay in issuing the report. The senior DOI official reported to us that the Department of Agriculture's Forest Service was unable to provide some information regarding the timing to conduct National Environmental Policy Act (NEPA) reviews.¹⁷ Without this information, the IWG could not accurately assess timeframes involved in the mining process. The senior DOI official also stated there were limitations in BLM's data that was needed to enable the IWG to address specific mining issues. For example, BLM could not easily provide the distribution of ages of existing mining claims or how many claims had some exploratory work done on them. Because mining operators were not required to report what specific materials they were exploring for, BLM also could not determine with certainty what minerals are currently being targeted. The senior DOI official stated that this information would have been helpful in assessing the effectiveness of the claim system and increasing BLM personnel's understanding of potential near-term and long-term mineral development efforts on public lands. The senior DOI official told us that there is no specific plan to gather this information.

DOI Will Need To Address the IJA Section 40206 Annual Reporting Requirement

Once the performance metric is published, Section 40206 requires the submission of an annual report no later than the date on which the President's budget is transmitted to Congress, which is typically between the first Monday in January and the first Monday in February.¹⁸ Each annual report must include:

- A summary of the implementation of recommendations, measures, and options, including regulatory and legislative proposals that would increase the timeliness of permitting activities and options for cost recovery paid by permit applicants.
- Using the performance metric, a description of the progress made by the executive branch, as compared to the baseline which quantifies the period of time typically required to complete each step associated with the development and processing of applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land.
- A comparison of the United States to other countries in terms of permitting efficiency and any other criteria relevant to the globally competitive critical minerals industry.

The senior DOI official told us that no one is currently assigned responsibility for these annual reports, because the performance metric itself has not been established. Although DOI has taken steps to meet Section 40206 requirements, additional work is needed to ensure that reporting requirements are met.

¹⁷ NEPA, Pub. L. No. 90-190, requires Federal agencies to consider the effects of their actions on the environment, including interrelated social, cultural, and economic effects. For more information, please refer to the [National Environmental Policy Act \(NEPA\) | U.S. Department of the Interior \(doi.gov\)](#).

¹⁸ See IJA, Pub. L. No. 117-58, 135 Stat. 962 § 40206(f) (2021) (referring to 31 U.S.C. § 1105, which identifies the timing for the President's budget).

Recommendations

We provided a draft of this report to the Secretary for the U.S. Department of the Interior. The Principal Deputy Assistant Secretary Exercising the Delegated Authority of the ASLM responded on behalf of the Secretary and partially concurred with Recommendation 1 and concurred with Recommendations 2 and 3. We consider Recommendation 1 implemented and Recommendations 2 and 3 resolved. We determined that Recommendation 2 is significant and will be reported as such in our semiannual report to Congress in accordance with the Inspector General Act.¹⁹ Below we summarize the ASLM's response to our recommendations, as well as our comments on its response. See Attachment 3 for the full text of the ASLM's response; Attachment 4 lists the status of each recommendation.

We recommend that the Secretary for the U.S. Department of the Interior or a designee:

1. Assess whether a resubmission of the report is required to fully address all four areas established in IJA Section 40206(d), "Review and Report."

ASLM Response: The ASLM partially concurred with this recommendation. The ASLM stated, "we agree that the two IJA Section 40206 reporting areas that were not addressed in the report submitted to Congress . . . would provide valuable information regarding permitting performance and the success of efforts to improve that performance." However, the ASLM stated "we believe the IWG interpreted Section 40206 properly given data limitations and inconsistencies in the legislative language, and do not believe that a resubmission of the report is necessary to restate those points."

Specifically, the ASLM quoted the IWG report, which stated, "Agencies do not always collect or maintain information needed to identify points in the permitting process where delays occur or to identify the causes of those delays." The ASLM further stated, "While the IWG report included the best data available regarding timelines, the lack or unreliability of necessary data prevented the IWG from being able to fully quantify each step 'associated with developing and processing applications,' particularly as 'developing applications' is within the purview of the applicant and federal agencies would not have access to that."

Regarding the fourth reporting area in Section 40206, related to the review of performance improvements, the ASLM stated that it "could not be included in a report that identified recommended performance improvements to implement after the report was published. Likewise, some of the direction provided in Section 40206(c), such as 'providing demonstrable improvements in the performance of Federal permitting and review processes,' cannot be completed until the recommendations in the IWG report are implemented."

¹⁹ The Inspector General Act of 1978, 5 U.S.C. § 405(b), requires inspectors general to prepare semiannual reports summarizing the activities of OIG during the immediately preceding 6-month periods. It also states that these semiannual reports should include an identification of each "significant recommendation" described in previous semiannual reports on which corrective action has not been completed.

The ASLM concluded by stating, “[W]e will continue to work to improve data collection and demonstrate permitting improvements as we work with the Bureau of Land Management (BLM) and other agencies to implement the recommendations in the IWG report.”

OIG Comment: Based on the ASLM’s response, we consider this recommendation implemented. We reviewed the ASLM’s response to this recommendation and determined that it was sufficient to demonstrate that the ASLM assessed whether a resubmission of the report was required. Therefore, no further action is required.

2. Finalize the performance metrics as established in IJJA Section 40206(e), “Performance Metric.”

ASLM Response: The ASLM concurred with the recommendation and stated, “On February 12, 2024, the BLM posted its draft performance metrics and announced it was accepting comments on them for 30 days. After reviewing comments, BLM will finalize the performance metrics.” The target implementation date is May 1, 2024.

OIG Comment: Based on the ASLM’s response, we consider this recommendation resolved. We will consider this recommendation implemented once the performance metrics are published in accordance with IJJA Section 40206(e).

3. Coordinate with the U.S. Department of Agriculture to assign responsibility for the required annual report and ensure that each annual report is completed and that all components required in the report are addressed after the publication of the performance metric mentioned in Recommendation 2, as established in IJJA Section 40206(f), “Annual Reports.”

ASLM Response: The ASLM concurred with the recommendation and stated, “On a bimonthly basis, the BLM meets with the U.S. Forest Service to ensure that each agencies’ efforts are coordinated on the requirements in IJJA Section 40206(f).” The target implementation date is March 14, 2025.

OIG Comment: Based on the ASLM’s response, we consider this recommendation resolved. We will consider it implemented once an annual report has been submitted in accordance with the IJJA Section 40206(f).

We will track open recommendations for resolution and implementation. We will notify Congress about our findings, and we will report semiannually, as required by law, on actions you have taken to implement the recommendations and on recommendations that have not been implemented. We will also post a public version of this report on our website.

If you have any questions about this report, please contact me, or your staff may contact Kathleen Sedney, Assistant Inspector General for Audits, Inspections, and Evaluations, at 202-208-5745.

Attachments (4)

Attachment 1: Scope and Methodology

Scope

We inspected the U.S. Department of the Interior’s (DOI’s) actions taken to comply with the requirements of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, Section 40206, since the law was enacted on November 15, 2021. The scope included the processes followed to develop the recommendations for the report and obtaining an understanding of the challenges in obtaining report data by DOI and the interagency working group (IWG). We did not opine on the accuracy of the report data or the efficacy of the report recommendations. Similarly, due to the technical nature of the report, we did not assess whether it addressed the intent of the IIJA Section 40206 requirements.

Methodology

We conducted our inspection in accordance with the *Quality Standards for Inspection and Evaluation* as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

To accomplish our objectives, we:

- Gathered and reviewed laws, regulations, and reports related to critical mineral mining including but not limited to:
 - *Recommendations to Improve Mining on Public Lands: Developed by the Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting* (Sept. 12, 2023);
 - IIJA, Pub. L. No. 117-58, 135 Stat. 961, § 40206 (2021);
 - Executive Order No. 14017, *America’s Supply Chains* (2021); and
 - Government Accountability Office, *Critical Minerals: Building on Federal Efforts to Advance Recovery and Substitution Could Help Address Supply Risks* (GAO-22-104824), issued June 2022.
- Interviewed DOI officials.
- Reviewed various documents provided by a DOI official, including but not limited to:
 - IWG meeting minutes from meetings with mining industry sector representatives; BLM staff, nongovernmental organizations, and Indian Tribal representatives; and

- Request for Information to Inform Interagency Working Group on Mining Regulations, Laws, and Permitting, 87 Fed. Reg. 18,881 (March 31, 2022).
- Compared the IWG final report content to Section 40206 requirements.

We did not rely on computer-generated data to draw significant conclusions for the inspection.

Attachment 2: IIJA Section 40206 Report Requirements Compared to the IWG Report

The figure in this attachment identifies whether the interagency working group’s (IWG’s) final report that it submitted to Congress on September 12, 2023, complied with Infrastructure Investment and Jobs Act (IIJA) Section 40206 reporting requirements. Although we found the report addressed many requirements, we note the report did not fully address all components of two of the four areas. Due to the technical nature of the report, we did not assess whether the IWG report adequately addressed the intent of the Section 40206 requirements and instead considered only if the requirements were addressed in the report.

IIJA Section 40206 Report Requirements Compared to the IWG Report

IIJA Section 40206 Report Requirements	Addressed in IWG Report?
<p><i>1. Requirement (c), Federal Permitting and Review Performance Improvements. Improve the quality and timeliness of Federal permitting and review processes with respect to critical mineral production on Federal land to the maximum extent practicable, shall complete the Federal permitting and review processes with maximum efficiency and effectiveness, while supporting vital economic growth, by:</i></p>	
<p>(1) establishing and adhering to timelines and schedules for the consideration of, and final decisions regarding, applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land;</p>	<p>No. According to the DOI, this requirement is inapplicable at this time.</p>
<p>(2) establishing clear, quantifiable, and temporal permitting performance goals and tracking progress against those goals;</p>	<p>No. According to the DOI, this requirement is inapplicable at this time.</p>
<p>(3) engaging in early collaboration among agencies, project sponsors, and affected stakeholders</p>	<p>Yes.</p>
<p>(A) to incorporate and address the interests of those parties; and</p>	<p>Yes.</p>
<p>(B) to minimize delays;</p>	<p>Yes.</p>
<p>(4) ensuring transparency and accountability by using cost-effective information technology to collect and disseminate information regarding individual projects and agency performance;</p>	<p>Yes.</p>

IIJA Section 40206 Report Requirements	Addressed in IWG Report?
(5) engaging in early and active consultation with State, local, and Tribal governments	Yes.
(A) to avoid conflicts or duplication of effort;	Yes.
(B) to resolve concerns; and	Yes.
(C) to allow for concurrent, rather than sequential reviews;	Yes.
(6) providing demonstrable improvements in the performance of Federal permitting and review processes, including lower costs and more timely decisions;	No. According to the DOI, this requirement is inapplicable at this time.
(7) expanding and institutionalizing Federal permitting and review process improvements that have proven effective;	Yes.
(8) developing mechanisms to better communicate priorities and resolve disputes among agencies at the national, regional, State, and local levels; and	Yes.
(9) developing other practices, such as preapplication procedures.	Yes.
<hr/>	
<i>2. Requirement (d), Review and Report. Not later than 1 year after the date of enactment of this Act, the Secretaries shall submit to Congress a report that:</i>	
(1) identifies additional measures, including regulatory and legislative proposals, if appropriate, that would increase the timeliness of permitting activities for the exploration and development of domestic critical minerals;	Yes.
(2) identifies options, including cost recovery paid by permit applicants, for ensuring adequate staffing and training of Federal entities and personnel responsible for the consideration of applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land;	Yes.

IIJA Section 40206 Report Requirements**Addressed in IWG Report?**

(3) quantifies the period of time typically required to complete each step associated with the development and processing of applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land, including by:

Partially. We were unable to identify the period of time required to complete each step and the variance.

(A) calculating the range, the mean, the median, the variance, and other statistical measures or representations of the period of time; and

Partially. We were unable to identify the period of time required to complete each step and the variance.

(B) taking into account other aspects that affect the period of time that are outside the control of the Executive branch, such as judicial review, applicant decisions, or State and local government involvement; and

Partially.

(4) describes actions carried out pursuant to subsection (c).

No. According to the DOI, three of the nine requirements of subsection (c) were not fully addressed in the IWG report (see Requirement 1).

Attachment 3: Response to Draft Report

The Principal Deputy Assistant Secretary Exercising the Delegated Authority of the Assistant Secretary, Land and Minerals Management's response to our draft report follows on page 16.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

Monday, March 4, 2024

Memorandum

To: Mark Lee Greenblatt
Inspector General

From: Steven Feldgus **STEVEN FELDGUS**
Principal Deputy Assistant Secretary Exercising the Delegated Authority of the Assistant Secretary, Land and Minerals Management

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STEVEN FELDGUS
Date: 2024.03.04
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Subject: Response to Draft Inspection Report – *The U.S. Department of the Interior Should Comply with Requirements in Infrastructure Investment and Jobs Act Section 40206, “Critical Minerals Supply Chains and Reliability”* Report No. 2023-ISP-013.

Thank you for the opportunity to respond to your draft report, *The U.S. Department of the Interior Should Comply with Requirements in Infrastructure Investment and Jobs Act [IIJA] Section 40206, “Critical Minerals Supply Chains and Reliability”* (Report No. 2023-ISP-013). This memorandum provides comments from the Office of the Assistant Secretary for Land and Minerals Management (ASLM) on the recommendations in that report, and describes actions being taken to address those recommendations.

Recommendation 1: Assess whether a resubmission of the report is required to fully address all four areas established in IIJA Section 40206(d), “Review and Report.”

Response: ASLM concurs with this recommendation in part, in that we agree that the two IIJA Section 40206 reporting areas that were not addressed in the report submitted to Congress (“Quantify the period of time typically required to complete each step associated with developing and processing applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land, including by multiple different measures”, and “Describe actions carried out for Federal permitting and a review of performance improvements, which contains nine specific components that must be addressed.”) would provide valuable information regarding permitting performance and the success of efforts to improve that performance.

However, as described in the report by the Interagency Working Group on Mining Laws, Regulations, and Permitting (IWG), *Recommendations to Improve Mining on Public Lands*, “agencies do not always collect the information needed to identify points in the permitting process where delays occur or to identify the causes of those delays,”¹ “[a]gencies also do not always collect or maintain information in ways that allow easy comparison across programs,”² and “[i]t is clear that better tracking of permitting schedules, along with transparency and accountability for schedule changes, is needed so that there is a common understanding of the causes of delay and an ability to target these areas for improvement.”³ While the IWG report included the best data available regarding timelines, the lack or unreliability of necessary data prevented the IWG from being able to fully quantify each step “associated with developing and processing applications,” particularly as “developing applications” is within the purview of the applicant and federal agencies would not have access to that.

The fourth reporting area in Section 40206, related to the review of performance improvements, could not be included in a report that identified recommended performance improvements to implement after the report was published. Likewise, some of the direction provided in Section 40206(c), such as “providing demonstrable improvements in the performance of Federal permitting and review processes,” cannot be completed until the recommendations in the IWG report are implemented.

We believe the IWG interpreted Section 40206 properly given data limitations and inconsistencies in the legislative language, and do not believe that a resubmission of the report is necessary to restate those points. We will continue to work to improve data collection and demonstrate permitting improvements as we work with the Bureau of Land Management (BLM) and other agencies to implement the recommendations in the IWG report.

Responsible Official: Steven Feldgus, Principal Deputy Assistant Secretary Exercising the Delegated Authority of the Assistant Secretary, Land and Minerals Management, Department of the Interior.

Target Date: Not applicable.

Recommendation 2: Finalize the performance metrics as established in IIJA Section 40206(e), “Performance Metrics.”

Response: Concur. On February 12, 2024, the BLM posted its draft performance metrics⁴ and announced it was accepting comments on them for 30 days.⁵ After reviewing comments, BLM will finalize the performance metrics.

Responsible Official: Benjamin Gruber; Acting Assistant Director – Energy, Minerals, and Realty Management; Bureau of Land Management.

¹ IWG, *Recommendations to Improve Mining on Public Lands*, September 2023, at 52.

² *Id.*

³ *Id.*, at 56-57.

⁴ <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/mining-performance-metrics>

⁵ <https://www.blm.gov/announcement/blm-seeks-comment-mine-permitting-metrics>

Target Date: May 1, 2024

Recommendation 3: Coordinate with the U.S. Department of Agriculture to assign responsibility for the required annual reports and ensure that the annual reports are completed and that all components required in the report are addressed after the publication of the performance metric mentioned in Recommendation 2, as established in IIJA Section 40206(f), “Annual Reporting.”

Response: Concur. On a bimonthly basis, the BLM meets with the U.S. Forest Service to ensure that each agencies’ efforts are coordinated on the requirements in IIJA Section 40206.

Responsible Official: Benjamin Gruber; Acting Assistant Director – Energy, Minerals, and Realty Management; Bureau of Land Management.

Target Date: March 14, 2025

Please contact me at (202) 208-6734 or [REDACTED] [@ios.doi.gov](mailto:[REDACTED]@ios.doi.gov) if you have any comments or questions.

Attachment 4: Status of Recommendations

Recommendation	Status	Action Required
<p>2023-ISP-013-01 We recommend that the Secretary for the U.S. Department of the Interior or a designee assess whether a resubmission of the report is required to fully address all four areas established in IIJA Section 40206(d), “Review and Report.”</p>	Implemented	No action is required.
<p>2023-ISP-013-02 We recommend that the Secretary for the U.S. Department of the Interior or a designee finalize the performance metrics as established in IIJA Section 40206(e), “Performance Metric.”</p>	Resolved	We will track implementation.
<p>2023-ISP-013-03 We recommend that the Secretary for the U.S. Department of the Interior or a designee coordinate with the U.S. Department of Agriculture to assign responsibility for the required annual report and ensure that each annual report is completed and that all components required in the report are addressed after the publication of the performance metric mentioned in Recommendation 2, as established in IIJA Section 40206(f), “Annual Reports.”</p>	Resolved	We will track implementation.



REPORT FRAUD, WASTE, ABUSE, AND MISMANAGEMENT

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