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United States to Build Up Critical Mineral Industry

Client Alert

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The escalation of tariffs and the Chinese response, choking off critical minerals, has left the supply chain in a precarious position. Customers are clamoring for certainty, the deeper depths of the supply chain remain unclear, and the demand for products continues unabated. Any uncertainty or instability in the cost or availability of critical minerals will impact companies using critical minerals as well as those working on programs where other components contain these minerals leading to potential shortages or delays. Now, more than ever, recognizing these issues, the White House recently issued two Executive Orders concerning critical minerals, highlighting their critical role in national security and economic stability. An assessment of a manufacturer's supply chain and a review of contracts, purchase orders, and terms and conditions are key as the risk of diminished resources threatens to significantly impact the manufacturing sector.

The United States recognizes vital minerals as critical to both national security and economic success. As demonstrated by the report published by the House Select Committee on Strategic Competition with China, the March 20, 2025, Executive Order (EO) 14241 titled "Immediate Measures to Increase American Mineral Production" and the April 24, 2025, Executive Order 14285 "Unleashing America's Offshore Critical Minerals and Resources," the US government sees enormous importance in developing and investing in a domestic critical minerals industry. This Alert is for businesses that manufacture products containing critical minerals, supply to a customer where the product relies on critical minerals (with the risk that volumes may fluctuate significantly), or are involved directly in the critical minerals (e.g., uranium, copper, potash, gold) industry to provide information on what the current Administration is hoping to accomplish and what programs and processes the Administration has indicated it will institute.

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The House Select Committee on Strategic Competition between the US and China, published policy recommendations in December 2024. The bipartisan working group conducted meetings with industry and defense experts to analyze US reliance on critical mineral imports from China and develop legislation to enhance supply chain resilience, sustainability and national security. The working group highlighted the risks posed by American reliance on foreign countries, specifically China, for critical mineral and rare earth elements. These materials are used in defense systems and semiconductors and a loss of access to these minerals and elements could cause defense production to stop and slow or even stop manufacturing of advanced technologies.

According to the working group, China controls about “90% of the rare earth elements and finished product market.” This control reflects both access to the minerals, mine ownership, and processing capability. In fact, between 2009 and 2020, China spent over \$14 billion enriching its processing capabilities, making it a dominant player in the global market. This level of control of the supply chain has given China the ability to disrupt markets and pressure the system as it has with export controls on critical minerals beginning with licensing gallium and germanium in July 2023 and more recently, with export bans on other critical elements. On February 5, 2025, China added export controls on five minerals including tungsten and on April 4, 2025, it added seven additional rare earth elements in response to US controls issued on semiconductor technology.

Another problem for national security is that as of FY 2023 the National Defense Stockpile (which safeguards essential materials to help mitigate reliance on importing products from other countries) had only 37.9% of the materials projected to be needed by the military. The working group recommended a number of bills to be passed but also stated that “significant work remains to fully address key challenges, including supply chain vulnerabilities, domestic production gaps and reliance on foreign adversaries.” President Trump has issued the above referenced two EOs concerning critical minerals, which address some of the issues highlighted by the working groups recommendations.

EO 14241, “Immediate Measures to Increase American Mineral Production” focuses on increasing US production of critical minerals as defined in 30 U.S.C. § 1606(a)(3), which are: Aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, yttrium, yttrium, zinc, and zirconium as well as uranium, copper, potash, gold and any other element, compound or material as determined by the Chair of the National Energy Dominance Council (NEDC).

The EO attempts to alleviate the burdensome permitting and review process for critical mineral production. The EO requires agencies, within 15 days of the EO, to provide information on all mineral production projects that have had a plan of operations, permit application or other applications to the NEDC. The NEDC will then identify projects that can be immediately approved and work to expedite other projects through the permitting and approval process. The NEDC will also be responsible for determining critical mineral projects which are or will be considered “transparency projects.”

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The EO prioritizes mining on federal lands. It requires the Secretaries of Defense, Interior, Agriculture and Energy to identify as many sites as possible for private mineral production and prioritize permitting and making the sites operational as soon as possible. The agencies are instructed to make use of many resources such as loans, capital assistance and working capital domestic mineral production project sponsors to assist private parties in securing favorable terms for their leases on government land.

The Assistant Secretary of Defense is ordered to convene a meeting of buyers of minerals and issue a request for bids to supply minerals. The NEDC and relevant agencies are also required to issue a request for information to solicit industry feedback on regulatory bottlenecks and recommendations for strategies to increase domestic mineral production.

This EO signals the Administration's priority in gaining independence from the US' reliance on foreign suppliers of critical minerals. In a further continuance of prioritizing critical minerals, on April 24, 2025, the Administration issued EO 14285 "Unleashing America's Offshore Critical Minerals and Resources". This EO focuses on expanding the priority of finding critical minerals to the seabed. The EO highlights that offshore seabed's hold critical minerals and energy resources.

The key areas of the Administration's policy are: (1) rapidly developing domestic capabilities for exploring, characterizing, collecting and processing of seabed minerals by streamlining permitting; (2) supporting investment in deep sea science, mapping, and technology; (3) enhancing agency cooperation with seabed development activities; (4) establishing the US as a global leader in the seabed mineral area; (5) creating a robust domestic supply chain for critical minerals derived from the seabed and (6) strengthening partnerships with allies to counter China's growing influence over seabed minerals.

The EO defines "seabed mineral resources" as polymetallic nodules, cobalt-rich ferromanganese crusts, polymetallic sulfides, heavy mineral sands, phosphorites, and other mineral-bearing materials. Mineral is defined using the same definition given above from EO 14241.

The EO tasks the Secretary of Commerce to expedite the process for reviewing and issuing seabed mineral exploration licenses and commercial recovery permits in areas beyond national jurisdiction under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*). The Secretary of Commerce must provide a report to the Assistant to the President for Economic Policy and to the Chair and Vice Chair of the National Energy Dominance Council. The report should identify private sector interest and opportunities for seabed mineral resource exploration, mining and environmental monitoring in the US outer continental shelf, beyond national jurisdiction and in the jurisdiction of partnering countries. It also requires identifying interest and opportunities for polymetallic nodule and other seabed mineral processing capacity in the US. A plan must be developed to map priority areas of the seabed to help accelerate data collection and characterization prioritizing areas in the US outer continental shelf.

The Secretary of Interior must establish an expedited process for reviewing and approving permits prospecting and granting leases for exploration, development and production of seabed mineral resources. The process should ensure efficiency, predictability and competitiveness for US companies.

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The Secretary of Interior must identify which critical minerals can be derived from seabed resources and indicate which critical minerals are essential for defense infrastructure, manufacturing and energy.

The Secretary of Commerce is required to engage key partners and allies about seabed minerals. This includes offering support in exploration, extraction, processing and environmental monitoring, seeking scientific collaboration and seeking commercial opportunities in the national jurisdictions of the partners or allies. The Secretary of Commerce must develop a list of countries that are a priority for engagement. The Secretary is tasked to create a report on the feasibility of an international benefit sharing mechanism for seabed minerals located outside any country's jurisdiction.

The EO tasks the Secretary of Defense and the Secretary of Energy to report on the feasibility and benefits and drawbacks of using the National Defense Stockpile for storage of materials derived from seabed polymetallic nodules. They should explore the possibility of using the Defense Production Act, grant and loan authorities or other procurement and financing authorities to support domestic processing capabilities for seabed minerals. The Secretaries should ensure that seabed mineral developments are considered for the strategy to secure critical materials for National Security.

These EOs have the potential to dramatically alter the landscape for scientists, commercial businesses and environmental groups who work anywhere in the critical minerals area, including in the environmental and aerospace and defense industries. For example, a company that desires to enter into or expand in the critical mineral processing area in the United States should expect a faster time to receive permits. Although, how much faster is still unknown given certain regulatory requirements that are currently required to be met. It is also expected that there will be an easier path to funding. Current production and orders may be impacted, even if your goods don't contain critical minerals. Moreover, customers are requiring full transparency. With these concerns, it's important to take into consideration supply chain mapping and your current contracts, as both buyer and seller. In a nutshell, these EOs are placing a large burden on different agencies and Secretaries in a very short period of time, along with the entire US supply chain. As a result, the timing of some of the impact to industry remains to be seen, but it is clear the Administration has decided this area is critical to national security and economic development.

Members of Butzel's Environment, Energy & Sustainability Practice Group as well as our Automotive Law and Aerospace and Defense Practices have extensive experience advising contractors and businesses. We encourage you to reach out to the authors of this Client Alert or your Butzel attorney for further information.

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