

ALERT

DOD Calls for Public Comments on Strategic and Critical Materials Supply Chains

April 16, 2021

Critical minerals are the raw materials that form the basis of everything essential to today's economy and national security, including steel, semiconductors, supercomputers, batteries, emerging technologies, F-35 jets, and missile systems. Despite their importance, the United States has allowed itself to become import dependent on these key resources over the course of the past few decades. This is why, on April 13, 2021, the U.S. Department of Defense (DOD) called for public comments on identifying risks in the supply chain for strategic and critical materials such as lithium, copper, and cobalt. It is seeking policy recommendations to address these risks, and comments are due to the DOD by **April 28, 2021**.

DOD's request follows a February 2021 executive order (EO) issued by President Biden to develop resilient and sustainable U.S. supply chains. The EO requires a comprehensive government examination of domestic production, research and development capabilities, and strategies to strengthen key sectors. Moreover, the EO institutes an expedited 100-day review period for four of the most vital sectors: critical minerals and rare earth elements, large capacity batteries, active pharmaceutical ingredients (APIs), and semiconductors.

With respect to the critical minerals supply chain in particular, the DOD has expressed interest in receiving comments on the following topics:

- **Diversifying supply sources** for strategic and critical minerals, including domestic sources and sources from allies and trading partners;
- **Diversifying production resources**, such as primary extraction, co-production, and including reclamation from mine, industrial,

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- and end-of-life products;
- Promoting **environmental, health and safety, labor, fair trade**, and a level playing field in global markets;
- Methods to reduce exposure to **price volatility and supply shocks**;
- Availability of **material and manufacturing processes substitutes; skilled labor and personnel**, including the domestic education and manufacturing workforce skills; and **manufacturing capabilities**, such as a single-point-of-failure capabilities or single/dual suppliers;
- The spectrum of risk to **supply disruptions**, considering duration, geographic scope, intensity, ability to meet projected demand at a particular supply chain node, and the probability of the disruption event;
- The spectrum of risk to the development and maintenance of sustainable supply chains, such as **human rights violations and forced labor**;
- Research, development, and demonstration priorities to support production and/or an **advanced manufacturing base**;
- **Policy recommendations** or suggested executive, legislative, or regulatory action to foster more resilient supply chains while promoting stewardship of affected communities and the environment; and
- **Recommendations** for long term research, development, and demonstration investments for reimagining a more sustainable and secure U.S. critical minerals supply chain.

Although the United States was once a major producer of critical minerals in the late 1980s, the People's Republic of China began producing these materials at lower cost and, as a result, drove many U.S. and worldwide producers out of the market. The result is that, today, China controls 80% of the global supply of critical minerals, including rare earth elements.

Policymakers have been sounding the alarm on the dangers associated with the United States' import dependence. In 2018, the U.S. Department of the Interior identified 35 critical minerals that are essential to U.S. national security. In 2019, the U.S. Department of Commerce (DOC) issued a report delineating the extent to which the United States has become reliant on foreign, and in many instances, insecure sources of each of the 35 minerals. Subsequently, the Fiscal Year 2021 National Defense Authorization Act (NDAA) ordered the DOD to acquire certain strategic and critical minerals domestically and from allies. The legislation also directed the DOD to develop an incentive structure to encourage the defense industrial base to develop processing and manufacturing capabilities in the event that supply chains are disrupted. Additionally, last year, then-President Trump declared a national emergency regarding U.S. dependence on foreign sources for 35 critical minerals.

The DOD has, to date, issued significant funds under Title III of the Defense Production Act to increase domestic critical mineral production. Furthermore, members of Congress continue to be interested in legislative efforts to secure the critical minerals supply chain, as members of the House Natural Resources Committee recently introduced legislation that seeks to speed up permitting for mining critical minerals. These efforts will certainly gain traction as a result of the DOD's efforts, and industry should consider weighing in to

ensure that their production lines are not suddenly halted by a supply shortage of critical mineral raw materials.

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Nicole Hager, a Law Clerk at Wiley Rein LLP, contributed to this alert.