

Client Alert

Energy

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Summary of Trump Administration Executive Orders on Critical Minerals

Critical minerals are the building blocks for many modern technologies, ranging from energy and defense to electronics and other high-tech industries. The Energy Act of 2020 defines a “critical mineral” as a non-fuel mineral or mineral material essential to the economic or national security of the United States (U.S.) and whose supply chain is vulnerable to disruption.

On January 20, 2025, President Trump issued several Executive Orders, including Declaring a National Energy Emergency, Executive Order 14156 and Unleashing American Energy, Executive Order 14154 (collectively the “EOs”). EO 14156 identifies the lack of a reliable, diversified, and affordable supply of both critical minerals and energy as posing an imminent and growing threat to prosperity and national security in the U.S.

The U.S. heavily depends on foreign countries, including malign and adversarial states, for its supply of critical minerals. Some foreign states have made significant investments internally and globally to secure the mining, processing, and manufacturing of components that use critical minerals.

This client alert provides an in-depth examination of the statutory definition of critical minerals, the significance of critical minerals to U.S. economic and national security, and the legal and policy implications of their designation. Please see our recent client alerts on the energy and environment and import tariffs on Mexico, Canada, and China for a broader discussion of the significant EOs and memoranda issued by the Trump Administration.

STATUTORY DEFINITION AND CRITERIA FOR CRITICAL MINERALS

The U.S. government, through the Department of the Interior and other agencies, periodically evaluates and updates the official list of critical minerals. The statutory framework under 30 U.S.C. §1606(a)(3) establishes three core criteria for a mineral's designation:

- **Essentiality to Economic and National Security:** These minerals are indispensable to key industries, including defense, energy, aerospace, and high technology.
- **Supply Chain Vulnerability:** If disruptions occur due to geopolitical instability, trade restrictions, or natural disasters, the economy and national security could be significantly impacted.
- **Essential Function in Advanced Manufacturing:** Many of these minerals are vital components for the manufacturing of various advanced technologies, such as renewable energy, semiconductors, advanced batteries, and more.

The Department of the Interior, in collaboration with the U.S. Geological Survey (USGS) and other federal entities, maintains and publishes an updated [list of critical minerals](#), ensuring that U.S. policymakers remain vigilant to emerging supply chain risks.

KEY MINERALS DESIGNATED AS “CRITICAL”

The latest list of critical minerals includes, but is not limited to:

- **Cobalt:** Used in batteries and aerospace components.
- **Graphite:** Required for battery anodes and other energy storage systems.
- **Lithium:** Essential for lithium-ion battery production.
- **Nickel:** A vital component in stainless steel and advanced battery technology.
- **Platinum Group Metals (including palladium and platinum):** Used in catalytic converters and hydrogen fuel cell technology.
- **Rare Earth Elements (neodymium, dysprosium, and others):** Crucial for magnets used in wind turbines and electric vehicles.

CRITICAL MINERAL DESIGNATION

1. National Security Considerations

The Department of Defense has identified several critical minerals as essential for military applications, including jet engines, guidance systems, satellites, submarines, and communication technologies. Dependency on foreign sources for these materials, particularly adversarial nations such as China, poses strategic risks.

2. Supply Chain Challenges and U.S. Policy Responses

Given that China dominates the global supply chain for many critical minerals, U.S. policymakers have taken proactive steps, including:

- **The Inflation Reduction Act:** Incentivizing domestic mining and processing of critical minerals.ⁱ
- **The Defense Production Act:** Authorizing federal investment in domestic mineral extraction and refining.ⁱⁱ

- **Bilateral Agreements:** Strengthening partnerships with allies such as Canada and Australia for secure supply chains.ⁱⁱⁱ

3. Legal and Regulatory Implications

The designation of a mineral as “critical” under 30 U.S.C. §1606(a)(3) triggers multiple regulatory and policy responses, such as:

- **Expedited Permitting:** Streamlining environmental review processes to accelerate domestic mining operations.
- **Financial Support:** Federal grants and tax incentives to promote domestic production and technological advancements in mineral processing.
- **Trade Policies:** Tariffs, export controls, and sanctions to counter unfair trade practices and mitigate reliance on adversarial nations.

4. Critical Minerals and Trade and Foreign Policy Implications

President Trump’s EOs seek to reduce the global influence of adversarial states and establish the U.S. as a leading producer of critical minerals.

Specifically, Section 9(f) of EO 14154 requires the United States Trade Representative to assess and report on exploitative practices and state-assisted mineral projects that are unlawful, unduly burdensome, or restrict U.S. commerce. Additionally, under Section 9(h), the Secretary of Homeland Security is to assess the quantity and inflow of minerals that are likely the product of forced labor.

These efforts will complement existing U.S. measures tackling child and forced labor, including the Uyghur Forced Labor Prevention Act (UFLPA),^{iv} which established a rebuttable presumption that goods produced wholly or in part in the Xinjiang Province of China – or otherwise involved certain designated entities – are made with forced labor and, as a result, are subject to an import prohibition in the U.S.^v

Presently, China is the leading producing country for 30 out of 44 critical minerals.^{vi} The other leading producing countries are South Africa, Australia, and the Democratic Republic of the Congo (DR Congo).^{vii} Notably, the DR Congo is essential to China’s position in the global cobalt market. In 2020, Chinese companies reportedly imported from the DR Congo nearly 90% of the cobalt used in China for “fine” refining and integration into battery chemicals.^{viii} In 2022, China accounted for the vast majority of U.S. battery imports, with a total trade value of \$9.3 billion.^{ix}

Forced labor in global critical minerals supply chains has been an area of focus in recent years. As one example, the U.S. Congress introduced a bill in 2023 to establish a rebuttable presumption that goods containing cobalt refined in China were made with forced or child labor, prohibiting their importation into the U.S.^x Although this bill was not enacted, it is likely that Congressional stakeholders and border enforcement authorities will continue to consider additional ways to subject critical minerals supply chains to enhanced scrutiny. More recently, on January 14, 2025, the Department of Homeland Security announced the addition of 37 entities to the UFLPA Entity List, marking the largest single expansion to date, including at least one large supplier of critical minerals.^{xi}

5. Future Actions to Support the Critical Minerals Industry

The EOs direct federal agencies to prioritize the development of critical minerals projects and identify and remove regulatory impediments within the scope of their authorities. For example, Section 9(a) of EO 14156 directs action agencies to “identify all agency actions that impose undue burdens on the domestic mining and processing of non-fuel minerals and undertake steps to revise or rescind such actions.” Section 9(e) directs the Department of Energy

to “ensure that critical mineral projects, including the processing of critical minerals, receive consideration for Federal support, contingent on the availability of appropriated funds.” That is particularly notable given other provisions in the EOs that call into question the extent to which the Trump Administration will continue to provide funding support for projects authorized under the Inflation Reduction Act and Bipartisan Infrastructure Law. The EOs also direct agencies to identify within 60 days additional policy recommendations necessary to enhance the competitiveness of American mining interests.

Fundamentally, the EOs recognize that onerous permitting and environmental review requirements have impeded the development of a more robust domestic industry for critical minerals. Moreover, they recognize that capital-intensive requirements, particularly at early stages of project development, pose another significant challenge for the industry that government support may help alleviate. It is expected that the agencies will soon begin implementing regulatory measures to support the growth of the critical minerals industry. Whether these measures, standing alone, will be sufficient remains to be seen; it is likely that long-sought-after permitting reform legislative measures may be necessary to help spur the industry. Indeed, new minerals projects will likely encounter opposition and potentially litigation threats from Environmental Non-governmental Organizations (eNGOs). Project developers will want to be sensitive to these regulatory and litigation risks and work collaboratively with federal, state, and local permitting authorities to ensure that permitting decisions and underlying environmental reviews are both sound and able to withstand judicial scrutiny.

SELECT EO REFERENCES

Declaring a National Energy Emergency, EO 14156

Section 1. Purpose. The energy and critical minerals (“energy”) identification, leasing, development, production, transportation, refining, and generation capacity of the United States are all far too inadequate to meet our Nation’s needs.

Sec. 8. Definitions. For purposes of this order, the following definitions shall apply:

(a) The term “energy” or “energy resources” means crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606 (a)(3).

Unleashing American Energy, EO 14154

Sec. 2. Policy. It is the policy of the United States:

(a) to encourage energy exploration and production on Federal lands and waters, including on the Outer Continental Shelf, in order to meet the needs of our citizens and solidify the United States as a global energy leader long into the future;

(b) **to establish our position as the leading producer and processor of non-fuel minerals, including rare earth minerals**, which will create jobs and prosperity at home, strengthen supply chains for the United States and its allies, and reduce the global influence of malign and adversarial states;

Sec. 3. Immediate Review of All Agency Actions that Potentially Burden the Development of Domestic Energy Resources. (a) The heads of all agencies shall review all existing regulations, orders, guidance documents, policies, settlements, consent orders, and any other agency actions (collectively, agency actions) to identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources — with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear

energy resources — or that are otherwise inconsistent with the policy set forth in section 2 of this order, including restrictions on consumer choice of vehicles and appliances.

Sec. 9. Restoring America's Mineral Dominance. (a) The Secretary of the Interior, Secretary of Agriculture, Administrator of the EPA, Chairman of CEQ, and the heads of any other relevant agencies, as appropriate, shall identify all agency actions that impose undue burdens on the domestic mining and processing of non-fuel minerals and undertake steps to revise or rescind such actions.

(b) The Secretaries of the Interior and Agriculture shall reassess any public lands withdrawals for potential revision.

(c) The Secretary of the Interior shall instruct the **Director of the U.S. Geological Survey** to consider updating the **Survey's list of critical minerals**, including for the potential of including uranium.

(d) The Secretary of the **Interior shall prioritize** efforts to accelerate the ongoing, detailed **geologic mapping of the United States**, with a focus on **locating previously unknown deposits of critical minerals**.

(e) The Secretary of **Energy** shall ensure that **critical mineral projects**, including the processing of critical minerals, receive consideration for Federal support, contingent on the availability of appropriated funds.

(f) The **United States Trade Representative** shall assess whether **exploitative practices** and **state-assisted mineral projects abroad are unlawful** or unduly burden or restrict United States commerce.

(g) The Secretary of **Commerce** shall assess the **national security implications** of the Nation's **mineral reliance** and the potential for trade action.

(h) The Secretary of **Homeland Security** shall assess the quantity and inflow of **minerals that are likely the product of forced labor** into the United States and **whether such inflows pose a threat to national security** and, within 90 days of the date of this order, shall provide this assessment to the **Director of the NEC**.

(i) The Secretary of **Defense** shall consider the needs of the United States in **supplying and maintaining the National Defense Stockpile**, review the legal authorities and obligations in managing the National Defense Stockpile, and take all appropriate steps to ensure that the National Defense Stockpile will provide **a robust supply of critical minerals** in event of future shortfall.

(j) Within 60 days of the date of this order, the Secretary of State, Secretary of Commerce, Secretary of Labor, the United States Trade Representative, and the heads of any other relevant agencies, shall submit a **report to the Assistant to the President for Economic Policy** that includes **policy recommendations** to enhance the **competitiveness of American mining and refining companies in other mineral-wealthy nations**.

(k) The Secretary of State shall consider opportunities to **advance the mining and processing of minerals within the United States** through the Quadrilateral Security Dialogue.

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ⁱ Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

ⁱⁱ Defense Production Act of 1950, Pub. L. No. 81-774, 64 Stat. 798 (1950).

ⁱⁱⁱ See e.g., U.S. Department of State, Minerals Security Partnership, available at: <https://www.state.gov/minerals-security-partnership#:~:text=MSP%20Launch%20%E2%80%93%20Canada,bolster%20critical%20mineral%20supply%20chains>.

^{iv} Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, 135 Stat. 1525 (2021).

^v U.S. Customs and Border Protection enforces the rebuttable presumption that goods mined, produced, or manufactured wholly or in part in Xinjiang, or by an entity on the UFLPA Entity List, are prohibited from U.S. importation under 19 U.S.C. § 1307.

^{vi} U.S. Geological Survey, 2025, Mineral commodity summaries 2025: U.S. Geological Survey, 212 p. 22,

<https://doi.org/10.3133/mcs2025> (hereafter, "U.S.G.S. 2025"). Moreover, in 2023-2024, the U.S. was fully reliant on imports for 12 of the 50 minerals on the U.S. List of Critical Minerals. These include arsenic, fluor spar, gallium, graphite (natural), iridium, manganese, scandium, tantalum, and yttrium. U.S.G.S. 2025, p. 23.

^{vii} U.S.G.S. 2025, p. 22.

^{viii} Congressional-Executive Commission on China, From Cobalt to Cars: How China Exploits Child and Forced Labor in DR Congo, November 14, 2023, available at: <https://www.congress.gov/event/118th-congress/joint-event/LC72512/text>.

^{ix} Felix Richter, "Charted: Where does the US lithium battery supply come from?," March 15, 2023, available at:

<https://www.weforum.org/stories/2023/03/charted-where-does-the-us-lithium-battery-supply-come-from/>. In comparison, the U.S. imports 13% of its rare earth metals and compounds from Malaysia, second only behind China (from which it imports 70%). U.S.G.S. 2025, p. 23.

^x U.S. H.R. 6909, COBALT Supply Chain Act (China's Odious and Brutally Atrocious Labor Trafficking Supply Chain Act) was introduced in the 118th Congress (2023–2025) on December 29, 2023 but died in previous Congress.

^{xi} U.S. Department of Homeland Security, "DHS Announces Addition of 37 PRC-Based Companies to UFLPA Entity List," January 14, 2025, available at: <https://www.dhs.gov/archive/news/2025/01/14/dhs-announces-addition-37-prc-based-companies-uflpa-entity-list>.