GUIDANCE

UNDERSTANDING THE EXECUTIVE ORDER ON CRITICAL MINERALS SUPPLY CHAINS

On September 30, 2020, U.S. President Donald Trump issued an executive order declaring a national emergency in response to the threat posed by overreliance on critical minerals sourced from foreign adversaries, namely China.

The objective of the order is to address the serious shortfall in domestic production of the 35 minerals identified as critical to the economic and national security of the U.S. Leveraging agencies across the government, the order could have substantial impacts on companies with parts or products containing any listed critical mineral.

THE EXECUTIVE ORDER

The September 2020 notice is an amendment to Executive Order 13817, issued in 2017, which required companies and agencies to identify rare-earth and other minerals critical to the nation by 2019. The pursuant list identified 35 minerals that:

- Were essential to the economy and defense of the U.S.
- Were vulnerable to supply chain disruption.
- Serve an essential role in manufacturing goods important to the economy or national security.[1]

A list of the minerals can be found here.

These minerals are currently not produced in sufficient amounts to meet the country's needs. For 31 of the 35 minerals, the U.S. imports more than 50 percent of its annual consumption. The U.S. currently has no domestic production of 14 of the critical minerals on the list.

The order reaffirms the intention to continue sourcing minerals from partners and allies, but identifies Chinese sourced minerals as a significant vulnerability. For example, more than 80 percent of rare earth elements in the U.S. originate from China.

With a single source supplying so much of the nation's material components, the U.S. is vulnerable to adverse foregin government action, natural disasters, or other supply chain disruptions. An inability to access these minerals would prevent the manufacturing of defense equipment, electronics, medical devices, and a multitude of other critical products. To mitigate this, the

1 Whitehouse.Gov. (2020, September 30) *Executive Order on Addressing the Threat to the Domestic Supply Chain from Reliance on Critical Minerals from Foreign Adversaries.* Retrieved from https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-domestic-supply-chain-reliance-critical-minerals-foreign-adversaries/

order establishes steps to increase domestic mining capacity for critical minerals and reduce the prevalence of critical minerals sourced from foreign adversaries.

ACTIONS TO BE TAKEN

The government's first action will be to investigate the risk of critical minerals dependence on China and other nations, headed by the secretary of the interior, in consultation with the secretary of the treasury, secretary of defense, secretary of commerce, and the heads of other relevant agencies. The secretary of the interior will then submit a report to the president with conclusions and recommendations, including possible tariffs, quotas, or other restrictions on imports.

Beginning in 2021, the secretary of the interior will also update the president on the state of the threat posed by critical minerals reliance every six months. This ensures the issue will remain front and center as the U.S. and China remain locked in trade disputes.

WHAT IT MEANS FOR BUSINESSES

The U.S. government's next moves remain to be seen, however, we know the U.S. has been willing to impose sanctions and restrictions on Chinese-sourced goods.[2] To promote and protect domestic critical minerals supply chains, Section 4 of the executive order outlines activities for identifying existing regulations to reconsider, which could place new requirements on companies doing business with the government. The order states that new rules will be proposed as soon as 90 days following a review from the secretary of energy.

The Buy America/Buy American acts are a potential template for revised critical minerals regulations. They place requirements on companies to source a majority of their material (namely steel) from the U.S. when supplying the federal government.

As critical minerals sourcing requirements come into force, companies will need answers from their supply chain, including:

- Which products contain critical minerals?
- Where do those minerals come from?
- Where else can I acquire these minerals?

SCOPING

Identifying products containing critical minerals is a difficult task, as they are common in the subcomponents of larger products. Antimony, for example, is frequently used in cable sheathing or to make ceramic enamels.[3] Companies will need to rely on their suppliers to provide comprehensive and accurate substance information to scope for risks.

Many of the 35 critical minerals are used extensively in electronics manufacturing. These products contain thousands of parts sourced from suppliers around the world, presenting a large data burden for manufacturers.

2 BBC News. (2020, September 9). *Xinjiang: US to block key exports from Chinese region.* Retrieved from https://www.bbc.com/news/business-54067492.

3 JLab Science Education. (n.d.). *The Element Antimony.* Retrieved from https://education.jlab.org/itselemental/ele051.html

COUNTRY OF ORIGIN

After identifying critical minerals in a product, companies will need to trace the material through the supply chain to determine if it originates from China or another foreign adversary. This becomes more difficult the closer to extraction an investigation leads. Ore from several countries is oftentimes refined together, making it difficult to determine the complete makeup of refined material. As China is rich in mineral deposits, there is a large probability that refined critical minerals contain ore sourced, at least in part, from China.

To address this requirement, companies will need to survey their supply chain to identify if these materials are in products, classify them, and determine their origin. An analogous process is part of standard global business practices, because conflict minerals due diligence was mandated as a part of Section 1502 of the Dodd-Frank Wall Street Protection and Consumer Reform Act.

The Dodd-Frank Act carries numerous requirements for publicly traded companies in the U.S., including a mandatory report and to executive due diligence activities to identify the origin of tin, tantalum, tungsten, and/or gold (3TGs) in their supply chain. It's worth noting that the three "Ts" are all critical minerals as well. While both the critical minerals executive order and the Dodd-Frank Act seek to promote the responsible sourcing of minerals, it is unlikely that the scale of actions required by the Dodd-Frank Act would be duplicated. More likely, a company will require a certificate stating the origin of their material, similar to the certificates used to comply with the Buy American Act.[4]

DIVERSIFYING SUPPLIERS

As stated, China has rich mineral deposits and mining operations for nearly every listed critical mineral, but in most cases, significant deposits also exist in the U.S. or allied countries. Countries such as Australia, Brazil, Canada, and others have large deposits and a historically friendly relationship with the U.S.[5] Therefore, new mining operations are likely to initiate as a result of this new policy and minerals from these sources will be in high demand.

As the U.S. seeks to mitigate its risks by diversifying its supply of critical minerals, so to will companies. With a varied supply chain, companies are less exposed to risks and disruptions associated with regulatory actions. A hold on Chinese goods, for example, could deny an electronics manufacturer crucial components needed to fill an order or stop production outright. Operational disruptions have a substantial financial impact and lasting damage to reputation.

TIMELINE

Critical minerals have been on the U.S. government's radar since at least 2017, and the most recent executive order contains a strict schedule to address its concerns to be met within 90 days of its start date.

---

4 Acquisition.Gov. (2014, May). *Buy American Certificate.* Retrieved from https://www.acquisition.gov/far/52.225-2.

5 U.S. Department of the Interior. (2017). *Critical mineral resources of the United States—Economic and environmental geology and prospects for future supply.* Retrieved from https://pubs.er.usgs.gov/publication/pp1802.

30 DAYS

Thirty days into the process, the heads of all relevant agencies shall each submit a report to the president identifying legal avenues that can be used to meet the goals laid out in the executive order.

The secretary of energy shall develop and publish guidance on the use of loan guarantees pursuant to the Energy Policy Act, which can be used to support domestic supply chains. The secretary of energy will also review all Department of Energy (DoE) regulations and identify all such regulations for revision or reconsideration to meet the order's goals.

45 DAYS

Within 45 days, the secretary of state will produce a report detailing current and future plans to:

- Reduce vulnerability caused by critical minerals dependence.
- Build resilient critical minerals supply chains, including supporting allies' supply chain diversification.
- Promote responsible minerals sourcing, labor, and business practices.
- Reduce the dependence on minerals produced using methods incongruent with responsible minerals standards.

60 DAYS

In addition to the investigation and its conclusory report that is due within 60 days of starting activities, the heads of relevant agencies shall detail their strategies for leveraging the legal activities they identified the month prior. The director of the Office of Science and Technology will also submit a report describing the current state of scientific development as it pertains to critical minerals, their extraction, processing, and use.

90 DAYS

Within 90 days, the secretary of energy shall propose for notice and comment rules regarding the regulations identified for reconsideration earlier.

This puts companies potentially three months out from first notice of substantial shifts in how they manufacture their products. To be prepared, companies should begin to scope which of their products and business units are most vulnerable to regulations that will mandate diversification of critical minerals within their supply chain.

HOW ASSENT CAN HELP

The Assent Compliance Platform automates supplier engagement and data management, empowering companies with the ability to efficiently scope their products, contact vast supply chains, and analyze risks. To learn more about how Assent can help you prepare for incoming critical minerals requirements, contact us at **info@assentcompliance.com**.