

Administration of Joseph R. Biden, Jr., 2022

Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended

March 31, 2022

Presidential Determination No. 2022–11

Memorandum for the Secretary of Defense

Subject: Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as amended

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the "Act") (50 U.S.C. 4533), it is hereby ordered:

Section 1. Policy. It is the policy of my Administration that ensuring a robust, resilient, sustainable, and environmentally responsible domestic industrial base to meet the requirements of the clean energy economy, such as the production of large-capacity batteries, is essential to our national security and the development and preservation of domestic critical infrastructure.

The United States depends on unreliable foreign sources for many of the strategic and critical materials necessary for the clean energy transition—such as lithium, nickel, cobalt, graphite, and manganese for large-capacity batteries. Demand for such materials is projected to increase exponentially as the world transitions to a clean energy economy.

To promote the national defense, the United States must secure a reliable and sustainable supply of such strategic and critical materials. The United States shall, to the extent consistent with the promotion of the national defense, secure the supply of such materials through environmentally responsible domestic mining and processing; recycling and reuse; and recovery from unconventional and secondary sources, such as mine waste.

These actions shall be conducted, to the extent consistent with the promotion of the national defense and applicable law, with strong environmental, sustainability, safety, labor, Tribal consultation, and impacted community engagement standards, to rebuild and maintain American expertise and productive capacity in these critical sectors.

Sec. 2. Determination. (a) I hereby determine, pursuant to section 303(a)(5) of the Act, that:

- (1) sustainable and responsible domestic mining, beneficiation, and value-added processing of strategic and critical materials for the production of large-capacity batteries for the automotive, e-mobility, and stationary storage sectors are essential to the national defense;
- (2) without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for these needed industrial resources, materials, or critical technology items in a timely manner; and
- (3) purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost-effective, expedient, and practical alternative method for meeting the need.

(b) Consistent with section 303(a)(1) of the Act, the Secretary of Defense shall create, maintain, protect, expand, or restore sustainable and responsible domestic production capabilities of such strategic and critical materials by supporting feasibility studies for mature mining,

beneficiation, and value-added processing projects; by-product and co-product production at existing mining, mine waste reclamation, and other industrial facilities; mining, beneficiation, and value-added processing modernization to increase productivity, environmental sustainability, and workforce safety; and any other such activities authorized under section 303(a)(1) of the Act.

(c) In the execution of projects to create, maintain, protect, expand, or restore sustainable and responsible domestic production capabilities of such strategic and critical materials consistent with section 303(a)(1) of the Act, the Secretary of Defense shall consult with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Energy, and the heads of other executive departments and agencies (agencies) as appropriate.

(d) Further, pursuant to section 303(a)(7)(B) of the Act, I find that action to expand the domestic production capabilities for such strategic and critical materials is necessary to avert an industrial resource or critical technology item shortfall that would severely impair the national defense capability. Therefore, I waive the requirements of section 303(a)(1)–(a)(6) of the Act for the purpose of expanding the sustainable and responsible domestic mining, beneficiation, and value-added processing of strategic and critical materials necessary for the production of large-capacity batteries for the automotive, e-mobility, and stationary storage sectors.

Sec. 3. Annual Report to the President and the Congress by the Secretary of Defense. (a) The Secretary of Defense, in consultation with the heads of other agencies as appropriate, shall conduct a survey of the domestic industrial base for the mining, beneficiation, and value-added processing of strategic and critical materials for the production of large-capacity batteries for the automotive, e-mobility, and stationary storage sectors. Such survey shall assess whether conditions continue to warrant the use of the authority under section 303 of the Act.

(b) Consistent with the designation under section 309 of Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness), the Secretary of Defense shall include the survey stated in section 3(a) of this determination in the annual report to the Congress required by section 304(f) of the Act, and also shall submit such report to the President.

Sec. 4. Limitations. Nothing in this determination shall be construed to waive or supersede the requirement for mines or other industrial facilities to comply with all Federal and State permitting requirements and environmental health and safety laws.

Sec. 5. General Provisions. (a) Nothing in this determination shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This determination shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This determination is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this determination in the *Federal Register*.

JOSEPH R. BIDEN, JR.

[Filed with the Office of the Federal Register, 8:45 a.m., April 5, 2022]

NOTE: This memorandum was published in the *Federal Register* on April 6.

Categories: Communications to Federal Agencies : Defense Production Act of 195, memorandum.

Subjects: Business and industry : Manufacturing industry :: Advanced manufacturing, promotion efforts; Defense Production Act of 1950, executive authorities; Infrastructure, national improvement efforts.

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