

Biden Administration Invokes DPA to Advance Clean Energy Goals

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On Monday, June 6, 2022, President Biden [invoked](#) the Defense Production Act of 1950 (“DPA”) with the intent to accelerate domestic manufacturing in the renewable energy sector. In addition to furthering the Administration’s clean energy agenda, Deputy Secretary of Defense Dr. Kathleen Hicks [explained](#) this action will strengthen U.S. national security, noting the vulnerability of fossil fuel supply lines during conflict and the military capability gains expected to flow from the Defense Department’s transition toward clean energy technologies. Title III of the DPA empowers the President to mitigate industrial base shortfalls and supply chain risks and expand U.S. production capabilities to promote national defense. Recently, Presidents Biden and Trump have invoked this emergency authority to address COVID-19 pandemic related vaccination and supply chain issues. This executive action has the potential to impact contractors and their supply chains in the domestic renewable energy sector and the energy industry writ large.

Invoking the DPA, President Biden authorized the Department of Energy (“DOE”) to take action to accelerate domestic production of [clean energy technologies](#). President Biden’s exercise of DPA authority includes five presidential determinations targeted toward key areas in the renewable energy industry:

- [Solar panel inputs](#), including photovoltaic modules and components thereof;
- [Building insulation](#), especially for older, less efficiently retrofitted buildings;
- [Heat pumps](#) used to efficiently heat and cool buildings;
- [Equipment](#) used to make and use clean electricity-generated fuels, such as electrolyzers, fuel cells, and related platinum group metals; and
- [Transformers](#) and other critical power grid infrastructure.

In its DPA-supported projects, the [Biden administration](#) will “strongly encourage” observance of “strong labor standards,” such as project labor agreements and community benefits agreements offering competitive wages and employment terms.^[1] The Administration will also “strongly encourage” projects involving [environmental justice outcomes](#) tailored to low-income communities and areas affected by historic “[legacy pollution](#).”

In five memoranda addressed to the Secretary of Energy issued on June 6, 2022, and published in the *Federal Register* on June 9, 2022, President Biden invoked Title III of the DPA, which authorizes the President to direct certain activities in order to “create, maintain, protect, expand, or restore”

domestic industry capabilities essential to national defense. 50 U.S.C. § 4533(a)(1) (2022). To achieve this, Title III authorizes the President to order government purchases of or commitments to purchase critical resources or technology, subsidize domestically-produced materials to ensure its availability, or order installation and purchasing of supplies for government and privately owned industrial facilities to expand their production capacity in order to aid the national defense.^[2] In issuing each memorandum, President Biden waived certain DPA statutory requirements after determining that action is necessary to avoid a shortage in the subject critical resource or technology that would severely impair national defense capability. *See* 50 U.S.C. § 4533(7)(B) (2022). Nonetheless, each memorandum addresses the three-pronged determination required by section 303(a)(5) of the DPA and discussed further below.

The stated purpose in each memorandum is to ensure a “robust, resilient, and sustainable domestic industrial base” necessary for a clean energy economy, which President Biden determined is essential to “national security, a resilient energy sector, and the preservation of domestic critical infrastructure.”^[3] According to the DOE, this DPA action will advance the Administration’s goals to reduce U.S. reliance on foreign energy supply—specifically, imports from Russia and China—and promote energy independence, reduce energy use, lessen reliance on fossil fuels and address climate change, create jobs, and decrease energy costs for American families. The DOE also notes high levels of U.S. and global demand for renewable energy technology and the expectation that this demand will continue to increase. Without this DPA action, the DOE predicts domestic supply capabilities would be insufficient, vulnerable to supply chain disruptions, and overly reliant on imports. Consequently, per section 303(a)(5) of the DPA, each memorandum asserts President Biden’s determination with regard to each of the five targeted areas:

- (1) the stated sector of the domestic energy industry is essential to national defense;
- (2) President Biden’s exercise of section 303 authority is necessary to ensure that the domestic industry can timely supply and satisfy the domestic need for the stated technology; and
- (3) purchases, purchase commitments, or other action under section 303 of the DPA are the most cost effective, expedient, and practical means of achieving the stated purpose for each measure.

The Administration also [announced](#) its plan, in collaboration with the DOE, to convene industry, labor, environmental justice, and other stakeholders to discuss means to maximize the impacts of this action. In February 2022, the DOE also [issued](#) a comprehensive assessment (“[America’s Strategy to Secure the Supply Chain for a Robust Clean Energy Transition](#)”) and reports and fact sheets addressing thirteen key areas in the domestic renewable energy industry, which further explain the Administration’s strategies and recommendations to advance its clean energy goals. For additional information on and links to the DOE’s assessments, please consult our advisory [here](#).

^[1] In a separate section of the statute, the DPA notably excludes from the President’s scope of authority the ability to control employment contracts. *See* 50 U.S.C. § 4511(c)(1) (2022).

^[2] For additional information on the DPA, please consult our advisory [here](#).

^[3] 87 Fed. Reg. 35,071; 87 Fed. Reg. 35,073; 87 Fed. Reg. 35,075; 87 Fed. Reg. 35,077; 87 Fed. Reg. 35,079.