



Statement of

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Introduction

Chairman Davidson, Vice Chairman Nunn, Ranking Member Beatty, and Members of the subcommittee, thank you for the opportunity to testify before you on the Defense Production Act. My name is Adam Levin, and I am an analyst in economic development at the Congressional Research Service (CRS). CRS provides Congress with analysis that is authoritative, confidential, objective, and nonpartisan. Any arguments presented in my written or oral testimony are provided for the purpose of informing Congress, not to advocate for a particular policy approach or outcome.

My testimony today will focus on the purpose and authorities of the Defense Production Act of 1950 (DPA). I will also discuss several potential issues Congress may face in any DPA reauthorization.

Purpose of the DPA

The Defense Production Act of 1950 (DPA; P.L. 81-774; 50 U.S.C. §§4501 et seq.) provides the President with an array of authorities to “shape national defense preparedness programs and to take appropriate steps to maintain and enhance the domestic industrial base.”¹ Over the past eight decades, multiple administrations have used the DPA as a tool to manage the nation’s defense- and nondefense-related productive capacity, invoking its authorities to increase the domestic supply of goods and materials.

These authorities are found in three titles:

- Title I (Priorities and Allocations) allows the President to require private businesses to preferentially accept certain contracts and orders, as well as to allocate materials, services, and facilities;
- Title III (Expansion of Productive Capacity and Supply) allows the President to provide loans, loan guarantees, purchases and purchase commitments, subsidies, and other financial assistance directly to private businesses; and
- Title VII (General Provisions) provides the President with a variety of authorities, including the power to establish voluntary agreements with industry and obtain information on the industrial base. Title VII also defines key terms and provides for the termination of most DPA provisions.

History of the DPA

Congress enacted the DPA in September 1950 to enable the Truman Administration to respond to the industrial and economic requirements of the Korean War.² In addition to the three currently active titles, the DPA originally included four additional titles. These titles provided the President with broader authorities to manage the domestic economy, including the power to requisition property, set price and wage ceilings, settle labor disputes, and control credit. Congress allowed these authorities to lapse following the Korean War.³

¹ 50 U.S.C. §4502.

² Many of the DPA’s provisions were modelled on similar laws in effect during World War II—particularly the War Powers Acts of 1941 (P.L. 77-354) and 1942 (P.L. 77-507).

³ The seven original Titles of the Act were: Title I (Priorities and Allocations); Title II (Authority to Requisition); Title III (Expansion of Productive Capacity and Supply); Title IV (Price and Wage Stabilization); Title V (Settlement of Labor Disputes); Title VI (Control of Consumer and Real Estate Credit); and Title VII (General Provisions). Titles IV and V lapsed on April 30, 1953, and Titles II and VI lapsed on June 30, 1953.

Due to its economic focus, congressional oversight of the DPA fell under the jurisdiction of what were then known as the House and Senate Committees on Banking and Currency—now the House Financial Services Committee and the Senate Committee on Banking, Housing, and Urban Affairs, respectively. These committees have retained jurisdiction to the present day.⁴

Sunset Provision and Examples of Legislative Activity

Since its enactment, most of the DPA has been subject to a sunset clause, on which date the authorities subject to the clause would expire.⁵ As a result, the DPA currently requires periodic reauthorization by Congress to retain effect. Congress has reauthorized the DPA dozens of times, most recently in 2018.⁶ The DPA's expiring provisions are currently set to terminate on September 30, 2025.

Some reauthorizations of the DPA have changed little or none of the act's substance, and were primarily used as vehicles to extend the law's sunset date.⁷ Other reauthorizations have amended the law's provisions, in addition to extending the sunset date.⁸ Over the years, Congress has made many amendments to the DPA's authorities, whether in reauthorization bills or other legislation. Legislative changes to DPA authorities have included:

- Broadening the definition of *national defense* (and, as a result, the purposes for which DPA authorities may be used);⁹
- Designating *energy* as a *strategic and critical material* subject to Title I authorities;¹⁰
- Allowing businesses in certain foreign countries to be considered as domestic sources eligible for Title III assistance;¹¹
- Changing the way Title III assistance is funded, including by establishing and modifying the Defense Production Act Fund (DPA Fund).¹²

⁴ The DPA also created a Joint Committee on Defense Production, which was composed of Members from the standing committees of jurisdiction. This Committee ceased operating 1977.

⁵ 50 U.S.C. §4564.

⁶ See Section 1791 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232).

⁷ For example, see the Defense Production Act Extension and Reauthorization of 2008 (P.L. 110-367), which extended the sunset clause by one year.

⁸ For example, see the Defense Production Act Reauthorization of 2009 (P.L. 111-67). Among other things, the law established the Defense Production Act Committee. It also extended the DPA's sunset date by five years.

⁹ As originally enacted, the DPA defined *national defense* as such: "The term 'national defense' means the operations and activities of the armed forces, the Atomic Energy Commission, or any other Government department of agency directly or indirectly concerned with the national defense, or operations or activities in connection with the Mutual Defense Assistance Act of 1949, as amended." By 1992, the definition (as amended by P.L. 102-558) read: "The term 'national defense' means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity." In 1994, P.L. 103-337 added "emergency preparedness," and in 2003, P.L. 108-195 added "critical infrastructure protection and restoration." The most recent amendment to the definition was in 2009, when P.L. 111-67 added "critical infrastructure assistance to any foreign nation" and "homeland security."

¹⁰ See section 103 of the Defense Production Act Amendments of 1980 (P.L. 96-294).

¹¹ Section 1080 of the National Defense Authorization Act for Fiscal Year 2024 (P.L. 118-31) amended 50 U.S.C. §4552 to expand this eligibility to include certain businesses in Australia and the United Kingdom (previously only countries in the United States and Canada were eligible).

¹² See Section 122 of the Defense Production Act Amendments of 1992 (P.L. 102-558).

Congress has also enacted numerous modifications to Title III reporting, notification, and authorization requirements, and has used Title VII to codify other industrial base-related authorities (for example, those associated with the Committee on Foreign Investment in the United States, or CFIUS).¹³

Applications and Funding

Executive branch use of DPA authorities has ebbed and flowed over time. The authorities were invoked frequently in the first few years of enactment, primarily from 1950 through 1953, during the Korean War. In the following years the DPA was invoked less often. For example, there does not appear to have been a single invocation of Title III authorities from the late 1960s through the mid-1980s.¹⁴ Since then, the number of active Title III projects reported by the Department of Defense (DOD)—the most frequent user of Title III authorities—was four in 1994, 37 in 2013, and 56 in 2024.¹⁵

While DOD may be the executive agency most closely associated with the DPA, several other agencies and departments have also been delegated authority to use the law. These include the Departments of Commerce, Energy, Health and Human Services, Homeland Security, and others. These delegations were largely established in Executive Order (E.O.) 13603, issued by the Obama Administration in 2012, and are still in place today.¹⁶ Other delegations have been added more recently. For example, President Trump issued E.O. 14241 in March 2025, which, among other things, delegated Title III authority to the U.S. International Development Finance Corporation to help “facilitate domestic mineral production to the maximum extent possible.”¹⁷

Beginning in 2020, DPA actions and appropriations appear to have increased. Both the Trump and Biden Administrations invoked Title I and Title III authorities to respond to the COVID-19 pandemic. These actions included the prioritization of vaccine-related contracts and the provision of financial assistance and incentives to producers of medical supplies.¹⁸ The Biden Administration also used Title III authorities to respond to the 2022 Russian/Ukrainian war through assistance to munitions and strategic/critical materials producers and for other policies it deemed important to national defense such as investing in clean energy technologies.¹⁹ In March 2025, President Trump issued an executive order intended to strengthen national security by increasing domestic mineral production that, among other actions, invoked Title III authorities.²⁰

¹³ See 50 U.S.C. §4565. The Committee on Foreign Investment in the United States (CFIUS) is often considered separately from the rest of the DPA, and lies outside the scope of this testimony.

¹⁴ House Committee on Banking, Finance, and Urban Affairs Subcommittee on Economic Stabilization, “Briefing on the Defense Production Act of 1950 (March 2, 1983).” (Washington, DC: Government Printing Office, 1953), pp. 7-11.

¹⁵ U.S. Government Accountability Office, *Defense Production Act: Foreign Involvement and Materials Qualification in the Title III Program*, NSIAD-94-74, March 14, 1994, <https://www.gao.gov/products/nsiad-94-74>; Senate Committee on Banking, Housing, and Urban Affairs, “Oversight of the Defense Production Act: Issues and Opportunities for Reauthorization,” July 16, 2023; and communication between CRS and the Department of Defense’s (DOD’s) Manufacturing Capability Expansion and Investment Prioritization office.

¹⁶ Executive Order (E.O.) 13603, “National Defense Resources Preparedness,” 77 *Federal Register* 16651, March 16, 2012.

¹⁷ Executive Order 14241, “Immediate Measures To Increase American Mineral Production,” 90 *Federal Register* 13673, March 25, 2025.

¹⁸ U.S. Government Accountability Office, *COVID-19: Agencies Are Taking Steps to Improve Future Use of Defense Production Act Authorities*, GAO-22-105380, December 16, 2021, <https://www.gao.gov/products/gao-22-105380>.

¹⁹ See DOD, *Ukraine Security Assistance*, August 8, 2024, <https://media.defense.gov/2024/Sep/06/2003538814/-1/-1/1/UKRAINE-INFOGRAPHIC-08AUG2024.PDF>, and U.S. Department of Energy, “President Biden Invokes Defense Production Act to Accelerate Domestic Manufacturing of Clean Energy,” press release, June 6, 2022, <https://www.energy.gov/articles/president-biden-invokes-defense-production-act-accelerate-domestic-manufacturing-clean>.

²⁰ E.O. 14241, “Immediate Measures to Increase American Mineral Production,” 90 *Federal Register* 13673, March 25, 2025.

Congress has also appropriated relatively more funds for DPA activities since 2020 than in previous years. From FY2010 through FY2019, Congress appropriated approximately \$952 million to the DPA Fund, which pays for Title III activities. From FY2020 through FY2025, Congress has provided at least \$4.4 billion to the DPA Fund for Title III purposes.²¹ These funds were provided through annual defense appropriations acts as well as through other legislation, including the CARES Act (P.L. 116-136; \$1 billion) and the Additional Ukraine Supplemental Appropriations Act, 2022 (P.L. 117-128; \$600 million), and the Inflation Reduction Act of 2022 (P.L. 117-169; \$500 million). The use of supplemental appropriations to fund the DPA is a change from congressional practices in FY2010 through FY2019, when all DPA funds were provided through annual defense appropriations acts.

Beyond these laws, the American Rescue Plan Act of 2021 (ARPA, P.L. 117-2) provided \$10 billion for use on DPA Title I, Title III, and Title VII activities for the “purchase, production ... or distribution of medical supplies and equipment ... related to combating the COVID-19 pandemic.”²² Given that the law specified that the funds could be used for all DPA authorities, and not just Title III (activities generally paid for from the DPA Fund), it appears that, in contrast to other examples of DPA appropriations, the funds were not necessarily provided to the DPA Fund specifically.

Many appropriations to the DPA Fund are made as “no-year money,” meaning that they are available until expended. However, Congress may place deadlines for spending certain funds appropriated for the DPA. For example, the Inflation Reduction Act of 2022 specified that its DPA appropriations were to remain available only until September 30, 2024.²³ Similarly, the funds appropriated for DPA use in ARPA were to remain available only until September 30, 2025.²⁴

DPA Authorities

Title I: Priorities and Allocations

Section 101(a) of Title I states:

The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.²⁵

The *priority* performance authority allows the federal government to ensure the timely availability of critical materials, equipment, and services produced in the private market in the interest of national defense, and to receive those materials, equipment, and services through contracts before any other competing interest. Under the language of the DPA, a person (including corporations, as defined in statute) is required to accept prioritized contracts/orders, though regulations implementing Title I

²¹ CRS analysis of annual and supplemental appropriations acts.

²² 135 Stat. 53-54.

²³ 136 Stat. 2027.

²⁴ 135 Stat. 53-54.

²⁵ 50 U.S.C. §4511(a).

authorities provide practical exemptions.²⁶ The government can also prioritize the performance of contracts between two private parties, such as a contract between a prime contractor and a subcontractor.²⁷

The use of Title I authority is implemented by a body of regulations known collectively as the Federal Priorities and Allocations System (FPAS). The regulation most frequently used is the Defense Priorities and Allocations System (DPAS), administered by the Department of Commerce's Bureau of Industry and Security, and used to support Title I programs managed by a variety of executive agencies.²⁸ DPAS enables the federal government to place priority ratings and specify delivery dates on contracts and purchase orders with suppliers.

E.O. 13603, issued by the Obama Administration in 2012, delegated the President's Title I authority to six different Cabinet Secretaries based upon their areas of expertise in different resource and material sectors:

- Secretary of Agriculture: food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer;
- Secretary of Energy: all forms of energy;
- Secretary of Health and Human Services: health resources;
- Secretary of Transportation: all forms of civil transportation;
- Secretary of Defense: water resources; and
- Secretary of Commerce: all other materials, services, and facilities, including construction material.²⁹

Additionally, E.O. 13603 established that the Title I priorities and allocation authority “may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense” by either the:

- Secretary of Defense, with respect to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by DOD, space, and directly related activities;
- Secretary of Energy, with respect to energy production and construction, distribution and use, and directly related activities; and
- Secretary of Homeland Security, with regards to all other national defense programs, including civil defense and continuity of government.³⁰

Although most uses of Title I authorities are for defense purposes, they have also been used in nondefense settings in recent years. For example, following a series of hurricanes in 2017, the Federal Emergency Management Agency (FEMA) used Title I authorities to prioritize contracts for housing construction and the restoration of electrical systems. From August 25 through November 30 of that year, FEMA issued 515 priority-rated orders and contracts under Title I.³¹ Multiple executive agencies invoked DPA

²⁶ 50 U.S.C. §4552(15). Section 702(15) of the DPA defines a person as an “individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.” Contracts and “rated orders” have the same meaning in regulations for Title I authorities. See, for example, the definition of “rated order” provided by 15 C.F.R. §700.8.

²⁷ 15 C.F.R. §700.3(d).

²⁸ DPAS is implemented by 15 C.F.R. §700.

²⁹ CRS analysis of E.O. 13603 and 50 U.S.C. §§4501 *et seq.*

³⁰ Section 202 of E.O. 13603.

³¹ Federal Emergency Management Agency, *2017 Hurricane Season FEMA After-Action Report*, July 12, 2018, p. 30, https://www.fema.gov/sites/default/files/2020-08/fema_hurricane-season-after-action-report_2017.pdf.

authorities in response to the COVID-19 pandemic. For example, in April 2020, HHS used Title I authorities to execute a \$489.4 million contract with General Motors to produce 30,000 ventilators.³² The Biden Administration later invoked Title I authorities to respond to a nationwide shortage of infant formula in 2022.³³

Title III: Expansion of Productive Capacity and Supply

Title III authorities are intended to help ensure that the nation has an adequate supply of, or the ability to produce, essential materials and goods necessary for the national defense. Using Title III authorities, the President may provide financial incentives to develop, maintain, modernize, restore, and expand the production capacity of domestic sources for critical components, critical technology items, materials, and industrial resources for the execution of the national security strategy of the United States.³⁴ These incentives are provided directly to businesses meeting the DPA's definition of domestic sources, which currently includes businesses in the United States, Canada, the United Kingdom, and Australia.³⁵ The assistance may be paid for with monies appropriated to the DPA Fund. Although DPA Fund money may remain available until expended, the Fund's unobligated balance at the end of each fiscal year may not exceed \$750 million.³⁶ DOD serves as the DPA Fund manager.³⁷

Sections 301 and 302 of Title III of the DPA authorize the President to issue loan guarantees and direct loans to private businesses to reduce current or projected shortfalls of industrial resources, purchase critical technology items, or acquire essential materials needed for national defense purposes.³⁸ There are a number of restrictions placed on the executive branch before these loan authorities may be used. For example, the budget authority for guarantees and direct loans must be included in appropriations passed by Congress and enacted by the President before such loan mechanisms can be issued.³⁹

Section 303 of Title III grants the President an array of authorities to create, maintain, protect, expand, or restore domestic industrial base capabilities essential to the national defense,⁴⁰ including:

- purchasing or making purchase commitments of industrial resources or critical technology items;⁴¹
- making subsidy payments for domestically produced materials;⁴² and
- installing and purchasing equipment for government and privately owned industrial facilities to expand their productive capacity.⁴³

Prior to taking Title III actions, the President, on a nondelegable basis, must issue a presidential determination (PD) stating that:

³² For more information on these uses, see CRS Insight IN11337, *The Defense Production Act (DPA) and the COVID-19 Pandemic: Recent Developments and Policy Considerations*, by Heidi M. Peters and Erica A. Lee.

³³ Executive Office of the President, "Presidential Determination No. 2022-13: Delegating Authority Under the Defense Production Act to Ensure an Adequate Supply of Infant Formula," 87 *Federal Register* 31357, May 24, 2022.

³⁴ 50 U.S.C. §4517; Section 107(a) of the DPA. Many of these terms are defined further in 50 U.S.C. §4552.

³⁵ 50 U.S.C. §4552.

³⁶ 50 U.S.C. §4534.

³⁷ Section 309 of E.O. 13603.

³⁸ 50 U.S.C. §4531(a)(1).

³⁹ 40 U.S.C. §4531(a)(3) and 50 U.S.C. §4532(c).

⁴⁰ 50 U.S.C. §4533.

⁴¹ 50 U.S.C. §4533(a).

⁴² 50 U.S.C. §4533(c).

⁴³ 50 U.S.C. §4533(e).

- the industrial resource, material, or critical technology item is essential to the national defense;
- without Presidential action, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and
- purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need.⁴⁴

The President must notify the congressional committees of jurisdiction of a shortfall prior to taking any Title III action. If a Title III action under an existing PD would cause the total value of all actions taken under that PD to exceed \$50 million, the President must have prior congressional authorization, and the action may not be taken until 30 days after the committees of jurisdiction have been notified in writing.⁴⁵ The determination, notification, and authorization requirements may be waived during a period of national emergency declared by Congress or the President, or if the President determines that “action is necessary to avert an industrial resources or critical technology item shortfall that would severely impair national defense capability.”⁴⁶ While the President cannot delegate the authority to issue PDs for Title III, E.O. 13603 delegated the authority to implement Title III actions to “the head of each agency engaged in procurement for national defense.”⁴⁷

As with Title I, DOD is the most frequent user of Title III authorities. DOD’s Title III activities are managed by its Manufacturing Capability Expansion and Investment Prioritization office, which reports to the Assistant Secretary of Defense for Industrial Base Policy. DOD has used DPA Title III authorities for a variety of defense-related activities, including to promote domestic production of certain defense capabilities and technologies. In recent years such efforts have included investing in the development and production of microelectronics and graphite.⁴⁸

Other executive agencies also use Title III authorities. For example, in December 2023, the Biden Administration issued a presidential determination giving the Department of Health and Human Services (HHS) authority to use Title III to “expand the domestic production capabilities for essential medicines, medical countermeasures, and critical inputs as necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.”⁴⁹ Responding to that determination, in October 2024, HHS’s Administration for Strategic Preparedness and Response subsequently used that authority to award approximately \$17.5 million to a private company “to support

⁴⁴ 36 U.S.C. §4533(a)(5).

⁴⁵ 50 U.S.C. §4533(a)(6).

⁴⁶ 50 U.S.C. §4533(a)(7).

⁴⁷ Section 801(h) of E.O. 13603 includes the “heads of the Departments of State, Justice, the Interior, and Homeland Security, the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Aeronautics and Space Administration, the General Services Administration, and all other agencies with authority delegated under section 201 of this order.” Under Section 201, the additional agencies are the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, and Transportation.

⁴⁸ See DOD, “DoD Announces \$10 Million Defense Production Act Title III Agreement with Six Sigma to Strengthen the Domestic Microelectronics Industrial Base,” press release, May 24, 2023, <https://www.defense.gov/News/Releases/Release/Article/3404320/dod-announces-10-million-defense-production-act-title-iii-agreement-with-six-si/> and DOD, “DOD Leverages Defense Production Act to Galvanize Critical Supply Chains,” press release, December 4, 2024, <https://www.defense.gov/News/News-Stories/Article/Article/3985393/dod-leverages-defense-production-act-to-galvanize-critical-supply-chains/>.

⁴⁹ Executive Office of the President, “Presidential Determination and Waiver Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Essential Medicines, Medical Countermeasures, and Critical Inputs,” 89 *Federal Register* 3, January 2, 2024.

the domestic production of key starting materials and active pharmaceutical ingredients for essential medicines.”⁵⁰

Title VII: General Provisions

Title VII contains various provisions that clarify how DPA authorities can and should be used and provide additional presidential authorities. Selected provisions are detailed below.

Definitions of Key Terms

Title VII includes a section of definitions. Two of the most significant are the definitions of *national defense* and *domestic source*, as these terms dictate how the DPA may be used and which businesses may be eligible for financial assistance under Title VII.

National defense is defined as:

Programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5195 et seq.] and critical infrastructure and restoration.⁵¹

Congress has amended this definition since the DPA’s enactment, most recently in 2009 in P.L. 111-67, which added “critical infrastructure assistance to any foreign nation” and “homeland security” to the definition.

Domestic source is defined as:

Except as provided [for the purposes of subchapter II (i.e., DPA Title III)], a business concern that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United States relating to a critical component or a critical technology item; and that procures from business concerns [business concerns that perform substantially all U.S. government contract work in the United States or Canada] substantially all of any components and assemblies required under a contract with the United States relating to a critical component or critical technology item. For purposes of subchapter II, [i.e., DPA Title III] the term ‘domestic source’ means a business concern that performs substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United State relating to a critical component or a critical technology item in the United States or Canada; or ... Australia or the United Kingdom.⁵²

Industrial Base Assessments

The President may “by regulation, subpoena, or otherwise obtain such information from ... any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of [the DPA].”⁵³ This authority is delegated to the Secretary of Commerce.⁵⁴ These industrial base assessments

⁵⁰ Resilience, “Resilience Secures Funding to Expand Domestic Manufacturing for Critical Pharmaceutical Ingredients,” press release, October 3, 2024, <https://resilience.com/news/resilience-secures-funding-to-expand-domestic-manufacturing-for-critical-pharmaceutical-ingredients>.

⁵¹ 50 U.S.C. §4552(14).

⁵² 50 U.S.C. §4552(7).

⁵³ 50 U.S.C. §4555(a).

⁵⁴ Section 104(d) of E.O. 13603.

are conducted in coordination with other federal agencies and the private sector to “monitor trends, benchmark industry performance, and raise awareness of diminishing manufacturing capabilities.”⁵⁵

Voluntary Agreements

Title VII authorizes the President to “consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the national defense.”⁵⁶ Parties entering into such voluntary agreements are afforded a special legal defense if their actions within that agreement would otherwise violate antitrust or contract laws.⁵⁷

Nucleus Executive Reserve

Title VII authorizes the President to create a volunteer body of industry executives known as the “Nucleus Executive Reserve” (also referred to as the National Defense Executive Reserve), who could be trained and appointed to fill executive positions within the federal government in the event of an emergency requiring their employment.⁵⁸

Standing Authorization of Appropriations

Title VII authorizes \$133 million in appropriations for the President to carry out DPA activities for each fiscal year.⁵⁹

Sunset Clause

Title VII provides that all DPA provisions not explicitly exempted will terminate on September 30, 2025.⁶⁰

Defense Production Act Committee

The Defense Production Act Committee (DPAC) is an interagency body originally established by the 2009 reauthorization of the DPA.⁶¹ Originally, the DPAC was created to advise the President on the effective use of the full scope of authorities of the DPA. Now, the law requires DPAC to be centrally focused on the priorities and allocations authorities of Title I of the DPA. The head of each federal agency delegated DPA authorities, as well as the Chairperson of the Council of Economic Advisers, is a member of the DPAC. DPAC has annual reporting requirements relating to the Title I priority and allocation authority.⁶²

⁵⁵ U.S. Department of Commerce, Bureau of Industry and Security, *Industrial Base Assessments*, <https://www.bis.doc.gov/index.php/other-areas/office-of-technology-evaluation-ote/industrial-base-assessments>.

⁵⁶ 50 U.S.C. §4558(c)(1).

⁵⁷ 50 U.S.C. §4558(j).

⁵⁸ 50 U.S.C. §4560.

⁵⁹ 50 U.S.C. §4561.

⁶⁰ 50 U.S.C. §4564. The exempt provisions are 50 U.S.C. §4514 (which prohibits both the imposition of wage or price controls without prior congressional authorization and the mandatory compliance of any private person to assist in the production of chemical or biological warfare capabilities); 50 U.S.C. §4557 (which grants persons limited immunity from liability for complying with DPA-authorized regulations); 50 U.S.C. §4558 (which provides for the establishment of voluntary agreements); and 50 U.S.C. §4565 (the so-called Exon-Florio Amendment, which gives the President and CFIUS review authority over certain corporate acquisition activities).

⁶¹ P.L. 111-67, codified at 50 U.S.C. §4567(a).

⁶² 50 U.S.C. §4567(d).

Considerations for Congress

Upcoming Sunset Date

One of the most pressing questions for Congress regarding the DPA is whether or not to reauthorize the law before its upcoming sunset date. Absent congressional action, most of the DPA's provisions will expire on September 30, 2025.

Since 1950, Congress has reauthorized DPA provisions on at least 53 separate occasions. Within the past 40 years, there has been at least one lapse in authorization (October 1990-August 1991), although Congress later retroactively authorized the DPA to encompass this period.

If Congress decides to reauthorize the DPA, it may consider the way in which it does so. Historically, the most frequent vehicle has been standalone legislation. However, the most recent reauthorization was enacted through Section 1791 of the National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232).

Another question is how long DPA reauthorization should endure. The 2014 and 2019 reauthorizations extended expiring DPA provisions for five and six years, respectively; some previous reauthorizations featured shorter extensions: P.L. 110-367 reauthorized the DPA for one year. Five- to six-year extensions may require less legislative activity in the long run; however, a 'stopgap' extension may provide Members with more time to deliberate on any substantive amendments they may seek to enact alongside reauthorization. At least one such stopgap was introduced in the 118th Congress as a standalone reauthorization bill (H.R. 10293), and one introduced in the 119th Congress (S. 1452) would extend the DPA's expiring provisions by one year (i.e., from September 30, 2025, to September 30, 2026) without otherwise amending the DPA. Congress could also consider permanently authorizing the entirety of the DPA.

DPA Uses and Definitions and Oversight

In recent years, some commentators and policymakers have argued that certain uses of DPA authorities have exceeded the law's intent. For example, some have criticized the Biden Administration's invocation of the DPA for use on clean energy projects.⁶³ Others hold that such actions have been appropriate uses of the DPA.⁶⁴

Should Congress seek to provide further clarity on what the DPA may or may not be used for, one option may be to amend the law's definition of *national defense*. As noted, the term's definition has been changed multiple times since the DPA's enactment. If Congress were to determine that the definition provides the President with too much or too little latitude to implement the DPA, Congress could consider again amending the DPA's definition of *national defense*.

Congress may also consider further oversight measures. If Members were to assess that the executive branch is not using DPA authorities effectively or appropriately, there are a number of possible responses.

⁶³ For examples and discussion of these arguments, see Oliver McPherson-Smith, *Manufacturing a Crisis: The Biden Administration's Abuse of the Defense Production Act*, America First Policy Institute, January 11, 2024, <https://www.americafirstpolicy.com/issues/manufacturing-a-crisis-the-biden-administrations-abuse-of-the-defense-production-act>, and Andres Picon, "The Next Big Energy Fight: Defense Production Act Renewal," *E&E News*, April 30, 2024.

⁶⁴ For example, see Trevor Dolan and Lucas Boyd, *Defending the Climate: Using the Defense Production Act to Mobilize American Clean Energy Manufacturing*, Evergreen Collaborative, June 2023, <https://collaborative.evergreenaction.com/policy-hub/Using-the-Defense-Production-Act-to-Mobilize-American-Manufacturing-June-2023.pdf>.

Congress could consider legislative provisions directing the President and/or Cabinet officials to modify their usage of DPA authorities to conform with congressional priorities. This has been done previously

through provisions in National Defense Authorization Acts, such as in P.L. 116-283. Congress could also consider whether or not to impose conditions on DPA appropriations to ensure they are being used according to congressional intent, or create additional notification or authorization requirements to constrain the executive's ability to execute Title III projects without congressional involvement or awareness.

Funding

Funding the DPA has been an issue of fairly consistent congressional interest. One question may be whether to continue the relatively elevated levels of DPA appropriations that Congress has provided in recent years, as discussed in “Applications and Funding.” In assessing that, Congress may again consider how it would like the President to use the DPA, an issue that may relate to how Congress defines *national defense* in the DPA.

Congress may also consider other questions related to DPA funding. As mentioned, the DPA Fund’s unobligated balance may not exceed \$750 million at the end of each fiscal year. Congress could assess whether to amend or eliminate that cap. It last raised the cap in P.L. 111-67. In April 2024, DOD proposed increasing the cap to \$1 billion.⁶⁵ If Congress seeks to exercise more control over how the President spends DPA funds, it could amend the DPA to designate particular departments or agencies to administer the funds, or specify the exact purposes for which the funds may be used. If Congress has concerns about the rate of executive expenditure, it could also provide for the expiration of DPA appropriations, as it has done on previous occasions (for example in the Inflation Reduction Act of 2022). Additionally, Congress may consider whether monies appropriated to the DPA Fund should be available for use on Title I and/or Title VII projects, in addition to Title III projects.

The Defense Production Act Committee (DPAC)

Congress authorized the DPAC in P.L. 111-67. The DPAC was intended to serve as an interagency mechanism for advising the President and coordinating DPA activities across government. Some, though, have argued that it has never fulfilled that role.⁶⁶ For example, P.L. 111-67 directed the President to appoint a DPAC executive director, but one was never appointed. P.L. 111-67 also required the DPAC to submit an annual report to Congress reviewing the use of *all* DPA authorities across the federal government. However, the 2014 DPA reauthorization (P.L. 113-172) narrowed the scope of the DPAC’s remit to only Title I activities and removed the language requiring a DPAC executive director.

Congress could consider whether to address aspects of the DPAC. For example, if Congress again determines that it would like the DPAC to serve as an interagency coordinator of DPA activities, it may evaluate what measures may empower the DPAC to effectively serve in that capacity. Options may include providing appropriations to the DPAC or again mandating the appointment of an executive director.

⁶⁵ DOD, *DOD Legislative Proposals, Fiscal Year 2025*, <https://ogc.osd.mil/Portals/99/OLC%20Proposals/FY%202025/05Apr2024Proposals.pdf?ver=INIOS1MHQXbODayjVmS61A%3d%3d>.

⁶⁶ For example, see Joel Dodge, *Revitalizing the Defense Production Act Committee*, Vanderbilt Policy Accelerator, November 2024, <https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2024/11/01215220/VPA-Revitalizing-DPAC-Nov.-2024-final-text.pdf>.