

## MEMORANDUM

**To:** Members of the Committee on Financial Services

**From:** Financial Services Committee Majority Staff

**Date:** May 3, 2024

**Subject:** May 8, 2024, National Security, Illicit Finance, and International Financial Institutions Subcommittee Hearing Entitled “Mission Critical: Restoring National Security as the Focus of Defense Production Act Reauthorization, Part II.”

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On Wednesday, May 8, 2024, at 2:00 p.m. in Room 2128 of the Rayburn House Office Building, the National Security, Illicit Finance, and International Financial Institutions Subcommittee of the Financial Services Committee will hold a hearing titled “Mission Critical: Restoring National Security as the Focus of Defense Production Act Reauthorization, Part II. Testifying at the hearing will be:

- **Dr. Laura Taylor-Kale:** Assistant Secretary of Defense for Industrial Base Policy, U.S. Department of Defense (DOD)
- **Ms. Thea Rozman Kendler:** Assistant Secretary for Export Administration, Bureau of Industry and Security (BIS), U.S. Department of Commerce
- **Ms. Cynthia Spishak:** Associate Administrator, Federal Emergency Management Agency (FEMA)

This hearing will continue the Committee’s review of the Defense Production Act of 1950 (DPA) since its enactment, including recent DPA uses, the DPA’s effect on the Defense Industrial Base, and other issues to consider in anticipation of its reauthorization in 2025.

The DPA provides a broad set of authorities to mobilize U.S. domestic industry to respond to national defense needs. Congress provided this authority with the understanding that, “the security of the United States is dependent on the ability of the domestic industrial base to supply materials and services for the national defense and to prepare for and respond to military conflicts, natural or man-caused disasters, or acts of terrorism within the United States.”<sup>1</sup>

Through the DPA, the President can, among other things, prioritize government contracts for goods and services over competing customers (Title I), and offer incentives within the domestic market to enhance the production and supply of critical materials and technologies when necessary for national defense (Title III).

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<sup>1</sup> [50 USC Ch. 55: DEFENSE PRODUCTION \(house.gov\)](#) §4502 (a) (1)

DPA funding has been increasingly deployed, including \$1 billion in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, \$746 million of the FY2022 Additional Ukraine Supplemental Appropriations, and \$500 million in the Inflation Reduction Act.<sup>2</sup>

### **Title I: Priorities and Allocations Authority**

A primary tool of DPA is the Defense Priorities and Allocations System (DPAS), administered by the Department of Commerce. The DPAS allows the federal government to prioritize contracts that meet the country's national security needs. The Department of Defense (DOD) places DPAS priority ratings on approximately 300,000 rated orders annually. Other departments and agencies also use DPAS authority, though less frequently, for a variety of purposes, including pandemic response, terrorism prevention, natural disaster preparedness, and energy.

Title I also contains provisions relating to domestic energy production. These provisions authorize the President to allocate and prioritize contracts that secure materials, equipment, and services that maximize domestic energy supplies. These are typically supplies that are “scarce, critical, and essential to maintain or further (i) exploration, production, refining, transportation, or (ii) the conservation of energy supplies, or (iii) for the construction and maintenance of energy facilities” and that the procurement “cannot reasonably be accomplished without exercising” the DPA authority.<sup>3</sup>

### **Title III: Financial Incentives**

Title III of the DPA allows the President to provide incentives including loans/loan guarantees, purchases/purchase commitments, and grants/subsidies to ensure the domestic industrial base has the ability to produce, or capacity to produce, essential materials and goods necessary to secure national defense.<sup>4</sup> Under 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.<sup>5</sup>

Title III of the DPA also establishes an account at the Department of the Treasury (Treasury), the Defense Production Act Fund, which is available to carry out all of the provisions

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<sup>2</sup> <https://www.businessdefense.gov/ibr/mceip/dpai/dpat3/docs/DPA-TitleIII-Overview.pdf>

<sup>3</sup> Schaumberg, Peter, J. (1979) “[Defense Production Act Section 101\(c\)](#)”, *Denver Law Review*, Volume 56, Issue 1, pp 307-311

<sup>4</sup> <https://www.businessdefense.gov/ibr/mceip/dpai/dpat3/docs/DPA-TitleIII-Overview.pdf>

<sup>5</sup> CRS Report, [The Defense Production Act of 1950: History, Authorities, and Considerations for Congress](#), October 6, 2023.

and purposes of Title III. The DPA Fund is also used to collect the proceeds from DPA activities under Title III, such as the resale of DPA-procured commodities or products.<sup>6</sup>

**Table I. Appropriations to the DPA Fund, FY2013-FY2023**

Amounts in millions

Fiscal Year	Law	Amount
2013	P.L. 113-6	\$223.5
2014	P.L. 113-76	\$60.1 <sup>a</sup>
2015	P.L. 113-235	\$51.6
2016	P.L. 114-113	\$76.7
2017	P.L. 115-31	\$64.1
2018	P.L. 115-141	\$67.4
2019	P.L. 115-245	\$53.6
2020	P.L. 116-93 and P.L. 116-136	\$1,064.4 <sup>b</sup>
2021	P.L. 116-260	\$174.6
2022	P.L. 117-103, P.L. 117-128, and P.L. 117-169.	\$1,488.3 <sup>c</sup>
2023	P.L. 117-328	\$372.9

**Source:** CRS analysis of appropriations acts.

**Notes:** Amounts not adjusted for inflation.

- a. In FYs 2014, 2015, and 2016, Congress also authorized the Department of Energy to transfer up to \$45 million to the DPA Fund from each FY appropriation from the Energy Efficiency and Renewable Energy account. For FY2014, see P.L. 113-76, 128 Stat. 165; for FY2015, see P.L. 113-235, 128 Stat. 2313; for FY2016, P.L. 114-113, 129 Stat. 2408. These transfers were made by DOE, for a total of \$135 million
- b. \$1 billion of the FY2020 total was appropriated by the CARES Act (P.L. 116-136) to “to prevent, prepare for, and respond to coronavirus, domestically or internationally.”
- c. Of the \$1,488.3 billion appropriated in FY2022, \$600 million was appropriated by the Additional Ukraine Supplemental Appropriations Act, 2022 (P.L. 117-128) “to respond to the situation in Ukraine and for related expenses” and \$500 million was appropriated by the Inflation Reduction Act of 2022 (P.L. 117-169).

## Title VII: Clarifications and Additional Authorities

Title VII of the DPA contains provisions that clarify how DPA authorities can and should be used and provides additional authorities.<sup>7</sup> For example, Title VII establishes the Committee on Foreign Investment in the United States (CFIUS) and the Defense Production Act Committee (DPAC), and contains the legal basis for the National Defense Executive Reserve (NDER), a set of civilian executives who are pre-vetted to enter government service in an emergency.<sup>8</sup>

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Eisenhower, Dwight D (February 15, 1956) “[Providing for the Establishment of a National Defense Executive Reserve](#)”

The DPAC is an interagency body that includes the Secretaries of Agriculture, Commerce, Defense, Energy, Labor, Health and Human Services, Homeland Security, the Interior, Transportation, the Treasury, and State; the Attorney General; the Administrators of the National Aeronautics and Space Administration and of General Services, the Chair of the Council of Economic Advisers; and the Directors of the Central Intelligence Agency and National Intelligence.<sup>9</sup>

### ***Federal Emergency Management Agency (FEMA)***

The FEMA Administrator is the DPAC chair and coordinator for federal DPA activities.<sup>10</sup> Under Executive Order 13603 additional FEMA roles include advising the President on national defense resource preparedness; providing central coordination of plans and programs; and providing guidance to other agencies.

### ***U.S. Department of Commerce (Commerce)***

The Secretary of Commerce prepares and transmits to Congress an annual report on the impact of offsets on defense preparedness, industrial competitiveness, employment, and trade. The report discusses “offsets” in the government or commercial sales of defense materials.<sup>11</sup> Commerce, through the Bureau of Industry and Security (BIS), administers the authority of the Defense Priorities and Allocations System (see below section, ‘Title I: Priorities and Allocations Authority’).

### ***U.S. Department of Defense (DOD)***

DOD DPA authorities fall under the Assistant Secretary for Industrial Base Policy, the principal advisor to the Under Secretary of Defense for Acquisition and Sustainment for:

- Developing DOD policies for the maintenance of the U.S. defense industrial base
- Executing small business programs and policy
- Conducting geo-economic analysis and assessments
- Providing recommendations on budget matters related to the defense industrial base
- Anticipating and closing gaps in manufacturing capabilities for defense systems
- Assessing impacts related to mergers, acquisitions, and divestitures
- Monitoring and assessing impact of foreign investments in the United States<sup>12</sup>

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<sup>9</sup> CRS Report, [The Defense Production Act of 1950: History, Authorities, and Considerations for Congress](#), October 6, 2023.

<sup>10</sup> CRS Report, [The Defense Production Act Committee \(DPAC\): A Primer](#), February 23, 2021.

<sup>11</sup> CRS Report, [The Defense Production Act of 1950: History, Authorities, and Considerations for Congress](#), October 6, 2023.

<sup>12</sup> <https://www.businessdefense.gov/about-us.html>

In addition, Title VII allows the President to engage with private industry to develop voluntary strategies and plans of action about how to better provide for national defense.<sup>13</sup> Two additional provisions in Title VII direct the President to accord special preference to small businesses when issuing contracts under DPA authorities.<sup>14</sup> Specifically, it directs the President to “accord a strong preference for small business concerns which are subcontractors or suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor.”<sup>15</sup>

## Recent Use of DPA Authorities

**Executive Order 13806**<sup>16</sup>: On July 21, 2017, former President Trump issued Executive Order (E.O.) 13806: Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States.<sup>17</sup> The E.O. directed the DOD to produce an assessment that identified sectors essential to the national security and risks to their supply chains, and to evaluate their resiliency to the most likely disruptions. The resulting report recommended expanding direct investment under Title III.<sup>18</sup>

**COVID-19 Pandemic Response**: In March 2020, former President Trump invoked Title I DPA distribution authorities to enable the Department of Health and Human Services (HHS) to prioritize contracts for health and medical resources such as personal protective equipment.<sup>19</sup> Under the same authority, the President directed specific companies to produce equipment such as ventilators.<sup>20</sup>

**Industrial Supply Chain**: On February 24, 2021, President Biden issued E.O. 14017<sup>21</sup> to strengthen the resilience of U.S. supply chains. Under the E.O., Commerce and the Department of Homeland Security (DHS) were directed to, “submit a report on supply chains for critical sectors and subsectors of the information and communications technology (ICT) industrial base.”<sup>22</sup>

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<sup>13</sup> [50 U.S. Code § 4558 - Voluntary agreements and plans of action for preparedness programs and expansion of production capacity and supply | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

<sup>14</sup> *Ibid.*

<sup>15</sup> CRS Report, [The Defense Production Act of 1950: History, Authorities, and Considerations for Congress](#), October 6, 2023.

<sup>16</sup> Trump, Donald J. (July 26, 2017) “[Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States](#)”

<sup>17</sup> Department of Defense, [Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States](#), September 2018.

<sup>18</sup> *Ibid.*

<sup>19</sup> <https://www.defenseone.com/ideas/2020/11/where-does-defense-production-act-go-here/170301/>

<sup>20</sup> *Ibid.*

<sup>21</sup> Biden, Joseph R., (March 1, 2021) “[America’s Supply Chains](#)”

<sup>22</sup> <https://www.cisa.gov/executive-order-14017-securing-americas-supply-chains>

**Artificial Intelligence:** On October 20, 2023, President Biden issued E.O. 14110<sup>23</sup>, “The Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.”<sup>24</sup> Section 4.2 of the E.O. delegates the DPA’s Title VII authorities to the Secretary of Commerce to require “companies developing or demonstrating an intent to develop potential dual-use foundation models” to submit certain information to the government, including information from red-teaming.<sup>25</sup>

**Clean Energy:** On June 6, 2022, President Biden invoked the DPA to “accelerate domestic production of clean energy technologies, including solar panel parts.”<sup>26</sup> The President, “authorized the Department of Energy (DOE) to use the DPA to rapidly expand American manufacturing of five critical clean energy technologies.”<sup>27</sup>

**Medical Supply Chain:** On November 27, 2023, President Biden issued a Presidential Determination to broaden HHS authorities under Title III to procure investment in domestic manufacturing of essential medicines, medical countermeasures, and critical inputs deemed essential to the national defense. HHS has identified \$35 million for investments in domestic production of key starting materials for sterile injectable medicines.<sup>28</sup>

## **The Defense Industrial Base (DIB)**

The Defense Industrial base (DIB) is generally referred to as “the organizations, facilities, and resources that supply the U.S. government – principally, but not exclusively, the Department of Defense (DOD) – with materials, products, and services for defense purposes.”<sup>29</sup> In December 2023, the DOD released its first-ever National Defense Industrial Strategy (NDIS), which establishes a long-term plan intended to strengthen the DIB for the needs of both the United States and those of its global allies and partners. The NDIS “provides a path that builds on recent progress, while remedying remaining gaps [in the defense industrial ecosystem] and potential shortfalls.”<sup>30</sup>

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<sup>23</sup> Biden, Joseph R. (November 1, 2023) “[Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#)”

<sup>24</sup> CRS Report, [The AI Executive Order and Its Potential Implications for DOD](#), December 12, 2023.

<sup>25</sup> *Ibid.*

<sup>26</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/fact-sheet-president-biden-takes-bold-executive-action-to-spur-domestic-clean-energy-manufacturing/>

<sup>27</sup> <https://www.energy.gov/articles/president-biden-invokes-defense-production-act-accelerate-domestic-manufacturing-clean>

<sup>28</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/27/fact-sheet-president-biden-announces-new-actions-to-strengthen-americas-supply-chains-lower-costs-for-families-and-secure-key-sectors/>

<sup>29</sup> CRS Report, [The U.S. Defense Industrial Base: Background and Issues for Congress](#), page 2, October 12, 2023.

<sup>30</sup> Department of Defense, [National Defense Industrial Strategy](#), page 8, December 2023.

## **Legislation for Consideration**

**H.R. 7500**, to amend the Defense Production Act of 1950 to allow an Indian Tribe to request CFIUS review of certain transactions between the Indian Tribe and foreign persons, and for other purposes. (Rep. Luetkemeyer)

**H.R. 7601**, the “**Bullets Not Batteries Act**” (Rep. Perry)

To amend the Defense Production Act of 1950 to prohibit the use of the authorities under title I and title III of such Act for electric vehicles or related technologies.

**H.R. 7602**, the “**Planes Not Panels Act**” (Rep. Perry)

To amend the Defense Production Act of 1950 to prohibit the President from making provision for the purchase of solar panels under the authority of such Act, and for other purposes.

**H.R. \_\_\_\_\_**, the “**Help Expedite Lagging Permitting for Defense Production Act**” or “**HELP DPA**” [DRAFT]

To prioritize Federal permitting for certain national defense activities related to the authorities under the Defense Production Act of 1950 and projects related to such activities, and for other purposes.

**H.R. \_\_\_\_\_**, to amend the Defense Production Act of 1950 to require the President to make an annual report to Congress on findings and determinations made by the President under that Act and the use of authorities under that Act, and for other purposes. [DRAFT]