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The Defense Production Act of 1950: History, Authorities, and Considerations for Congress

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Summary

The Defense Production Act (DPA) of 1950 (P.L. 81-774, 50 U.S.C. §§4501 et seq.), as amended, confers upon the President a broad set of authorities to influence domestic industry in the interest of national defense. The authorities can be used across the federal government to shape the domestic industrial base so that, when called upon, it is capable of providing essential materials and goods needed for the national defense.

Though initially passed in response to the Korean War, the DPA is historically based on the War Powers Acts of World War II. Gradually, Congress has expanded the term *national defense,* as defined in the DPA. Based on this definition, the scope of DPA authorities now extends beyond shaping U.S. military preparedness and capabilities, as the authorities may also be used to enhance and support domestic preparedness, response, and recovery from natural hazards, terrorist attacks, and other national emergencies.

Some current DPA authorities include, but are not limited to

- **Title I: Priorities and Allocations**, which allows the President to require persons (including businesses and corporations) to prioritize and accept contracts for materials and services as necessary to promote the national defense.
- **Title III: Expansion of Productive Capacity and Supply**, which allows the President to incentivize the domestic industrial base to expand the production and supply of critical materials and goods. Authorized incentives include loans, loan guarantees, direct purchases and purchase commitments, and the authority to procure and install equipment in private industrial facilities.
- **Title VII: General Provisions**, which includes key definitions for the DPA and several distinct authorities, including the authority to establish voluntary agreements with private industry; the authority to block proposed or pending foreign corporate mergers, acquisitions, or takeovers that threaten national security; and the authority to employ persons of outstanding experience and ability and to establish a volunteer pool of industry executives who could be called to government service in the interest of the national defense.

These are not the exclusive authorities of the DPA, but rather some of the most pertinent because of their historical or current use.

The authorities of the DPA are generally afforded to the President in the statute. The President, in turn, has delegated these authorities to department and agency heads in Executive Order 13603, *National Defense Resource Preparedness*, issued in 2012. While the authorities are most frequently used by, and commonly associated with, the Department of Defense (DOD), they can be and have been used by numerous other executive departments and agencies.

Since 1950, the DPA has been reauthorized over 50 times, though significant authorities were terminated from the original law in 1953. Congress last reauthorized the DPA in Section 1791 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232). This extended the termination of the act by six years, from September 30, 2019, to September 30, 2025, when nearly all DPA authorities will terminate. A few authorities of the DPA, such as the Exon-Florio Amendment (which established government review of the acquisition of U.S. companies by foreigners) and anti-trust protections for certain voluntary industry agreements, have been made permanent by Congress. The DPA lies within the legislative jurisdiction of the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs.

Congress may consider enhancing its oversight of executive branch activities related to the DPA in a number of ways. To enhance oversight, Congress could expand executive branch reporting requirements, track and enforce rulemaking requirements, review the activities of the Defense Production Act Committee, and broaden the committee oversight jurisdiction of the DPA in Congress. Congress may also consider amending the DPA, either by creating new authorities or repealing existing ones. In addition, Congress may consider amending the definitions of the DPA to expand or restrict the DPA's scope, amending the statute to supersede the President's delegation of DPA authorities made in E.O. 13603, or consider adjusting future appropriations to the DPA Fund in order to manage the scope of Title III projects initiated by the President.

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Introduction

The Defense Production Act of 1950, as amended (DPA),[1] provides the President a broad set of authorities to ensure that domestic industry can meet national defense requirements. In the DPA, Congress has found 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."[2] Through the DPA, the President can, among other activities, prioritize government contracts for goods and services over competing customers, and offer incentives within the domestic market to enhance the production and supply of critical materials and technologies when necessary for national defense. Since 1950, the DPA has been reauthorized over 50 times by Congress, most recently in 2018 (Sec. 791 of P.L. 115-232). The majority of DPA authorities will expire on September 30, 2025, unless reauthorized.

This report examines some of the extensive history of the DPA, focusing primarily on its creation and most recent legislative reauthorization. This report also discusses the foremost active authorities of the DPA. Nevertheless, this report is not intended to evaluate all authorities of the DPA comprehensively. For example, though significant authorities for the Committee on Foreign Investment in the United States (CFIUS) are included in the DPA, CFIUS is generally considered separate and distinct from the DPA and this report defers to other CRS reports for in-depth discussion on that issue. This report also identifies relevant delegations of the President's DPA authorities made in Executive Order (E.O.) 13603, *National Defense Resources Preparedness*.[3] Finally, this report provides a brief overview of issues Congress may consider in its oversight of executive branch use of DPA authorities, as well as the implementation of changes made in the most recent reauthorization. The report also discusses congressional considerations for expanding, restricting, or otherwise modifying the authorities provided by the DPA through new legislation.

As appendices to this report, several supplementary tables provide: additional resources related to various DPA subjects; a tabled analysis of key provisions of the DPA and related portions of E.O. 13603 and in regulations; the delegation of Title I priorities and allocations authority to Cabinet Secretaries in E.O. 13603; and a chronology of laws reauthorizing DPA authorities since first enactment. There is also an appendix discussing how DPA authorities changed as a result of the last major reauthorization of the law that included reforms (P.L. 113-172, To reauthorize the Defense Production Act, to improve the Defense Production Act Committee, and for other purposes).[4]

[1] 50 U.S.C. §§4501 et seq. The DPA has been reclassified and renumbered from the former Appendix to Title 50 of the U.S. Code, where it was numerated at 50 U.S.C. Appx. §§2061 et seq.

[2] 50 U.S.C. §4502(a)(1); Section 2(a)(1) of the DPA.

[3] Executive Order 13603, "National Defense Resource Preparedness," 77 *Federal Register* 16651, March 22, 2012.

[4] These changes are discussed at length in this report, but are summarized in **Table A-2** of the Appendix.

History of the DPA

Origin

The DPA was inspired by the First and Second War Powers Acts of 1941 and 1942, which gave the executive branch broad authority to regulate industry during World War II.[5] Much of this authority lapsed at the end of that war, but the beginning of the Cold War with the Soviet Union in the late 1940s and the North Korean invasion of South Korea in June of 1950 caused the Truman Administration to reconsider the need for stronger executive authority in the interest of national defense.[6]

The original DPA, enacted on September 8, 1950, granted broad authority to the President to control national economic policy.[7] Containing seven separate titles, the DPA allowed the President, among other powers, to demand that manufacturers give priority to defense production, to requisition materials and property, to expand government and private defense production capacity, ration consumer goods, fix wage and price ceilings, force settlement of some labor disputes, control consumer credit and regulate real estate construction credit and loans, provide certain antitrust protections to industry, and establish a voluntary reserve of private sector executives who would be available for emergency federal employment.

Four of the seven titles (Titles II, IV, V, and VI), those which related to requisitioning, rationing, wage and price fixing, labor disputes, and credit controls and regulation, terminated in 1953 when Congress allowed them to lapse.[8]

[5] First War Powers Act, 1941 (H.R. 6233, P.L. 77-354, 55 Stat. 838), and Second War Powers Act, 1942 (S. 2208, P.L. 77-507, 56 Stat. 176). The first of these statutes conferred considerable emergency power on the President to reorganize the executive branch, to enter into contracts and make payments on them, and to regulate "trade with the enemy." The second act expanded the powers of the Interstate Commerce Commission to improve the efficiency of transportation of war materials; expanded an existing authority for military departments to acquire private property by condemnation, purchase, donation, or other transfer; permitted the Secretaries of War and the Navy to place orders and contracts and the President to give such contracts priority over all deliveries for private accounts or for export; and gave the President the authority to require acceptance of and performance under these contracts and to allocate materials and facilities for their fulfillment. The act also empowered the President to obtain information, records, and reports sufficient to enforce the provisions of the act and clarified existing law on the amount of compensation required if property was requisitioned for defense purposes. The act also included provisions relating to free postage for members of the military services, naturalization of persons serving in the armed forces, acceptance of conditional gifts to further the war program, metal content of coinage, inspection and audit of war contractors, and the gathering and assessment of war information by the Department of Commerce.

[6] In a message sent to Congress at the outbreak of war in Korea in mid-1950, President Truman stated that the United States and the United Nations were responding to a military invasion of the Republic of Korea by forces from north of the 38th parallel, that the nation urgently needed additional military manpower, supplies, and equipment, and that the nation's military and economic preparedness were inseparable. He urged Congress to pass legislation that would guarantee the prompt supply of adequate quantities of needed military and civilian goods, including measures to help compensate for manufacturing demand growth caused by military expansion. For more history of the DPA, see U.S. Congress, House Banking and the Currency, *Defense Production Act of 1950*, report to accompany H.R. 9176, 81st Cong., 2nd sess., July 28, 1950, H.Rept. 81-2759 (Washington: GPO, 1950), p. 1.

[7] P.L. 81-774, 64 Stat. 798.

[8] P.L. 83-95, 67 Stat. 129. P.L. 83-95 permitted the termination of Titles II and VI as of June 30, 1953, and Titles IV and V to terminate as of April 30, 1953.

Committee Jurisdiction

Though commonly associated with industrial production for the DOD, the DPA currently lies within the jurisdiction of the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs. Prior to 1975, House rules did not permit simultaneous referral of bills to two or more committees. Precedents in both chambers did not allow divided or joint referrals, regardless of bill content. Instead, bills were assigned to committees based on the preponderance of their subject matter. Because much of the President's proposal dealt with economic policy, what became the Defense Production Act was assigned in 1950 to the House and Senate Committees on Banking and Currency (their successors are the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs). Although the parts of the act dealing with the requisitioning of materials, wages and prices, labor, and credit are no longer in force, these committees have retained jurisdiction.

In addition to the standing committees of jurisdiction, the original statute created a Joint Committee on Defense Production. This committee was composed of selected members from the standing Committees on Banking and Currency of the Senate and House. This committee was intended to review the programs established by the DPA and advise the standing committees whenever they drafted legislation on the subject. Although the provision in the DPA establishing the Joint Committee on Defense Production was officially repealed in 1992,[9] in effect, the Joint Committee has not existed since 1977, when salaries and expenses for the committee were last funded.[10]

History of DPA Reauthorizations

The DPA has been amended and reauthorized numerous times since its original enactment. Most notably, with the passage and enactment of P.L. 85-95, Congress reauthorized Titles I, III, and VII while allowing Titles II, IV, V, and VI of the DPA to expire in 1953.[11] The Defense Production Act, like the War Power Acts that preceded it, included a sunset provision that has required periodic reauthorization and offered the opportunity for amendment. Congress passed the DPA in 1950 and has thus far reauthorized it 53 times, including many short-term "stop-gap" extensions. From time to time, the DPA has expired without Congress passing a law reauthorizing and extending its termination date. In such circumstances, Congress has often ultimately passed a law retroactively setting the effective date for the law to the previous expiration date. Most notably, for example, the DPA expired on October 20, 1990, and was not reauthorized until August 17, 1991. However, upon passage of P.L. 102-99, the effective date of the law was set to October 20, 1990. The DPA was most recently reauthorized by the 115th Congress, in Section 1791 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232). This extended the termination of the act by six years, from September 30, 2019, to September 30, 2025, when nearly all DPA authorities will terminate. See **Table A-4** in the Appendix for a full chronology of reauthorizations.

[9] Section 153 of the Defense Production Act Amendments of 1992 (P.L. 102-558, 106 Stat. 4219).

[10] Although in 1977 Congress extended the 1950 Act through September 30, 1979 (P.L. 95-37), no appropriation for salaries and expenses of the Joint Committee was made for FY1978. The last appropriation for salaries and expenses for the Joint Committee was made in P.L. 94-440.

[11] Act of June 30, 1953, Defense Production Act Amendments of 1953 (S. 1080, P.L. 83-95).

Major Authorities of the DPA

This section provides summaries of the major authorities granted to the President in the three remaining active titles of the DPA.[12] Each summary describes how the DPA authorities are delegated to Cabinet officials or other offices of the U.S. government in the issued Executive Order (E.O.) 13603, *National Defense Resource Preparedness*.[13] It is not intended to comprehensively evaluate all authorities in the DPA. The information provided below is reviewed in **Table A-2** for select provisions of the DPA. **Table A-1** also provides a list of additional materials, information, and resources on various topics of the DPA that may be of use to Congress.

General Scope of the DPA

The DPA provides the President an "array of authorities to shape *national defense* preparedness programs and to take appropriate steps to maintain and enhance the domestic industrial base."[14] [Italics added.] DPA authorities are tied to the definition of *national defense*, as the use of any major DPA authority must be interpreted to promote, support, or otherwise be deemed needed or essential for the national defense.[15] *National defense* is currently defined in the statute 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 protection and restoration.[16]

Further reference can be made to Title VI of the Stafford Act for a definition of "emergency preparedness" activities. It states that emergency preparedness:

> means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard.[17]

Therefore, the use of DPA authorities extends beyond shaping U.S. military preparedness and capabilities, as the authorities may also be used to enhance and support domestic preparedness,

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[12] Titles I, III, and VII. The former Titles of the DPA (II, IV, V, and VI) terminated in 1953, but were officially repealed in the Reauthorization of 2009.

[13] Executive Order 13603, "National Defense Resource Preparedness," 77 *Federal Register* 16651, March 22, 2012. E.O. 13603 replaced the previous E.O. 12919 on National Defense Industrial Resource Preparedness, which had been issued by President William J. Clinton on June 3, 1994. See Executive Order 12919, "National Defense Industrial Resources Preparedness," 59 *Federal Register* 29525, June 7, 1994.

[14] 50 U.S.C. §4502(a)(4); Section 2(a)(4) of the DPA (emphasis added).

[15] There are various references to national defense throughout the DPA. Some examples: Title I, Section 101 priorities and allocations authority requires the President to deem action as "necessary or appropriate to promote the national defense" (50 U.S.C. §4511(a)); Title III authorities can be used when "essential for the national defense" (50 U.S.C. §§4531(a), 4532(a), 4533(a)); and Title VII voluntary agreement authority requires that the use helps "provide for the national defense" (50 U.S.C. §4558(c)(1)).

[16] 50 U.S.C. §4552(14); Section 702(14) of the DPA.

[17] 42 U.S.C. §5195(a)(3)

response, and recovery from hazards, terrorist attacks, and other national emergencies, among other purposes.

In its original 1950 form, the DPA defined *national defense* as "the operations and activities of the armed forces, the Atomic Energy Commission, or any other department or agency directly or indirectly and substantially concerned with the national defense... "[18] Over the many reauthorizations and amendments to the DPA, Congress has gradually expanded the scope of the definition of national defense, as recently as 2009.[19] At that time, Congress included critical infrastructure assistance to any foreign nation and added homeland security to the definition.[20]

The DPA statute also includes both a full Congressional "Findings" and "Statement of Policy," as set forth in the "Declaration of Policy" section of the DPA.[21] This section of the law gives additional guidance—though not explicit legal requirements—to the executive branch on why and how the DPA authorities should be used in order to provide for the national security. For example, in the "Findings" section, with regards to national defense and energy security, Congress stated that

> to further assure the adequate maintenance of the domestic industrial base, to the maximum extent possible, domestic energy supplies should be augmented through reliance on renewable energy sources (including solar, geothermal, wind, and biomass sources), more efficient energy storage and distribution technologies, and energy conservation measures.[22]

As another example, as guidance to the executive branch on how the defense industrial base should be encouraged to develop, in the "Statement of Policy," Congress stated that

> it is the policy of the United States that... in order to ensure productive capacity in the event of an attack on the United States, the United States Government should encourage the geographic dispersal of industrial facilities in the United States to discourage the concentration of such productive facilities within limited geographic areas that are vulnerable to attack by an enemy of the United States.[23]

Authorities under Title I of the DPA

Priorities and Allocations Authority

Section 101(a) of Title I of the DPA states

> The President is 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

[18] See Section 702(d) of P.L. 81-774.

[19] For further discussion of the evolution of the definition of national defense, see The National Infrastructure Advisory Council, *Framework for Dealing with Disasters and Related Interdependencies: Final Report and Recommendations*, Appendix G: The Defense Production Act, Washington, DC, July 14, 2009, pp. 41-42, at http://www.dhs.gov/xlibrary/assets/niac/niac_framework_dealing_with_disasters.pdf.

[20] 123 Stat. 2017, Section 8 of P.L. 111-67. Both "critical infrastructure" and "homeland security" are defined in Section 702 of the DPA, 50 U.S.C. §4552.

[21] 50 U.S.C. §4502; Section 2 of the DPA. This section comprises congressional findings, Section 2(a), and a statement of policy of the United States, Section 2(b).

[22] 50 U.S.C. §4502(a)(6); Section 2(a)(6) of the DPA.

[23] 50 U.S.C. §4502(b)(6); Section 2(b)(6) of the DPA.

> 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.[24]

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.[25] Under the language of the DPA, a *person* (including corporations, as defined in statute)[26] is required to accept prioritized contracts/orders,[27] though regulations implementing Title I authorities provide practical exemptions to this mandate. The limited allowances for when a person is required to or may optionally reject a prioritized order can be superseded by the direction of the implementing federal department.[28] In executing a contract under the DPA, a contractor is not liable for actions taken to comply with governing rules, regulations, and orders (e.g., prioritization requirements), including any rules, regulations, or orders later declared legally invalid.[29] The government can also prioritize the performance of contracts between two private parties, such as a contract between a prime contractor and a subcontractor, if needed to fulfill a priority contract and promote the national defense.[30]

Title I also allows the President to *allocate* or control the general distribution of materials, services, and facilities. Allocation authority relates historically to the controlled materials programs of World War II, when the distribution of critical materials and resources had to be managed to maximize the production of goods needed in the war effort.[31] No allocation action has been taken by the President since the end of the Cold War.[32]

There are several notable restrictions to the priorities and allocation authority. For example, it cannot be used for contracts of employment.[33]Additionally, unless authorized by a joint resolution of Congress, the authority cannot be used for wage or price controls. Private persons are also not

[24] 50 U.S.C. §4511(a); Section 101(a) of the DPA.

[25] As noted in regulations for Title I authorities, especially 15 C.F.R. §700.1(b), this priority authority is broader than similar priority authorities provided in other statutes including Section 18 of the Selective Service Act of 1948 (50 U.S.C. §3816).

[26] 50 U.S.C. §4552(15), Section 702(15) of the DPA, defines person as "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."

[27] Contracts and "rated orders" have the same meaning in the regulations for Title I authorities. See, for example, the definition for "rated order" provided by 15 C.F.R. §700.8.

[28] See, for example, the regulations establishing standards and procedures for the use of the Secretaries' of Agriculture, Commerce, Energy, Health and Human Services, and Transportation delegated authorities under Title I of the DPA (7 C.F.R. §786.13, 15 C.F.R. §700.13, 10 C.F.R. §217.33, 45 C.F.R. §101.33, and 49 C.F.R. §33.33, respectively). These regulations explain the circumstances under which a person may reject a prioritized contract, though these conditions are limited by the clause "Unless otherwise directed by the [implementing department]."

[29] 50 U.S.C. §4557; Section 707 of the DPA. Immunity under this provision is limited, and does not confer blanket tort immunity to a contractor for liability to injured third parties. Also, carrying out a contract according to its terms does not necessarily entitle a contractor to be indemnified by the government when the resulting product injures third parties, absent an indemnification clause in the contract. *Hercules v. United States*, 516 U.S. 417 (1996).

[30] See, for example, 15 C.F.R. §700.3(d).

[31] See further explanation of allocation authority in 15 C.F.R. §700.30.

[32] Department of Homeland Security, *The Defense Production Act Committee Report to Congress*, Calendar Year 2017 Report to Congress, June 18, 2019, p. 11.

[33] This restriction is written as a parenthetical in Section 101(a)(1), but is a considerable constraint on Title I priorities authority.

required to assist in the production or development of chemical or biological weapons unless directly authorized by the President or a Cabinet secretary.[34]

Title I also contains several provisions related to domestic energy. Section 101(c) specifically authorizes the President to allocate and prioritize contracts relating to materials, equipment, and services to maximize domestic energy supplies in certain circumstances.[35] However, Section 101(c) also restricts this use unless the President makes certain findings.[36] Further, Section 105 of the DPA restricts the authorities from being used to ration the end-use of gasoline without the approval of Congress.[37] Section 106 of Title I, as amended, also designates *energy* as a *strategic and critical* material.[38] This designation enables other authorities in the DPA, especially Title III authorities discussed below, to be used for policy purposes related to energy.

Delegations of Title I Authorities

In statute, Title I priorities and allocation authority can only be used to "promote national defense." In E.O. 13603, the President further constrains that authority so that it "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, the Secretary of Homeland Security, or the Secretary of Energy, depending on the issue involved. The Secretary of Defense makes determinations related to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by DOD, space, and directly related activities; the Secretary of Energy makes determinations related to energy production and construction, distribution and use, and directly related activities; and the Secretary of Homeland Security makes determinations related to all other national defense programs, including civil defense and continuity of government.[39]

Once a program is determined to promote the national defense, other Secretaries who have been delegated the priorities and allocation authority can use their authority for those pre-designated program purposes. E.O. 13603 provides for the delegation of the President's priorities and

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[34] 50 U.S.C. §4514; Section 104 of the DPA. It should be noted that development and production of chemical weapons and biological weapons are prohibited by the Chemical Weapons Convention (CWC) and the Biological Weapons Convention (BWC), respectively. The United States is a state party to both of these international treaties and is legally bound by their obligations and prohibitions.

[35] 50 U.S.C. §4511(c); Section 101(c) of the DPA.

[36] 50 U.S.C. §4511(c)(2); Section 101(c)(2) of the DPA stipulates that the Title I authority related to domestic energy

> "may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that—
>
> (A) such materials, services, and facilities are scarce, critical, and essential—
>
> (i) to maintain or expand exploration, production, refining, transportation;
>
> (ii) to conserve energy supplies; or
>
> (iii) to construct or maintain energy facilities; and
>
> (B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection."

[37] 50 U.S.C. §4515; Section 105 of the DPA.

[38] 50 U.S.C. §4516; Section 106 of the DPA.

[39] See Section 202 of E.O. 13603. An example of a written determination, issued by the Department of Homeland Security through FEMA, can be found at http://www.fema.gov/pdf/about/programs/dpa/signed-program-determinations-100506.pdf.

allocation authority to six different Cabinet Secretaries based upon their areas of expertise in different resource and material sectors. These resource areas are further defined in Section 801 of E.O. 13603. In practice, the priorities authority held by one Cabinet Secretary is frequently allowed to be used by other federal agencies, thereby allowing one agency to use another agency's authorities (e.g., DHS was allowed to use the Department of Agriculture's priorities authority related to food resources).[40] **Table A-3** in the Appendix summarizes this delegation of priorities and allocation authority.

Each of the six federal agencies to which the President delegated priorities and allocations authority are required by law to issue and annually review regulations that "establish standards and procedures by which the priorities and allocations authority under this section is used to promote the national defense, under both emergency and nonemergency conditions."[41] Five of the six delegated the authority—the Departments of Agriculture, Commerce, Energy, Health and Human Services, and Transportation—have issued those regulations. DOD has not issued its regulation as it relates to using the priorities and allocation authority for water resources, as of November 20, 2018. However, DOD has indicated that its regulation is in preliminary draft.[42] Historically, the Department of Commerce's rule establishing the Defense Priorities and Allocations System (DPAS) has been the most frequently used by the executive branch. As encouraged by statute, the DPAS regulation was used as a model to create a "consistent and unified Federal priorities and allocations system."[43] This system is referred to as the "Federal Priorities and Allocations System" (FPAS).[44] Each of the regulations that make up the FPAS establish two levels of priority for issued orders notated as "DO" and "DX." In the DPAS regulations, a "DO" rating is lower than a "DX" rating. A "DO" rating order for a product means that it must be prioritized over all other nonrated orders. However, if a product that has a "DO" rated order is needed for a different "DX" rated order, the "DX" rated order takes precedence. As a matter of practice, few select programs may receive a "DX" rating.[45]

Examples of Use of Title I Authorities

The authority to prioritize contracts is routinely employed by DOD. These prioritized contracts are typically issued under the Department of Commerce's (DOC's) delegated authority with respect to materials, services, and facilities, including construction materials, and under its Defense Priorities and Allocations System (DPAS) regulations guiding the use of this authority.[46] DOD has reported that it includes a priority rating as a standard clause in virtually all eligible contracts and orders for items under DOC's resource jurisdiction.[47] Some past examples of DOD's use of Title I priorities authority include supporting the Integrated Ballistic Missile Defense System, the B-2 Bomber, the VC-25A Presidential Aircraft (i.e., Air Force One), and

[40] Department of Homeland Security, *The Defense Production Act Committee: Report to Congress*, Calendar Year 2017 Report, June 18, 2019, p. 11.

[41] 50 U.S.C. §4511(d)(1), Sec. 101(d)(1) of the DPA.

[42] Email response from Department of Defense, Legislative Affairs, November 8, 2018.

[43] 50 U.S.C. §4511(d)(2), Sec. 101(d)(2) of the DPA.

[44] For additional information on FPAS, see FEMA's website about it at https://www.fema.gov/federal-priorities-and-allocations-system.

[45] For a discussion of the different priority ratings, see 15 C.F.R. §700.11.

[46] Ibid. DOD has been re-delegated authority by DOC to use their regulations and authorities for Title I priorities authority.

[47] Department of Homeland Security, *The Defense Production Act Committee: Report to Congress*, Calendar Year 2015 Report, June 16, 2016, p. 5.

Mine Resistant Ambush Protected (MRAP) Vehicles.[48] While the priorities authority is used far less frequently by other departments and agencies, it has been used for both the prevention of terrorism and natural disaster preparedness. For example, the Federal Bureau of Investigation has prioritized contracts in support of the Terrorist Screening Center program and the U.S. Army Corps of Engineers prioritized contracts in support of the Greater New Orleans Hurricane and Storm Damage Risk Reduction System program.[49] The Federal Emergency Management Agency used the authority extensively during the 2017 disaster season, including prioritizing contracts for manufactured housing units, food and bottled water, and the restoration of electrical transmission and distribution systems in Puerto Rico.[50] Further, U.S. allies have used the authority to assist with defense-related procurement issues.[51] The specific Title I prioritization and allocation authorities related to domestic energy (Section 101(c) of the DPA) was used by the Department of Energy to ensure that emergency supplies of natural gas continued to flow to California utilities, helping to avoid threatened electrical blackouts in early 2001.[52]

Unlike the prioritization authority, the allocation authority has not been used since the Cold War. The authority does support the Civil Reserve Air Fleet (CRAF) program, which was created initially in 1951, and is now managed by the U.S. Department of Transportation. Under the CRAF program, civilian aircraft are "allocated" for the potential use, if required, by the DOD so that it may augment its airlift capability with civilian aircraft during a national defense related crisis. In return for their participation in the CRAF program, civilian carriers are given preference in carrying commercial peacetime cargo and passenger traffic for the DOD.[53]

Authorities Under Title III of the DPA

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 appropriate 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 essential for the execution of the national security strategy of the United States.[54] The President is also directed to use Title III authorities to ensure that critical components, critical technology items, essential

[48] For a list of Department of Defense programs that were approved for DX-rating as of March 2016, see https://www.bis.doc.gov/index.php/forms-documents/pdfs/1257-dx-rated-program-list/file.

[49] U.S. Congress, House Committee on Financial Services, Subcommittee on Monetary Policy and Trade, *Reauthorizing the Defense Production Act*, 113th Cong., 1st sess., May 8, 2013, H.Hrg. 113-18 (Washington: GPO, 2013), p. 13.

[50] Department of Homeland Security, *The Defense Production Act Committee: Report to Congress*, Calendar Year 2017 Report, June 18, 2018, p. 10.

[51] As reported by DOD, "For example, in FY2012, a U.S. ally asked for help in expediting the refurbishment of naval vessel environmental control systems. These atmospheric controls were urgently needed by both the U.S. and the ally's navies to avoid disruptions of fleet deployments, but the contractor was limited in its ability to meet the needs of both customers." See Department of Defense, *Annual Industrial Capabilities*, Fiscal Year 2012 Report to Congress, October 2013, p. 54, at https://www.hsdl.org/?abstract&did=748032.

[52] For discussion on how DPA was used in this situation, see U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *California Energy Crisis and Use of the Defense Production Act*, 107th Cong., 1st sess., February 9, 2001, S.Hrg. 107-215 (Washington: GPO, 2001).

[53] For more on the CRAF program, see U.S. Department of Transportation's website on the program at http://www.dot.gov/ost/oiser/craf.htm.

[54] 50 U.S.C. §4517; Section 107(a) of the DPA. Many of these terms are defined further in 50 U.S.C. §4552.

materials, and industrial resources are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency.[55]

Loan Guarantees and Direct Loans

Sections 301 and 302 of Title III of the DPA authorize the President to issue loan guarantees and direct loans to reduce current or projected shortfalls of industrial resources, critical technology items, or essential materials needed for national defense purposes.[56] Loan guarantees and direct loans can be issued to private businesses to help them create, maintain, expedite, expand, protect, or restore production and deliveries or services essential to the national defense.[57] A direct loan is a loan from the federal government to another government or private sector borrower that requires repayment, with or without interest. A loan guarantee allows the federal government to guarantee a loan made by a nonfederal lender to a nonfederal borrower, either by pledging to pay back all or part of the loan in cases when the borrower is unable to do so. These authorities, for instance, could be used to provide a loan, or to guarantee a loan, to a defense contractor that is responsible for the provision of critical services essential to the national defense when credit is otherwise unavailable in the private market.

There are a number of restrictions placed on the executive branch before these loan authorities may be used in the interest of national defense. First, the budget authority for guarantees and direct loans must be specifically included in appropriations passed by Congress and enacted by the President before such loan mechanisms can be issued.[58] Except during periods of national emergency declared by Congress or the President,[59] the DPA statute also requires the President to determine that loan guarantees or direct loans meet a number of conditions before issuance. One of the conditions in using the loan authority is that the loan or loan guarantee is the most cost-effective, expedient, and practical alternative method for meeting the need.[60] There are also a number of determination requirements for loan guarantees and direct loans that may help ensure that the loan is repaid by the recipient.[61] For example, the President is required to determine that there is "reasonable assurance" that a recipient of a loan or loan guarantee will be able to repay the loan.[62]

Purchase, Purchase Commitments, and Installation of Equipment

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.[63] These authorities include, but are not limited to

[55] 50 U.S.C. §4517; Section 107(b)(1) of the DPA.

[56] 50 U.S.C. §4531(a)(1). The beginning of 50 U.S.C. §4532(a) includes the same basic text as §4531(a)(1).

[57] Ibid.

[58] See 50 U.S.C. §4531(a)(3) and 50 U.S.C. §4532(c).

[59] See 50 U.S.C. §4531(a)(2) and 50 U.S.C. §4532(b)(2).

[60] 50 U.S.C. §4531(a)(2)(C) and 50 U.S.C. §4532(b)(2)(C).

[61] See, for example, 50 U.S.C. §§4531(a)(2)(D), (E), (F) and (G) and 50 U.S.C. §§4532(b)(2)(D) and (E); which are Sections 301(a)(2)(D), (E), and (F) and Sections 302(b)(2)(D) and (E) of the DPA, respectively.

[62] See 50 U.S.C. §4531(a)(2)(D), Section 301(a)(2)(D) of the DPA.

[63] 50 U.S.C. §4533, Section 303 of the DPA.

- purchasing or making purchase commitments of industrial resources or critical technology items;[64]
- making subsidy payments for domestically produced materials;[65] and
- installing and purchasing equipment for government and privately owned industrial facilities to expand their productive capacity.[66]

In general, Section 303 authorities can be used by the President to provide incentives for domestic private industry to produce and supply critical goods that are necessary for the national defense. The scope of Section 303 authorities allows for these incentives to be structured in a number of ways, including direct purchases or subsidies of such goods. Therefore, whereas Title I authorities help ensure that the government has priority access to goods that are already being produced by domestic industries, Section 303 authorities help create a sufficient supply of these essential goods in the interest of national defense.

Prior to using Section 303 authorities, the law requires the President, on a nondelegable basis, to determine that there is a "domestic industrial base shortfall" for a particular industrial resource, material, or critical technology item that threatens the national defense.[67] This determination includes finding that the industry of the United States cannot reasonably be expected to provide the capability for the good in a timely manner, and that purchases, purchase commitments, or other actions are the most cost effective, expedient, and practical alternative method for meeting the need.[68] For projects that cumulatively cost more than $50 million to address an industrial base shortfall, the projects must first be authorized by an act of Congress. Additionally, the President is required to notify the committees of jurisdiction, and give the committees 30 days to comment, when the actions to remedy the shortfall are expected to exceed $50 million.[69] Generally, very few Title III projects exceed the $50 million threshold. The President is authorized to waive the determination and notification provisions in periods of national emergency or in situations that the President, on a nondelegable basis, determines the industrial base shortfall would severely impair national defense.[70]

[64] 50 U.S.C. §4533(a), Section 303(a)(1)(A) of the DPA. The terms "critical technology item" and "industry resource" are further defined in 50 U.S.C. §4552, Section 702 of the DPA.

[65] 50 U.S.C. §4533(c), Section 303(c) of the DPA.

[66] 50 U.S.C. §4533(e), Section 303(e) of the DPA.

[67] The President previously delegated authority to make this determination to the "head of each agency engage[d] in procurement for national defense" in Section 305(b) of E.O. 13603. However, changes to the DPA in P.L. 113-72 made subsequent to the issuance of the E.O. 13603 have overridden these delegations because the President is no longer allowed to delegate this determination and notification responsibility.

[68] 50 U.S.C. §4533(a)(5)(B) and (C), Section 303(a)(5)(B) and (C) of the DPA.

[69] 50 U.S.C. §4533(a)(6), Section 303(a)(6) of the DPA.

[70] 50 U.S.C. §4533(a)(7), Section 303(a)(7) of the DPA.

DOD's Broad Agency Announcement Under the DPA

In February 2018, DOD's DPA Title III office (located in the office of the Manufacturing and Industrial Base Policy) issued a Broad Agency Announcement requesting interested parties to submit white papers or proposals for "projects that create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense." The announcement identified three broad focus areas for potential projects:

- Sustainment of Critical Production,
- Commercialization of R&D Investments, and
- Scaling of Emerging Technologies.

A Broad Agency Announcement is a method by which an agency solicits interest in solving a development problem. No budget is allocated and no particular procurement approach is determined in advance. Such announcements, however, often lead to a contract, grant, or some other financial agreement. (For more information on this particular BPA, see https://www.businessdefense.gov/DPA-Title-III/Opportunities/.)

Delegation of Section 301, 302, and 303 Authorities in E.O. 13603

In E.O. 13603, the "head of each agency engaged in procurement for national defense" is delegated the majority of the authorities of Sections 301, 302, and 303 of Title III of the DPA.[71] These agencies are specifically identified in E.O. 13603.[72] This delegation includes the ability to make all determinations not explicitly cited in the statute as being nondelegable.[73] However, this delegation does not include the authority to encourage the exploration, development, and mining of strategic and critical materials and other materials. This authority is provided to the President in the statute, and is delegated only to the Secretaries of Defense and the Interior.[74]

Defense Production Act Fund

Title III of the DPA establishes a Treasury account, the Defense Production Act Fund, which is available to carry out all of the provisions and purposes of Title III. The DPA Fund is also used to collect all proceeds from DPA activities under Title III, such as the resale of DPA-procured commodities or products.[75] The monies in the DPA Fund are available until expended. However, the unobligated balance in the DPA Fund at the end of any fiscal year cannot exceed $750 million, excluding monies appropriated for that fiscal year.[76]

Table 1 provides the appropriations to the DPA Fund between FY2010 and FY2019. It is possible for appropriations to the DPA Fund to be made in any of the bills providing funding to the

[71] See Sections 301, 302, 303, 304, and 305 of E.O. 13603.

[72] Section 801(h) of E.O. 13603 states "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 of the executive order, the additional agencies are the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, and Transportation.

[73] Section 305 of E.O. 13603.

[74] In statute, see 50 U.S.C. §4533(a)(1)(B); Section 303(a)(1)(B) of the DPA. The authority is delegated in Section 306 of E.O. 13603. The Secretary of Interior is delegated this authority in consultation with the Secretary of Defense, as the National Defense Stockpile Manager.

[75] 50 U.S.C. §4534; Section 304 of the DPA.

[76] 50 U.S.C. §4534(e); Section 304(e) of the DPA. The obligation of funds is defined in the DOD Financial Management Regulation as an "amount representing orders placed, contracts awarded, services received, and similar transactions during an accounting period that will require payment during the same, or a future, period." Office of the Comptroller, Department of Defense, *Financial Management Regulation*, DOD 7000.14-R, Washington, DC, April 2015, p. Glossary-22.

numerous agencies delegated Title III authorities.[77] All recent discretionary appropriations directly to the DPA Fund have come from DOD appropriations acts. As noted in **Table 1**, however, in FY2014-2016, the Department of Energy was authorized, and subsequently made, transfers of $45 million to the DPA Fund each year from another appropriation.[78] In addition, Title III projects that are paid for through the DPA Fund have been funded through transfers of budget authority from DOD and other federal agencies.[79] Since 2000, the average total project size for Title III projects has been $25.13 million. Of that total, an average of $14.02 million was provided by the DPA Fund, while an average of $0.95 million came from other government funding, and an average of $10.21 million was provided by private sector partners as a cost-share.[80]

Table 1. Appropriations to the DPA Fund Since FY2010, in Millions

Fiscal Year	Law	Appropriation Amount
2010	P.L. 111-118, 123 Stat. 3422	$150.7
2011	P.L. 112-10, 125 Stat. 51	$34.3
2012	P.L. 112-74, 125 Stat. 800	$170.0
2013	P.L. 113-6, 127 Stat. 291	$223.5
2014	P.L. 113-76, 128 Stat. 98	$60.1[a]
2015	P.L. 113-235, 128 Stat. 2246	$51.6[a]
2016	P.L. 114-113, 129 Stat. 2345	$76.7[a]
2017	P.L. 115-31, 131 Stat. 242	$64.1
2018	P.L. 115-141	$67.4
2019	P.L. 115-245	$53.6

Source: CRS analysis of appropriation acts.

Notes: Dollars rounded to the nearest hundred thousand. These figures may not account for transfers or other obligations to the DPA Fund and may not reflect adjustments to appropriations required by recently enacted legislation.

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.

[77] See footnote 72 for an explanation and full list of the delegated agencies with Title III authorities.

[78] A total of $135 million was transferred between FY2014 and FY2016. In its FY2014 budget request, DOE stated the $45 million would be used to support the construction of commercial-scale biofuels production facilities that can produce drop-in, hydrocarbon biofuels under a joint DOD-Navy, DOE, and USDA memorandum of agreement. A total of $135 million was transferred between FY2014 and FY2016.

[79] For example, a Title III project on "Read Out Integrated Circuit Foundry Improvement and Sustainability" has been funded in part with budget authority transferred from the Air Force, Missile Defense Agency, and another government agency. See Department of Defense, *Annual Industrial Capabilities*, Fiscal Year 2014 Report to Congress, September 2016, p. C-15, at https://www.businessdefense.gov/Portals/51/Documents/Resources/2014%20AIC%20RTC%2010-03-16%20-%20Public%20Unclassified.pdf?ver=2017-04-18-072624-770.

[80] Dollar amounts are not adjusted for inflation. Email response from Department of Defense, Legislative Affairs, November 8, 2018.

The President is required to designate a "Fund manager" to carry out general accounting functions for the fund.[81] The Secretary of Defense has been designated to be the Fund Manager in E.O. 13603.[82] As the Fund Manager, the Secretary of Defense (or official to whom the authority is further delegated in DOD) is responsible for the financial accounting of the fund, but does not necessarily have decision-making authority over the use of the fund.

Examples of Use of Title III Authorities

According to the Defense Production Act Committee, the federal government has not used the loan authorities provided in Section 301 or Section 302 of Title III in more than 30 years.[83] Rather, current projects are initiated under Section 303 of Title III of the DPA. During FY2017, the DOD reported that it "managed 22 [Title III] projects and oversaw 7 projects in the monitoring phase. Three projects were completed, eight projects were in active acquisition, and seven projects were explored as potential future efforts."[84]

Examples of Title III projects include an "Advanced Drop-In Biofuel Production Project" to accelerate the commercialization of drop-in biofuels for military and commercial use,[85] and several projects to support radar and electronic warfare, including to establish a domestic, economically viable, open-foundry merchant supplier production capability for Ka-band gallium nitride (GaN) MMICs [monolithic microwave integrated circuits].[86] Like many other Title III projects, these are meant to establish a domestic capacity to produce advanced technologies deemed essential for national defense by the President.[87]

Authorities Under Title VII of the DPA

Title VII of the DPA contains various provisions that clarify how DPA authorities should and can be used, as well as additional presidential authorities. Some significant provisions of Title VII are summarized below.

Special Preference for Small Businesses

Two provisions in the DPA direct the President to accord special preference to small businesses when issuing contracts under DPA authorities. Section 701 reiterates[88] and expands upon a requirement in Section 108 of Title I directing the President to "accord a strong preference for

[81] 50 U.S.C. §4534(f); Section 304(f) of the DPA.

[82] Section 309 of E.O. 13603.

[83] Department of Homeland Security, *The Defense Production Act Committee: Report to Congress*, Calendar Year 2010 Report, August 2011, p. 10.

[84] Department of Defense, *Annual Industrial Capabilities*, Fiscal Year 2017 Report to Congress, March 2018, p. 33, at https://www.businessdefense.gov/Portals/51/Documents/Resources/2017%20AIC%20RTC%2005-17-2018%20-%20Public%20Release.pdf?ver=2018-05-17-224631-340.

[85] Department of Defense, *Annual Industrial Capabilities*, Fiscal Year 2015 Report to Congress, September 2016, p. C-4 and C-5, at https://www.businessdefense.gov/Portals/51/Documents/Resources/2015%20AIC%20RTC%2010-03-16%20-%20Public%20Unclassified.pdf?ver=2017-04-18-072624-770.

[86] Department of Defense, *Annual Industrial Capabilities*, Fiscal Year 2017 Report to Congress, March 2018, p. 33, at https://www.businessdefense.gov/Portals/51/Documents/Resources/2017%20AIC%20RTC%2005-17-2018%20-%20Public%20Release.pdf?ver=2018-05-17-224631-340.

[87] A complete list of active Title III projects is traditionally provided in an appendix to the DOD's Annual Industrial Capabilities report, but it is for official use only, business confidential, and proprietary.

[88] 50 U.S.C. §4551; Section 701 of the DPA.

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."[89]

Definitions of Key Terms in the DPA

The DPA statute historically has included a section of definitions.[90] Though *national defense* is perhaps the most important term, there are additional definitions provided both in current law and in E.O. 13603.[91] Over time, the list of definitions provided in both the law and implementing executive orders has been added to and edited, most recently in 2009, when Congress added a definition for *homeland security*[92] to place it within the context of *national defense*.[93]

Industrial Base Assessments

To appropriately use numerous authorities of the DPA, especially Title III authorities, the President may require a detailed understanding of current domestic industrial capabilities and therefore need to obtain extensive information from private industries. Under Section 705 of the DPA, 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 this Act [the DPA]."[94] This authority is delegated to the Secretary of Commerce in E.O. 13603.[95] Though this authority has many potential implications and uses, it is most commonly associated with what the DOC's Bureau of Industry and Security calls "industrial base assessments."[96] These assessments are often conducted in coordination with other federal agencies and the private sector to "monitor trends, benchmark industry performance, and raise awareness of diminishing manufacturing capabilities."[97] The statute requires the President to issue regulations to insure that the authority is used only after "the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it

[89] 50 U.S.C. §4518; Section 108(a) of the DPA.

[90] The original law provided five definitions, including a definition of "national defense." See Section 702 of P.L. 81-774.

[91] In total, there are 17 terms defined in law in 50 U.S.C. §4552, and 13 additional definitions in Section 801 of E.O. 13603.

[92] 50 U.S.C. §4552(11). *Homeland security* means efforts "(A) to prevent terrorist attacks within the United States; (B) to reduce the vulnerability of the United States to terrorism; (C) to minimize damage from a terrorist attack in the United States; and (D) to recover from a terrorist attack in the United States."

[93] 123 Stat 2017-2018. Congress amended, in addition to the definition of *national defense*, the existing definitions of *critical component, critical technology, domestic industrial base, industrial resources,* and *services*. Congress struck the definitions for c*ritical industry for national security, essential weapon system,* and *small business concern owned and controlled by socially and economically disadvantaged individuals*. Congress added the definitions *guaranteeing agency* and *homeland security*.

[94] 50 U.S.C. §4555(a); Section 705(a) of the DPA.

[95] Generally, see Section 104(d) of E.O. 13603.

[96] For examples of some publically available industrial base assessments, see the agency's website at http://www.bis.doc.gov/index.php/other-areas/office-of-technology-evaluation-ote/industrial-base-assessments.

[97] Ibid.

is assured that no adequate and authoritative data are available from any Federal or other responsible agency."[98] This regulation has been issued by DOC.[99]

Voluntary Agreements

Normally, voluntary agreements or plans of action between competing private industry interests could be subject to legal sanction under anti-trust statutes or contract law. Title VII of the DPA 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."[100] The President must determine that a "condition exists which may pose a direct threat to the national defense or its preparedness programs"[101] prior to engaging in the consultation process. Following the consultation process, the President or presidential delegate may approve and implement the agreement or plan of action.[102] 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.[103] Historically, the National Infrastructure Advisory Council noted that the voluntary agreement authority has been used to "enable companies to cooperate in weapons manufacture, solving production problems and standardizing designs, specifications and processes," among other examples.[104] It could also be used, for example, to develop a plan of action with private industry for the repair and reconstruction of major critical infrastructure systems following a domestic disaster.

The authority to establish a voluntary agreement has been delegated to the head of any federal department or agency otherwise delegated authority under any other part of E.O. 13603.[105] Thus, the authority could be potentially used by a large group of federal departments and agencies. Use of these voluntary agreements is tracked by the Secretary of Homeland Security,[106] who is tasked under E.O. 13603 with issuing regulations that are required by law on the "standards and procedures by which voluntary agreements and plans of action may be developed and carried out."[107] The Federal Emergency Management Agency (FEMA), which at the time was an independent agency and tasked with these responsibilities under the DPA, issued regulations in 1981 to fulfill this requirement.[108] FEMA is now a part of DHS, and those regulations remain in effect.

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[98] 50 U.S.C. §4555(a); Section 705(a) of the DPA.

[99] See 15 C.F.R. Part 702.

[100] 50 U.S.C. §4558(c)(1); Section 708(c)(1) of the DPA.

[101] Ibid. The consultation process is described in 50 U.S.C. §§4558(d) and (e); Section 708(d) and (e) of the DPA.

[102] 50 U.S.C. §4558(f); Section 708(f) of the DPA.

[103] 50 U.S.C. §4558, Section 708 of the DPA provides a legal defense to parties of voluntary agreements or plans of action that can be used in civil suits or criminal actions brought against them under anti-trust laws (§4558(j)) or for breach of contract (§2158(o)). These exemptions do not grant them blanket immunity from these laws.

[104] The National Infrastructure Advisory Council, *Framework for Dealing with Disasters and Related Interdependencies: Final Report and Recommendations*, Appendix G: The Defense Production Act, Washington, DC, July 14, 2009, p. 45, at http://www.dhs.gov/xlibrary/assets/niac/niac_framework_dealing_with_disasters.pdf.

[105] Section 401 of E.O. 13603.

[106] Section 401 of E.O. 13603.

[107] 50 U.S.C. §4558(e); Section 708(e) of the DPA.

[108] FEMA's regulations can be found at 44 C.F.R. Part 332. They were issued at Federal Emergency Management Agency, "Voluntary Agreements: Standards and Procedures," 46 *Federal Register* 2349, January 9, 1981.

The Maritime Administration (MARAD) of the U.S. Department of Transportation manages the only currently established voluntary agreements in the federal government, the Voluntary Intermodal Sealift Agreement (commonly referred to as "VISA") and the Voluntary Tanker Agreement. These programs are maintained in partnership with the U.S. Transportation Command of DOD, and have been established to ensure that the maritime industry can respond to the rapid mobilization, deployment, and transportation requirements of DOD. Voluntary participants from the maritime industry are solicited to join the agreements annually.[109]

Nucleus Executive Reserve

Title VII of the DPA authorizes the President to establish a volunteer body of industry executives, the "Nucleus Executive Reserve," or more frequently called the National Defense Executive Reserve (NDER).[110] The NDER would be a pool of individuals with recognized expertise from various segments of the private sector and from government (except full-time federal employees). These individuals would be brought together for training in executive positions within the federal government in the event of an emergency that requires their employment. The historic concept of the NDER has been used as a means of improving the war mobilization and productivity of industries.[111]

The head of any governmental department or agency may establish a unit of the NDER and train its members.[112] No NDER unit is currently active, though the statute and E.O. 13603 still provide for this possibility. Units may be activated only when the Secretary of Homeland Security declares in writing that "an emergency affecting the national defense exists and that the activation of the unit is necessary to carry out the emergency program functions of the agency."[113]

Authorization of Appropriations, as amended by P.L. 113-72

Appropriations for the purpose of the DPA are authorized by Section 711 of Title VII.[114] Prior to the P.L. 113-172, "such sums as necessary" were authorized to be appropriated. This has been replaced by a specific authorization for an appropriation of $133 million per fiscal year and each fiscal year thereafter, starting in FY2015, to carry out the provisions and purposes of the Defense Production Act.[115]

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[109] For more, see approval of the VISA program in the *Federal Register* at Maritime Administration, "Voluntary Intermodal Sealift Agreement," 79 *Federal Register* 64462, October 29, 2014. See also MARAD's website at https://www.marad.dot.gov/ships-and-shipping/strategic-sealift/voluntary-intermodal-sealift-agreement-visa/.

[110] 50 U.S.C. §4560(e); Section 710(e) of the DPA.

[111] President Dwight D. Eisenhower created the NDER in 1956 by issuing E.O.10660 under the authorities granted in Title VII. It has served as a vehicle for training highly qualified private industry executives in war production mobilization should the nation be faced with the need to place the nation's industrial base on a war footing. This program was inspired by the experiences of the War Industries Board of World War I and the War Production Board of World War II, when corporate executives were brought into government service, often with little or no compensation, to organize the nation's industries for war production. For background on the origins and operation of the War Industries Board, see Paul A. C. Koistinen, "The 'Industrial-Military Complex' in Historical Perspective: World War I," *The Business History Review*, vol. 41, no. 4 (Winter 1967), pp. 378-403; and Robert D. Cuff, "A 'Dollar-a-Year Man' in Government: George N. Peek and the War Industries Board," *The Business History Review*, vol. 41, no. 4 (Winter 1967), pp. 404-420.

[112] Section 501(c) in E.O. 13603.

[113] Section 501(e) in E.O. 13603.

[114] 50 U.S.C. §4561.

[115] Section 5 of P.L. 113-172.

Table 1 shows that the annual average appropriation to the DPA Fund between FY2010 and FY2019 was $109.1 million,[116] with a high of $223.5 million in FY2013 and a low of $34.3 million in FY2011. Monies in the DPA Fund are available until expended, so annual appropriations may carry over from year to year if not expended. Recently, the only regular annual appropriation for the purposes of the DPA has been made in the DOD appropriations bill, though appropriations could be made in other bills directly to the DPA Fund (or transferred from other appropriations).

Committee on Foreign Investment in the United States[117]

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that serves the President in overseeing the national security implications of foreign investment in the economy. It reviews foreign investment transactions to determine if (1) they threaten to impair U.S. national security; (2) the foreign investor is controlled by a foreign government; or (3) the transaction could affect homeland security or would result in control of any critical infrastructure that could impair the national security. The President has the authority to block proposed or pending foreign investment transactions that threaten to impair the national security.

CFIUS initially was created and operated through a series of Executive Orders.[118] In 1988, Congress passed the "Exon-Florio" amendment to the DPA, granting the President authority to review certain corporate mergers, acquisitions, and takeovers, and to investigate the potential impact on national security of such actions.[119] This amendment codified the CFIUS review process due in large part to concerns over acquisitions of U.S. defense-related firms by Japanese investors. In 2007, amid growing concerns over the proposed foreign purchase of commercial operations of six U.S. ports, Congress passed the Foreign Investment and National Security Act of 2007 (P.L. 110-49) to create CFIUS in statute.

On August 13, 2018, President Trump signed into law new rules governing national security reviews of foreign investment, known as the *Foreign Investment Risk Review Modernization Act* (FIRRMA, Title XVII, P.L. 115-235).[120] FIRRMA amends several aspects of the CFIUS review process under Section 721 of the DPA.[121] Notably, it expands the scope of transactions that fall under CFIUS' jurisdiction. It maintains core components of the current CFIUS process for evaluating proposed or pending investments in U.S. firms, but increases the allowable time for reviews and investigations. Upon receiving written notification of a proposed acquisition, merger,

[116] This average figure increases by $9 million to $136.72 if one includes the $45 million authorized transfer from the overall appropriation of $1,912 million for the Department of Energy's Energy Efficiency and Renewable Energy account in FY2014.

[117] This section was written by James K. Jackson, Specialist in International Trade and Finance and Cathleen Cimino-Isaacs, Analyst in International Trade and Finance. For more information on CFIUS, see CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*, by James K. Jackson, and CRS In Focus IF10952, *CFIUS Reform: Foreign Investment National Security Reviews*, by James K. Jackson and Cathleen D. Cimino-Isaacs.

[118] The various CFIUS authorities are not delegated by the President in E.O. 13603 with the majority of other DPA authorities. Rather, CFIUS authorities are delegated by the President in E.O. 11858, *Foreign Investment in the United States*, as amended, which was originally issued in 1975 but has been amended since then (notably by E.O. 13456, *Further Amendment of Executive Order 11858 Concerning Foreign Investment in the United States*). See Executive Order 13456, "Foreign Investment in the United States," 73 *Federal Register* 4677, January 25, 2008.

[119] 50 U.S.C. §4565; Section 721 of the DPA.

[120] For more detail on FIRRMA, see CRS In Focus IF10952, *CFIUS Reform: Foreign Investment National Security Reviews*, by James K. Jackson and Cathleen D. Cimino-Isaacs.

[121] For the U.S. Treasury's summary and FAQs of the changes, see https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.

or takeover of a U.S. firm by a foreign investor, the CFIUS process can proceed potentially through three steps: (1) a 45-day national security review; (2) a 45-day maximum national security investigation (with an option for a 15-day extension for "extraordinary circumstances"); and (3) a 15-day maximum Presidential determination. The President can exercise his authority to suspend or prohibit a foreign investment, subject to a CFIUS review, if he finds that (1) "credible evidence" exists that the foreign investor might take action that threatens to impair the national security; and (2) no other laws provide adequate and appropriate authority for the President to protect national security. FIRRMA shifts the filing requirement for foreign investors from voluntary to mandatory in certain cases, and provides a two-track method for reviewing certain investment transactions. Other changes mandated by FIRRMA would provide more resources for CFIUS, add new reporting requirements, and reform export controls.

Termination of the Act

Title VII of the DPA also includes a "sunset" clause for the majority of the DPA authorities. All DPA authorities in Titles I, III, and VII have a termination date, with the exception of four sections.[122] As explained in Section 717 of the DPA, the sections that are exempt from termination are

- 50 U.S.C. §4514, Section 104 of the DPA that 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, Section 707 of the DPA that grants persons limited immunity from liability for complying with DPA-authorized regulations;
- 50 U.S.C. §4558, Section 708 of the DPA that provides for the establishment of voluntary agreements; and
- 50 U.S.C. §4565, Section 721 of the DPA, the so-called Exon-Florio Amendment, that gives the President and CFIUS review authority over certain corporate acquisition activities.

P.L. 115-232 extended the termination date of Section 717 from September 30, 2019, to September 30, 2025. In addition, Section 717(c) provides that any termination of sections of the DPA "shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this Act" prior to its termination. This means, for instance, that prioritized contracts or Section 303 projects created with DPA authorities prior to September 30, 2025, would still be executed until completion even if the DPA is not reauthorized. Similarly, the statute specifies that the authority to investigate, subpoena, and otherwise collect information necessary to administer the provisions of the act, as provided by Section 705 of the DPA, will not expire until two years after the termination of the DPA.[123] For a chronology of all laws reauthorizing the DPA since inception, see **Table A-4**.

Defense Production Act Committee

The Defense Production Act Committee (DPAC) is an interagency body originally established by the 2009 reauthorization of the DPA.[124] Originally, the DPAC was created to advise the President

[122] 123 Stat. 2006; 50 U.S.C. §4564.

[123] 50 U.S.C. §4555(a); Section 705(a) of the DPA. Thus, under current law, Section 705 authority would expire on September 30, 2027.

[124] P.L. 111-67, 123 Stat. 2019-2020. The DPAC is now authorized in Section 722 of the DPA, 50 U.S.C. §4567.

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 statute assigns membership in the DPAC to the head of each federal agency delegated DPA authorities, as well as the Chairperson of the Council of Economic Advisors. A full list of the members of the DPAC is included in E.O. 13603.[125] As stipulated in law, the Chairperson of the DPAC is to be the "head of the agency to which the President has delegated primary responsibility for government-wide coordination of the authorities in this Act."[126] As currently established in E.O. 13603 delegations, the Secretary of Homeland Security is the chair-designate, but the language of the law could allow the President to appoint another Secretary with revision to the E.O.[127] The Chairperson of the DPAC is also required to appoint one full-time employee of the federal government to coordinate all the activities of the DPAC. Congress has exempted the DPAC from the requirements of the Federal Advisory Committee Act.[128]

The DPAC has annual reporting requirements relating to the Title I priority and allocation authority, and is also required to include updated copies of Title I-related rules in its report. The annual report also contains, among other items, a "description of the contingency planning ... for events that might require the use of the priorities and allocations authorities" and "recommendations for legislative actions, as appropriate, to support the effective use" of the Title I authorities.[129] The DPAC report is provided to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services.

Impact of Offsets Report

Offsets are industrial compensation practices that foreign governments or companies require of U.S. firms as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act (22 U.S.C. §2751, et seq.) and the International Traffic in Arms Regulations (22 C.F.R. §§120-130). In the defense trade, such industrial compensation can include mandatory co-production, licensed production, subcontractor production, technology transfer, and foreign investment.

The Secretary of Commerce is required by law to prepare and to transmit to the appropriate congressional committees an annual report on the impact of offsets on defense preparedness, industrial competitiveness, employment, and trade. Specifically, the report discusses "offsets" in the government or commercial sales of defense materials.[130]

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[125] Section 701 of E.O. 13603. The DPAC is composed of the Secretaries of Agriculture; Commerce; Defense; Energy; Labor; Health and Human Services; Homeland Security; Interior; Transportation; Treasury, and State; the Attorney General; the Administrator of the National Aeronautics and Space Administration; the Administrator of General Services; the Chair of the Council of Economic Advisers; and the Directors of the Central Intelligence Agency and of National Intelligence. In addition, the Director of the Office of Management and Budget and the Director of the Office of Science and Technology Policy serve in an advisory role.

[126] See Section 722(b)(2) of the DPA; 50 U.S.C. §4567(b)(2).

[127] See Section 104(b)(2) of E.O. 13603, which includes as one of the responsibilities of the Secretary of Homeland Security to "provide for the central coordination of the plans and programs incident to authorities and functions delegated under this order.... " Given this language, the Secretary of Homeland Security is the Chairperson, though a change to E.O. 13603 (or a different interpretation of E.O. 13603 by the Administration), could allow for another Chairperson to be designated.

[128] Section 722(e) of the DPA; 50 U.S.C. §4567(e). For more on the Federal Advisory Committee Act, see CRS Report R44253, *Federal Advisory Committees: An Introduction and Overview*, by Meghan M. Stuessy.

[129] See Section 722(d) of the DPA; 50 U.S.C. §4567(d).

[130] Offsets are defined in Section 801(k) of E.O. 13603. Offsets can be direct, where offsetting sales of goods and

Considerations for Congress

Enhance Oversight

Expand Reporting or Notification Requirements

Congress may consider whether to add more extensive notification and reporting requirements on the use of all or specific authorities in the DPA. These reporting or notification requirements could be added to the existing law, or could be included in conference or committee reports accompanying germane legislation, such as appropriations bills or the National Defense Authorization Act. Additional reporting or notification requirements could involve formal notification of Congress prior to or after the use of certain authorities under specific circumstances. For example, Congress may consider whether to require the President to notify Congress (or the oversight committees) when the priorities and allocations authority is used on a contract valued above a threshold dollar amount.[131] Congress might also consider expanding the existing reporting requirements of the DPAC, to include semi-annual updates on the recent use of authorities or explanations about controversial determinations made by the President. Existing requirements could also be expanded from notifying/reporting to the committees of jurisdiction to the Congress as a whole, or to include other interested committees, such as the House and Senate Armed Services Committees.

Enforce and Revise Rulemaking Requirements

Congress may consider reviewing the agencies' compliance with existing rulemaking requirements. A rulemaking requirement exists for the voluntary agreement authority in Title VII that has been completed by DHS, but it has not been updated since 1981 and may be in need of an update given changes to the authority and government reorganizations since that date.[132] One of the agencies responsible for issuing a rulemaking on the use of Title I authorities has yet to do so. Congress may also consider potentially expanding regulatory requirements for other authorities included in the DPA. For example, Congress may consider whether the President should promulgate rules establishing standards and procedures for the use of all or certain Title III authorities. In addition to formalizing the executive branch's policies and procedures for using DPA authorities, these regulations could also serve an important function by offering an opportunity for private citizens and industry to comment on and understand the impact of DPA authorities on their personal interests.

Broaden Committee Oversight Jurisdiction

Since its enactment, the House Committee on Financial Services, the Senate Committee on Banking, Housing, and Urban Affairs, and their predecessors have exercised legislative oversight

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services are related to the military export sale being contracted, or indirect, where they are not. These reports are prepared by the Department of Commerce Bureau of Industry and Security (BIS) and are posted on at BIS's website at http://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/offsets-in-defense-trade.

[131] For example, such a notification requirement is placed on Title III projects based on total project cost. See the section "Purchase, Purchase Commitments, and Installation of Equipment" of this report for more.

[132] 50 U.S.C. §4558(e); Section 708(e) of the DPA. This rule is established in 44 C.F.R. Part 332. The voluntary agreement authority was revised most recently in P.L. 111-67. The national defense context and potential need for voluntary agreement authorities has evolved since 1981, which could also potentially prompt the need to revise the regulation.

of the Defense Production Act. The statutory authorities granted in the various titles have been vested in the President, who has delegated some of these authorities to various agency officials through E.O. 13603. As an example of the scope of delegations, the membership of the Defense Production Act Committee (DPAC), created in 2009 and amended in 2014, 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.

In order to complement existing oversight, given the number of agencies that currently use or could potentially use the array of DPA authorities to support national defense missions, Congress may consider reestablishing a select committee with a purpose similar to the former Joint Committee on Defense Production.[133] As an alternative to the creation of a new committee, Congress may consider formally broadening DPA oversight responsibilities to include all relevant standing committees when developing its committee oversight plan.

Should DPA oversight be broadened, Congress might consider ways to enhance inter-committee communication and coordination of its related activities. This coordination could include periodic meetings to prepare for oversight hearings or ensuring that DPA-related communications from agencies are shared appropriately. Finally, because the DPA was enacted at a time when the organization and rules of both chambers were markedly different to current practice, Congress may consider the joint referral of proposed DPA-related legislation to the appropriate oversight committees.

Amending the Defense Production Act of 1950

While the act in its current form may remain in force until September 30, 2025, the legislature could amend the DPA at any time to extend, expand, restrict, or otherwise clarify the powers it grants to the President. For example, Congress could eliminate certain authorities altogether. Likewise, Congress could expand the DPA to include new authorities to address novel threats to the national defense. For example, Congress may consider creating new authorities to address specific concerns relating to production and security of emerging technologies necessary for the national defense.

Declaration of Policy

The "Declaration of Policy" in the DPA describes the general intentions of Congress in granting the authorities conferred on the President. Congress may amend this section of the statute in order to expand, restrict, or clarify the overall purpose of the authorities. For instance, given the wide variety of circumstances in which DPA authorities have been employed, Congress could include an expanded discussion of the specific conditions in which it would find DPA authorities appropriate for use by the President. Though this section serves as a guide for the overall use of DPA authorities, changes to the Declaration of Policy may not fully endow or deny the President's authorities covered in the titles of the DPA without also amending the DPA's other provisions.

[133] P.L. 102-558, 106 Stat. 4219. This committee was intended to review the programs established by the DPA and advise the standing committees in their legislation on the subject.

Definitions

Congress may amend the definitions of key terms found in the DPA to shape the scope and use of the authorities, especially the definition of *national defense*. As an example, Congress could amend the definition of national defense to remove *space* from the definition, thus weakening the President's ability to support space-related projects through the use of DPA authorities.[134] On the other hand, for example, Congress could amend the definition of *national defense* to specifically include counter-narcotics, cybersecurity, or organized crime. Doing so would more explicitly enable the use of DPA authorities to address these homeland security and national defense concerns.

Amending the Delegations of Authority in E.O. 13603

Congress may consider limiting the use of certain DPA authorities to specific agencies. To do so, Congress could amend the President's delegation of DPA authorities, superseding those made in E.O. 13603, by amending the statute to assign specific authorities to individual Cabinet Secretaries rather than the President. Further, Congress could expand the use of the legislative clause "on a nondelegable basis" to ensure that the authority is not delegated beyond the person identified in the statute.[135] In considering these options, Congress may determine that the use of some authorities by certain agencies is appropriate and necessary for the national defense, but not for others.

Appropriations to the DPA Fund

Congress could adjust future appropriations to the DPA Fund in order to manage the scope of Title III projects initiated by the President (see **Table 1** for appropriations to the DPA Fund since FY2010). The use of the DPA Fund, however, is specific to Title III. Therefore, adjusting appropriations to the DPA Fund is unlikely to have an effect on the President's ability to exercise authorities under the other titles of the DPA, unless Congress drafts legislation changing the nature of the Fund itself or authorizing its use beyond a specific title. Congress may also reintroduce a separate provision in Section 711 of the DPA authorizing only certain appropriation amounts over a given time period for Title III or other DPA authorities.[136] Likewise, Congress may direct the use of such funds more specifically, such as has been done in relation to past Title III projects.[137] Congress may also consider including specific restrictions or reporting requirements related to the DPA in the appropriations made to other accounts that could be used to pay for Title I activities, such as the Disaster Relief Fund managed by FEMA.[138]

[134] For the definition of national defense, see 50 U.S.C. §4552(14); Section 702(14) of the DPA.

[135] For an example of this clause, see 50 U.S.C. §4558(c)(3); Section 708(c)(3) of the DPA.

[136] For example, appropriations for Title I could be authorized for only one year, but for Title III for five, and vice versa. See the "Authorization of Appropriations" section of this report for more.

[137] For example, see Section 315, P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013. This provision limited the use of funds for a Title III project on biofuels production.

[138] The Disaster Relief Fund is the main account to fund a wide variety of federal disaster assistance programs and activities pursuant to the Robert T. Stafford Relief and Emergency Assistance Act (P.L. 93-288). As such, it has been used to pay for priority-rated contracts to support disaster relief efforts.

Appendix. Supplementary Tables

Table A-1. Additional Resources by Defense Production Act Subject

DPA Subject	Additional Resources
General Information on DPA Authorities	FEMA website on the DPA at https://www.fema.gov/defense-production-act-program. DOD website on Title III of the DPA at https://www.businessdefense.gov/Programs/DPA-Title-III/ Annual reports on the industrial capabilities from the DOD, to include how DPA has been used to support those capabilities, at https://www.businessdefense.gov/resources/
Title I: Priorities and Allocations	Department of Commerce "Defense Priorities and Allocations System" website at http://www.bis.doc.gov/dpas/default.htm. This website includes online training courses and various additional resources on the authorities. DOD website on the Defense Priorities and Allocations System at http://www.dcma.mil/DPAS/
Title III Projects	DOD website at https://www.businessdefense.gov/Programs/DPA-Title-III/
Committee on Foreign Investment in the United States (CFIUS)	Department of the Treasury CFIUS website at https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*, by James K. Jackson
Impact of Offsets in Defense Trade	Department of Commerce website on offsets at http://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/offsets-in-defense-trade

Source: CRS.

Table A-2. Key Provisions of the Defense Production Act, Related Portions of Executive Order 13603, and Associated Regulations

Authority and DPA Statute	Related Portions of Executive Order13603[a]	Regulations or Guiding Documents	Summary of How the Authority Changed in P.L. 113-172	Example of Use of Authority
Declaration of Policy; Section 2 of the DPA, 50 U.S.C. §4502	Sections 101, 102, and 103	Not applicable	No changes were made.	Not applicable
Priorities and Allocations; Title I of the DPA, 50 U.S.C. §4511	Part II	7 C.F.R. Part 789, 10 C.F.R. Part 217, 15 C.F.R. Part 700, 45 C.F.R. Part 101, and 49 C.F.R. Part 33. An additional regulation from DOD is required.[b]	Revised the existing rulemaking requirement for all federal departments and agencies delegated Title I authorities. Requirement now is for these agencies to issue and annually review their final rules whenever appropriate.	Priority contracts have been issued in the past to support the Integrated Ballistic Missile Defense System.[c]
Loan Guarantees; Section 301 and 302 of Title III of the DPA, 50 U.S.C. §§4531 and 4532	Part III	Not applicable	No changes were made.	According to the DPAC, none in recent history.
Purchases, Purchase Commitments, and Installation of Equipment; Section 303 of Title III of the DPA, 50 U.S.C. §4553	Part III	Not applicable	Revised the determination requirement for Section 303 of Title III in several ways, including: requiring the President to submit determinations on Title III projects without delegating the responsibility; reinstituted a $50 million cost cap on the size of Title III projects without an act of Congress; and reinstituted the requirement that the President find that actions are the most cost effective, expedient, and cost-effective method of meeting the need.	"Radiation-Hardened Cryogenic Readout Integrated Circuits" Project which involved Title III resources to "establish a viable, domestic foundry for commercial production" of microelectronics that are a "critical technology employed in the manufacture of focal plane arrays (FPAs), which are utilized in high altitudes, space-based imaging, and missile systems."[d]
Definitions; Section 702 of the DPA, 50 U.S.C. §4552	Section 802	Not applicable	No changes were made.	Not applicable

Authority and DPA Statute	Related Portions of Executive Order13603[a]	Regulations or Guiding Documents	Summary of How the Authority Changed in P.L. 113-172	Example of Use of Authority
Voluntary Agreements; Section 708 of the DPA, 50 U.S.C. §4558	Part IV	44 C.F.R. Part 332	No changes were made.	Voluntary Intermodal Sealift Agreement (VISA) managed by the Maritime Administration (MARAD) in the U.S. Department of Transportation.[e]
National Defense Executive Reserve (NDER); Section 710 of the DPA, 50 U.S.C. §4560	Part V	Interim Guidance for the NDER Program[f]	No changes were made.	Not applicable
Committee on Foreign Investment in the United States (CFIUS); Section 721 of the DPA, 50 U.S.C. §4565	Executive Order 11858: Foreign Investment in the United States, as amended.	31 C.F.R. Part 800, as amended	No changes were made in P.L. 113-72; however, significant changes were made in the Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018 (Title XVII, P.L. 115-232)	See CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*, by James K. Jackson.
Defense Production Act Committee (DPAC); Section 722 of the DPA, 50 U.S.C. §4567	Part VII	None that are currently applicable.[g]	Revised the focus of the DPAC to be exclusively on coordinating and planning for the use of Title I priorities and allocations authority. Revised DPAC Chairperson designation and the annual reporting requirement to reflect new Title I focus of the DPAC.	Not applicable.[g]

Source: CRS analysis of E.O. 13603, 50 U.S.C. §§4501 et seq., and information from available resources.

Notes:

a. Unless otherwise noted, provisions cited are found in E.O. 13603.

b. DOD, via the U.S. Army Corps of Engineers, also has been directed by law to issue a rulemaking for Title I, by virtue of being delegated priorities and allocations authority related to water resource in E.O. 13603. DOD has indicated that a preliminary draft of this rulemaking has been completed, as of November 8, 2018.

c. For more examples, see Department of Homeland Security, *The Defense Production Act Committee*: Report to Congress, Calendar Year 2017, p. 10; or see a list of Department of Defense programs that were approved for DX-rating as of March 2016, see https://www.bis.doc.gov/index.php/forms-documents/pdfs/1257-dx-rated-program-list/file.

d. For specific information on this project and other examples of Title III projects, see Department of Defense, *Annual Industrial Capabilities*, Fiscal Year 2015 Report to Congress, September 2016, p. C-15, at https://www.businessdefense.gov/Portals/51/Documents/Resources/2015%20AIC%20RTC%2010-03-16%20-%20Public%20Unclassified.pdf?ver=2017-04-18-072624-770.

e. For more, see approval of the VISA program in the *Federal Register* at Maritime Administration, "Voluntary Intermodal Sealift Agreement," 79 *Federal Register* 64462, October 29, 2014. See also MARAD's website at https://www.marad.dot.gov/ships-and-shipping/strategic-sealift/voluntary-intermodal-sealift-agreement-visa/.

f. Federal Emergency Management Agency, *The National Defense Executive Reserve: Policies and Procedures Manual*, Washington, DC, June 20, 2007, at http://www.fema.gov/library/viewRecord.do?id=3606.

g. The Defense Production Act Committee's purpose and focus was revised by P.L. 113-172. Prior to this change, the DPAC statute was support by a Presidential Memorandum Designating the Chairperson of the Committee; an official Charter of the DPAC; and a Memorandum of Understanding between DHS and DOD on their shared responsibilities to support the DPAC. These documents are now outdated by P.L. 113-172.

Table A-3. Delegation of Priorities and Allocations Authorities to Cabinet Secretaries

Cabinet Secretary	Delegated Area of Authority in E.O. 13603[a]	Definitions in E.O. 13603[b]
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	"Farm equipment" means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources. "Fertilizer" means any product or combination of products that contain one or more of the elements nitrogen, phosphorus, and potassium for use as a plant nutrient. "Food resources" means all commodities and products (simple, mixed, or compound), or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. "Food resources" also means potable water packaged in commercially marketable containers, all starches, sugars, vegetable and animal or marine fats and oils, seed, cotton, hemp, and flax fiber, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product. "Food resource facilities" means plants, machinery, vehicles (including on farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).
Secretary of Energy	All forms of energy	"Energy" means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquefaction, and coal gasification), solar, wind, other types of renewable energy, atomic energy, and the production, conservation, use, control, and distribution (including pipelines) of all of these forms of energy.
Secretary of Health and Human Services	Health resources	"Health resources" means drugs, biological products, medical devices, materials, facilities, health supplies, services and equipment required to diagnose, mitigate or prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.

Cabinet Secretary	Delegated Area of Authority in E.O. 13603[a]	Definitions in E.O. 13603[b]
Secretary of Transportation	All forms of civil transportation	"Civil transportation" includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. "Civil transportation" also shall include direction, control, and coordination of civil transportation capacity regardless of ownership. "Civil transportation" shall not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly.
Secretary of Defense	Water resources	"Water resources" means all usable water, from all sources, within the jurisdiction of the United States, that can be managed, controlled, and allocated to meet emergency requirements, except "water resources" does not include usable water that qualifies as "food resources."
Secretary of Commerce	All other materials, services, and facilities, including construction materials	Materials, services, and facilities are all defined in statute; see 50 U.S.C. §4552(13), (16), and (8), respectively.

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

Notes:

a. See Section 201(a)(1) to (6) of E.O. 13603.

b. These definitions are found in Section 802 of E.O. 13603.

Table A-4. Chronology of Laws Reauthorizing the Defense Production Act of 1950

Public Law and Statutes at Large Citation, and Date of Enactment	General Expiration Date[a]
P.L. 81-774, 64 Stat. 798, September 8, 1950	June 30, 1951
P.L. 82-69, 65 Stat. 110, June 30, 1951	July 31, 1951
P.L. 82-96, 65 Stat. 131, July 31 1951	June 30, 1952
P.L. 82-429, 66 Stat. 296, June 30, 1952	June 30, 1953
P.L. 83-95, 67 Stat. 129, June 30, 1953[b]	June 30, 1955[b]
P.L. 84-119, 69 Stat. 225, June 30, 1955	July 31, 1955
P.L. 84-295, 69 Stat. 580, August 9, 1955	June 30, 1956
P.L. 84-632, 70 Stat. 408, June 29, 1956	June 30, 1958
P.L. 85-471, 72 Stat. 241, June 28, 1958	June 30, 1960
P.L. 86-560, 74 Stat. 282, June 30, 1960	June 30, 1962
P.L. 87-505, 76 Stat. 112, June 28, 1962	June 30, 1964
P.L. 88-343, 78 Stat. 235, June 30, 1964	June 30, 1966
P.L. 89-482, 80 Stat. 235, June 30, 1966	June 30, 1968
P.L. 90-370, 82 Stat. 279, July1, 1968	June 30, 1970
P.L. 91-300, 84 Stat. 367, June 30, 1970	July 30, 1970
P.L. 91-371, 84 Stat. 694, August 1, 1970	August 15, 1970
P.L. 91-379, 84 Stat. 796, August 15, 1970	June 30, 1972
P.L. 92-325, 86 Stat. 390, June 30, 1972	June 30, 1974
P.L. 93-323, 88 Stat. 280, June 30, 1974	July 30, 1974
P.L. 93-367, 88 Stat. 419, August 7, 1974	September 30, 1974
P.L. 93-426, 88 Stat. 1166, September 30, 1974	June 30, 1975
P.L. 94-42, 89 Stat. 232, June 28, 1975	September 30, 1975
P.L. 94-100, 89 Stat. 483, October 1, 1975	November 30, 1975
P.L. 94-152, 89 Stat. 810, December 16, 1975	September 30, 1977
P.L. 95-37, 91 Stat. 178, June 1, 1977	September 30, 1979
P.L. 96-77, 93 Stat. 588, September 29, 1979	January 28, 1980
P.L. 96-188, 94 Stat. 3, January 28, 1980	March 28, 1980
P.L. 96-225, 94 Stat. 310, April 3, 1980	May 27, 1980
P.L. 96-250, 94 Stat. 371, May 26, 1980	August 27, 1980
P.L. 96-294, 94 Stat. 611, June 30, 1980	September 30, 1981
P.L. 97-47, 95 Stat. 954, September 30, 1981	September 30, 1982
P.L. 97-336, 96 Stat. 1630, October 15, 1982	March 31, 1983
P.L. 98-12, 97 Stat. 53, March 29, 1983	September 30, 1983
P.L. 98-181, 97 Stat. 1267, November 30, 1983	March 30, 1984
P.L. 98-265, 98 Stat. 149, April 17, 1984	September 30, 1986
P.L. 99-441, 100 Stat. 1117, October 3, 1986	September 30, 1989

Public Law and Statutes at Large Citation, and Date of Enactment	General Expiration Date[a]
P.L. 101-137, 103 Stat. 824, November 3, 1989	August 10, 1990
P.L. 101-351, 104 Stat. 404, August 9, 1990	September 30, 1990
P.L. 101-407, 104 Stat. 882, October 4, 1990	October 5, 1990
P.L. 101-411, 104 Stat. 893, October 6, 1990	October 20, 1990
P.L. 102-99, 105 Stat. 487, August 17, 1991	September 30, 1991[c]
P.L. 102-193, 105 Stat. 1593, December 6, 1991	March 1, 1992
P.L. 102-558, 106 Stat. 4198, October 28, 1992	September 30, 1995
P.L. 104-64, 109 Stat. 689, December 18, 1995	September 30, 1998
P.L. 105-261, 112 Stat. 2137, October 17, 1998	September 30, 1999
P.L. 106-65, 113 Stat. 769, October 5, 1999	September 30, 2000
P.L. 106-363, 114 Stat. 1407, October 27, 2000	September 30, 2001
P.L. 107-47, 115 Stat. 260, October 5, 2001	September 30, 2003
P.L. 108-195, 117 Stat. 2892, December 17, 2003	September 30, 2008
P.L. 110-367, 122 Stat. 4026, October 8, 2008	September 30, 2009
P.L. 111-67, 123 Stat. 2006, September 30, 2009	September 30, 2014
P.L. 113-172, September 26, 2014	September 30, 2019
P.L. 115-232, August 13, 2018	September 30, 2025

Source: CRS.

Notes: This table does not include all laws that amended the DPA, only those that altered the termination date of the act, currently codified at 50 U.S.C. §4564, Section 717 of the DPA.

a. Not all provisions of the DPA may have expired on each given date, as the law has frequently offered an evolving set of exceptions to the termination of DPA authorities. For example, currently the majority of DPA authorities will terminate on September 30, 2025, with the exception of four sections.

b. P.L. 83-95 permitted the termination of Titles 2 and 6 as of June 30, 1953, and Titles IV and V to terminate as of April 30, 1953.

c. The termination of authorization from October 20, 1990, to August 17, 1991, is the longest period on record since inception. However, in Section 7 of P.L. 102-99, Congress set the effective date of the passage to October 20, 1990, thus technically authorizing the DPA through this time period.

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Acknowledgments

This CRS Report In was originally co-authored by former CRS Specialist in Defense Acquisition Moshe Schwartz.

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