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# The Defense Production Act of 1950 (DPA)

## Overview

### What is the DPA?

The Defense Production Act of 1950 (DPA, 50 U.S.C. Appx § 2061 et seq.) confers upon the President a broad set of authorities to influence domestic industry in the interest of national defense. These authorities are primarily used by the Department of Defense (DOD) to enhance and support U.S. military preparedness and capabilities. They are also used across the federal government to improve domestic preparedness, response, and recovery from natural hazards, terrorist attacks, and other national emergencies.

“...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.” DPA, 50 U.S.C. Appx. § 2062(a)(1)

### History of the DPA

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. The original DPA contained seven separate titles, but four of the seven titles (Titles II, IV, V, and VI) terminated in 1953 when Congress allowed them to lapse. These terminated titles related to requisitioning materials and property, rationing consumer goods, fixing wage and price ceilings, settling labor disputes, and controlling consumer credit.

Existing DPA authorities are largely tied to the definition of *national defense* (§702(14)), 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. Since original enactment, Congress has gradually expanded the scope of the definition of national defense to include homeland security related activities.

Congress has granted most DPA authorities directly to the President. The President, in turn, has historically delegated these authorities to department and agency heads through memoranda or Executive Order. Most recently, President Obama updated and issued Executive Order 13603, *National Defense Resource Preparedness*, in 2012.

## Key Provisions of the DPA

### Title I: Priority Contracts

Priority contract authority (§101(a)) allows delegated federal agencies to prioritize (or “rate”) contracts for critical materials, equipment, and services produced in the private market. Prioritized contracts must be fulfilled before other competing interests to ensure timely availability of goods for the national defense. In executing a prioritized contract, 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.

### Title III: Expansion of Productive Capacity

Title III authorities can be used to provide financial incentives to develop, maintain, modernize, restore, and expand the production capacity of domestic sources for critical components, critical technology items, materials, and industrial resources essential for the national defense. These authorities (§303) include, but are not limited to:

- purchasing or making purchase commitments of industrial resources or critical technology items;
- making subsidized payments for domestically produced materials; and
- installing and purchasing equipment for industrial facilities to expand their productive capacity.

Available incentives also include government direct loans and loan guarantees, though these authorities have not been used in recent decades.

### Title VII: General Provisions

Title VII contains an assortment of provisions that clarify how DPA authorities can be used and set out key definitions. Title VII also establishes the Defense Production Act Committee (DPAC), an interagency body created to advise the President regarding the effective use of DPA authorities. The DPAC is co-chaired by the Secretaries of Defense and Homeland Security. Title VII also provides two important authorities that are permanently authorized in statute. They are: §721, the so-called Exon-Florio Amendment, which gives the President and the Committee on Foreign Investment in the United States (CFIUS) review authority over certain corporate acquisition activities; and §708, which provides for the establishment of voluntary agreements in the private sector in the interest of the national defense.

## Examples of Use

### Title I: Priority Contracts

In a typical year, DOD will assign a DPA priority to more than 300,000 contracts, representing more than 20% of the nearly 1.5 million contracts reported by DOD for FY2012. For example, DOD has used it to support the Integrated Ballistic Missile Defense System and Mine Resistant Ambush Protected (MRAP) Vehicles programs. Less frequently, the priority authority has been used for homeland security issues. Examples of the use of priority contracts include the FBI Terrorist Screening Center program, the U.S. Army Corps of Engineers New Orleans flood protection system, and FEMA language translation services in the aftermath of Hurricane Sandy.

### Title III: Expansion of Productive Capacity

Though Title III authorities may be used by a wide variety of federal agencies, DOD manages the only active Title III contracts. Current Title III projects cost an average of approximately \$22 million per project. Examples of projects include a “Lithium Ion Space Battery Production Initiative” and a “Lightweight Small Caliber Ammunition Production Initiative.” More controversially, DOD has also recently initiated projects to develop advanced drop-in (useable without modification) biofuels.

### Title VII: General Provisions

**Voluntary Agreements:** The Maritime Administration of the Department of Transportation manages the only current such agreements established under the DPA, the Voluntary Intermodal Sealift Agreement (“VISA”) and the Voluntary Tanker Agreement. These agreements help ensure that the maritime industry can respond to the mobilization and transportation requirements of DOD.

**CFIUS Exon-Florio:** One example of a potential merger that prompted CFIUS concern is the proposed 2013 acquisition of Smithfield Food Inc. by China's Shuanghui International Holdings Ltd. Smithfield Foods is the world's leading vertically integrated pork processor and pork producer. Another example was the proposed 2006 acquisition of six U.S. commercial port operations of the British-owned Peninsular and Oriental Steam Navigation Company (P&O) in six U.S. ports by Dubai Ports World (DP World).

### Future Reauthorization of the DPA

Unless reauthorized by Congress, most DPA authorities will expire on September 30, 2014 (§717 of the DPA). As of November 4, 2013; no legislation has been introduced to reauthorize the DPA, though the committees of jurisdiction in both chambers (House Financial Services and Senate Banking) have held hearings on the subject.

Since original passage in 1950, Congress has reauthorized the DPA 51 times. Frequently, Congress has reauthorized the DPA for a limited period, such as a year, without amendment. In other circumstances, Congress has

reauthorized the law for several years while also amending the other provisions of the law. Reauthorizations typically are presented as discrete bills, though on occasion the DPA has been reauthorized through a provision in a larger legislative vehicle like the National Defense Authorization Act. The last reauthorization of the DPA occurred in 2009 (P.L. 111-67) as a stand-alone bill that made several changes to existing authorities.

**Figure 1. Federal Agencies with Delegated DPA Authority**



Source. [www.acq.osd.mil/mibp/dpac.html](http://www.acq.osd.mil/mibp/dpac.html)

If the DPA expires, Title I contracts or Title III projects created with DPA authorities prior to September 30, 2014 would still be executed until their completion. In conjunction with or separate from a reauthorization bill, Congress could amend the DPA in order to extend, expand, restrict, or otherwise clarify the powers granted to the President in the DPA.

### More Information

For comprehensive analysis of the DPA, see CRS Report R43118, *The Defense Production Act of 1950: History, Authorities, and Reauthorization*, by Jared T. Brown and Daniel H. Else. Additional information on CFIUS is available in CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*, by James K. Jackson. For more on DOD development of biofuels, see CRS Report R42859, *DOD Alternative Fuels: Policy, Initiatives and Legislative Activity*, by Katherine Blakeley.

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