



Statement of

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Before

Committee on Financial Services

Subcommittee on National Security, Illicit Finance, and International
Financial Institutions

U.S. House of Representatives

Hearing on

**“Mission Critical: Restoring National Security
as the Focus of Defense Production Act
Reauthorization”**

March 12, 2024

Congressional Research Service

<https://crsreports.congress.gov>

TE10092

Introduction

Chairman Luetkemeyer, Ranking Member Beatty, and Members of the subcommittee, thank you for the opportunity to testify before you. My name is Luke Nicastro, and I am an analyst in defense policy at the Congressional Research Service (CRS). CRS provides Congress with analysis that is authoritative, confidential, objective, and nonpartisan. Any arguments presented in my written or oral testimony are provided for the purposes of informing Congress, not to advocate for a particular policy approach or outcome.

My testimony today will focus on the purpose, history, and current authorities of the Defense Production Act of 1950 (DPA). I will also discuss several issues relating to the DPA that Congress may face.

Purpose of the DPA

The Defense Production Act of 1950 (P.L. 81-774; codified as 50 U.S.C. §§4501 *et seq.*), provides the President with an array of authorities to “shape national defense preparedness programs and to take appropriate steps to maintain and enhance the domestic industrial base.”¹ Over the past 74 years, successive administrations have used the DPA as a tool to manage the nation’s defense-related productive capacity, invoking its authorities to increase the domestic supply of goods and materials.

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

History of the DPA

Legislative Development

The DPA was enacted in September 1950 to enable the Truman Administration to respond to the industrial and economic requirements of the Korean War.² In addition to the three titles identified above, the Act originally included four additional titles that provided the President with broader authorities to manage the domestic economy, including the power to requisition property, set price and wage ceilings, settle labor disputes, and control credit (these were allowed to lapse as the Korean War drew to a close).³ Because of its economic focus, the DPA fell under the jurisdiction of what were then the House and

¹ 50 U.S.C. §4502.

² Many of the DPA’s provisions were modelled on similar laws in effect during World War II—particularly the War Powers Acts of 1941 (P.L. 77-354) and 1942 (P.L. 77-507). For contemporaneous debate surrounding the DPA’s passage, see U.S. Senate, *Hearings on S. 3936 Before the Committee on Banking and Currency - July 24, 25, and 26, 1950* (Washington: Government Printing Office, 1950).

³ The seven original Titles of the Act were: Title I (Priorities and Allocations); Title II (Authority to Requisition); Title III (Expansion of Productive Capacity and Supply); Title IV (Price and Wage Stabilization); Title V (Settlement of Labor Disputes); Title VI (Control of Consumer and Real Estate Credit); and Title VII (General Provisions). Titles IV and V lapsed on April 30, 1953, and Titles II and VI lapsed on June 30, 1953, pursuant to Section 11 of the Defense Production Act Amendments of 1953 (P.L. 83-95).

Senate Committees on Banking and Currency—now the House Financial Services Committee and the Senate Committee on Banking, Housing, and Urban Affairs, respectively—which have retained jurisdiction through the present day.⁴

Since the legislation’s initial enactment, most of the DPA has been subject to a ‘sunset’ clause, requiring periodic re-authorization by Congress to retain effect.⁵ Congress has re-authorized the DPA dozens of times, most recently in 2018 (without congressional action, its expiring provisions will terminate on September 30, 2025).⁶

In addition to reauthorizing the DPA, Congress has also amended many of its provisions. Legislative changes to DPA authorities have included:

- Broadening the definition of *national defense* (and thus, the purposes for which DPA authorities may be used);⁷
- Designating *energy* as a *strategic and critical material* subject to Title I authorities;⁸
- Changing eligibility for Title III assistance;⁹ and
- Changing the way Title III assistance is funded, including by establishing and modifying the Defense Production Act Fund (DPA Fund).¹⁰

Congress has also enacted numerous modifications to Title III reporting, notification, and authorization requirements, and has used Title VII to codify other industrial base-related authorities (for example, those associated with the Committee on Foreign Investment in the United States, or CFIUS).¹¹

Executive Application

The executive branch’s use of DPA authorities has also changed over time. DPA authorities saw their most extensive application between 1950 and 1953, and were credited by some policymakers for contributing

⁴ The DPA also created a Joint Committee on Defense Production, which was composed of Members from the standing committees of jurisdiction. This Committee ceased operating in 1977 (the last appropriation for salaries and expenses was made for FY1978, in P.L. 94-440), and its authorizing provision was repealed in 1992 (Section 153 of P.L. 102-558).

⁵ 50 U.S.C. §4564.

⁶ The most recent reauthorization was enacted through Section 1791 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232).

⁷ As originally enacted, the DPA defined *national defense* in the following manner: “The term “national defense” means the operations and activities of the armed forces, the Atomic Energy Commission, or any other Government department or agency directly or indirectly concerned with the national defense, or operations or activities in connection with the Mutual Defense Assistance Act of 1949, as amended.” By 1992, the definition (as enacted by P.L. 102-558) read: “The term ‘national defense’ means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity.” In 1994, P.L. 103-337 added “emergency preparedness,” and in 2003, P.L. 108-195 added “critical infrastructure protection and restoration.” The most recent amendment to this definition was made in 2009, when P.L. 111-67 added “critical infrastructure assistance to any foreign nation” and “homeland security.” See “Amendments” section of 50 U.S.C. §4552.

⁸ Section 103 of the Defense Production Act Amendments of 1980 (P.L. 96-294) so designated *energy* by enacting what is now 50 U.S.C. §4516.

⁹ Section 1080 of the National Defense Authorization Act for Fiscal Year 2024 (P.L. 118-31) amended 50 U.S.C. §4552 to expand this eligibility to encompass certain businesses in Australia and the United Kingdom (previously, it was restricted to businesses in the United States and Canada).

¹⁰ The modern DPA Fund was established by Section 122 of the Defense Production Act Amendments of 1992 (P.L. 102-558).

¹¹ See, for example, 50 U.S.C. §4565. CFIUS is often considered separately from the rest of the DPA, and lies outside of the scope of my testimony. For more information, see CRS In Focus IF10177, *The Committee on Foreign Investment in the United States*, by Cathleen D. Cimino-Isaacs and Karen M. Sutter.

to the nation's productive capacity and economic performance.¹² During this period, the Truman and Eisenhower Administrations established a number of organizations to manage industrial mobilization generally and DPA activities specifically, including the Office of Defense Mobilization, the Defense Production Administration, and the Small Plants Administration.¹³ After the end of the Korean War, executive invocations of the DPA—particularly Title III—decreased, and between the late 1960s and mid-1980s Title III authorities appear to have gone entirely unused.¹⁴ In 1985, the Reagan Administration resumed use of Title III authorities, which have continued through the present.¹⁵ By way of historical illustration, the number of Title III projects reported as active by DOD—the largest user of Title III authorities—was 4 in 1994, 37 in 2013, and 56 in 2024.¹⁶

The Department of Defense is the executive department most commonly associated with the DPA, and has been consistently involved in the majority of both Title I and Title III actions.¹⁷ However, successive presidential administrations have delegated DPA-related roles and responsibilities to a variety of executive departments and agencies, including the Departments of Commerce, Energy, Health and Human Services, Homeland Security, and others. The current pattern of delegation was largely established by Executive Order 13603, which was issued in March 2012.¹⁸

Beginning in 2020, the number and variety of DPA actions appear to have increased significantly. The Trump and Biden Administrations used Title I and Title III authorities extensively to respond to the COVID-19 pandemic, including through the prioritization of vaccine-related contracts and the provision of financial assistance and incentives to domestic producers of medical supplies.¹⁹ The Biden Administration has also used Title III authorities to respond to the 2022 Russian invasion of Ukraine (through assistance to munitions and strategic/critical materials producers), as well as to accomplish other policy priorities such as investing in clean energy technologies and expanding the production of strategic/critical materials.²⁰

Another difference between pre- and post-COVID-19 uses of the DPA may be found in the funds available for DPA activities. Over the ten fiscal years from FY2010 through FY2019, Congress appropriated approximately \$952 million to the DPA Fund, which pays for Title III activities. Over the

¹² See, for instance, the May 21, 1953 testimony of Arthur Flemming (director of the Office of Defense Mobilization) before the House Committee on Banking and Currency. House of Representatives, "Hearings Before the Committee on Banking and Currency (May 21, 22, 25, 26, 27, 28, June 1 and 2, 1953)." (Washington D.C.: Government Printing Office, 1953), pp. 7-11.

¹³ *Ibid.*, p. 7.

¹⁴ See House Committee on Banking, Finance, and Urban Affairs' Subcommittee on Economic Stabilization, "Briefing on the Defense Production Act of 1950 (March 2, 1983)." (Washington, D.C.: Government Printing Office, 1983), pp. 5 and 15-16.

¹⁵ U.S. General Accounting Office, "Defense Production Act: Foreign Involvement and Materials Qualification in the Title III Program," March 1994, pp. 1 and 4.

¹⁶ The 1994 figure comes from GAO; the 2013 figure comes from testimony by Frank Kendall, then-Under Secretary for Acquisition, Technology, and Logistics, given before the Senate Committee on Banking, Housing, and Urban Affairs on July 16, 2013; and the 2024 figure comes from information provided to the author by DOD's Manufacturing Capability Expansion and Investment Prioritization office. GAO, "Defense Production Act: Foreign Involvement in Title III;" Senate Committee on Banking, Housing, and Urban Affairs, "Oversight of the Defense Production Act: Issues and Opportunities for Reauthorization," July 16, 2023; and DOD, "DPA Title III Status of Funds," February 6, 2024.

¹⁷ The Secretary of Defense is also designated by E.O. 13603 as the DPA Fund manager. Executive Order 13603 of March 16, 2012, available online at <https://www.federalregister.gov/documents/2012/03/22/2012-7019/national-defense-resources-preparedness>.

¹⁸ Executive Order 13603 of March 16, 2012, available online at <https://www.federalregister.gov/documents/2012/03/22/2012-7019/national-defense-resources-preparedness>.

¹⁹ Government Accountability Office, *COVID-19: Agencies Are Taking Steps to Improve Future Use of Defense Production Act Authorities*, December 2021. Available online at <https://www.gao.gov/assets/gao-22105380.pdf>.

²⁰ DOD, "DPA Title III Status of Funds," February 6, 2024; and Department of Energy, "President Biden Invokes DPA to Accelerate Domestic Manufacturing of Clean Energy," June 6, 2022, available online at <https://www.energy.gov/articles/president-biden-invokes-defense-production-act-accelerate-domestic-manufacturing-clean>.

four fiscal years from FY2020 through FY2023, Congress has provided at least \$3.1 billion to the DPA Fund for Title III purposes.²¹ These funds were provided through annual defense appropriations acts, as well as other legislation, including the CARES Act of 2020 (P.L. 116-136), the Additional Ukraine Supplemental Appropriations Act, 2022 (P.L. 117-128), and the Inflation Reduction Act of 2022 (P.L. 117-169). The use of supplemental appropriations to fund the DPA represents a change from congressional practice between FY2010 and FY2019, when all DPA funds were provided through annual defense appropriations acts.

In addition, the American Rescue Plan Act of 2021 (P.L. 117-2) made \$10 billion available for use of all DPA authorities (not just Title III) for the “purchase, production...or distribution of medical supplies and equipment... related to combating the COVID-19 pandemic.”²² These funds do not appear to have been provided to the DPA Fund in the same manner as other DPA appropriations discussed in my testimony; additionally, after September 30, 2022, the funds could be used for non-DPA pandemic response efforts.²³ The Department of Health and Human Services appears to have been designated to administer these funds.²⁴

Current DPA Authorities

Title I

Title I of the DPA authorizes the President to:

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

The use of this priorities and allocations authority is coordinated by an interagency body known as the Defense Production Act Committee (DPAC), and implemented by a body of regulations known collectively as the Federal Priorities and Allocations System (FPAS).²⁶ The regulation most frequently

²¹ CRS analysis of annual and supplemental appropriations acts. The figure for FY2010-FY2019 includes appropriations made as part of the annual defense appropriations acts for those years. The figure for FY2020-FY2023 includes appropriations made as part of the annual defense appropriations acts for FY2020 (approximately \$64 million), FY2021 (approximately \$175 million), FY2022 (approximately \$388 million), and FY2023 approximately (\$373 million), as well as the CARES Act of 2020 (\$1 billion), the Additional Ukraine Supplemental Appropriations Act of 2022 (\$600 million), and the Inflation Reduction Act of 2022 (\$500 million).

²² American Rescue Plan Act of 2021 (P.L. 117-2)

²³ “After September 30, 2022, amounts appropriated in subsection (a) may be used for any activity authorized by paragraph (1), or any other activity necessary to meet critical public health needs of the United States, with respect to any pathogen that the President has determined has the potential for creating a public health emergency.” Ibid.

²⁴ According to GAO, as of December 2021, HHS had planned to spend at least \$6 billion of these funds on projects to expand the production of vaccine supplies (\$3.4 billion), personal protective equipment (\$1.4 billion), and testing capacity (\$1 billion), among other things. See Government Accountability Office, *COVID-19: Agencies Are Taking Steps to Improve Future Use of Defense Production Act Authorities*, December 2021. Available online at <https://www.gao.gov/assets/gao-22105380.pdf>, pp. 15-16.

²⁵ 50 U.S.C. §4511. According to DOD, the allocations authority has not been invoked since 1974, although it remains the basis of the Civil Reserve Air Fleet (CRAF) program, which was first established in 1951.

²⁶ The DPAC is established by 50 U.S.C. §4567 (a provision of Title VII). Current DPAC membership includes the Secretaries of Agriculture, Commerce, Defense, Energy, Homeland Security, Health and Human Services, the Interior, Labor, Transportation, (continued...)

used is the Defense Priorities and Allocations System (DPAS), which is administered by the Department of Commerce’s Bureau of Industry and Security and is used to support programs managed by the Department of Defense, Department of Energy, Department of Homeland Security, and other executive departments and agencies.²⁷ DPAS enables the U.S. government to place priority ratings and specify delivery dates on contracts and purchase orders with suppliers.²⁸ DOD is the “primary user” of DPAS, using the system to place an average of 300,000 rated orders with industry annually.²⁹

Although most uses of Title I authorities are handled through DPAS, there are also systems for the exercise of priorities and allocations authorities in other areas.³⁰ Within the past decade, many of the non-DOD uses of Title I have occurred in the context of public health. As part of its COVID-19 response, for instance, the Department of Health and Human Services reported issuing 70 priority ratings for health-related purposes (including contracts for ventilators, personal protective equipment, vaccines, and diagnostics).³¹ Some other non-DOD uses of Title I authorities have occurred in the context of disaster relief, or relieving commercial shortages of goods and materials judged to be important (for example, baby formula and natural gas).³²

Title III

Title III of the DPA authorizes the President to provide financial assistance to private industry in order to “create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense.”³³ This assistance may take the form of loan guarantees, loans, purchases, purchase commitments, subsidy payments, or related aid provided directly to eligible business concerns (i.e., businesses in the United States, Canada, Australia, or the United Kingdom that meet the definition of *domestic sources* under 50 U.S.C. §4552).³⁴ Such assistance may be paid for by monies appropriated by Congress to the DPA Fund. Appropriations made to the DPA Fund generally remain available to the President until expended, but the fund’s unobligated balance at the end of each fiscal year may not exceed \$750 million.³⁵

and the Treasury, as well as the Attorney General, the Directors of National Intelligence and the Central Intelligence Agency, the Administrators of General Services and the National Aeronautics and Space Administration, and the Chair of the Council of Economic Advisors. Federal Emergency Management Agency, *The 2022 Defense Production Act Committee Report*, August 1, 2023.

²⁷ The DPAS is implemented by 15 CFR Part 700.

²⁸ DPAS allows for two different priority ratings—DX and DO. All DX-rated orders have equal priority with each other and take precedence over both DO-rated and unrated orders; similarly, all DO-rated orders have equal priority with each other and take precedence over unrated orders. In the event of conflict between orders with equal priority, a procedure known as Special Priorities Assistance may be necessary to resolve the issue. See 15 CFR 700.11-700.14 and 15 CFR 700.50-700.58.

²⁹ By way of comparison, the Department of Homeland Security reported placing 120 rated orders with industry in 2022. FEMA, *The 2022 Defense Production Act Committee Report*, pp. III and 6.

³⁰ Examples include the Agricultural Priorities and Allocations System, or APAS, the Health Resources Priorities and Allocations System, or HRPAS, etc. Ibid.

³¹ “HHS DPA Authorities,” Department of Commerce, Bureau of Industry and Security, June 2022. Available online at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.bis.doc.gov/index.php/documents/2022-update-conference/3066-hrpas-slides-bis-2022-conference-v5/file>.

³² For more information, see CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*, by Alexandra G. Neenan and Luke A. Nicastro.

³³ 50 U.S.C. §4533.

³⁴ Loan guarantees are provided for by 50 U.S.C. §4531 (also referred to as Section 301), loans by 50 U.S.C. §4532 (Section 302), and other means of assistance by 50 U.S.C. §4533 (Section 303).

³⁵ The current limit of \$750 million was established in 2009 by P.L. 111-67. Congress may also make appropriations that are available only for particular periods of time (for example, the appropriations made to the DPA Fund via the Inflation Reduction Act of 2022 (P.L. 117-69) expire at the end of FY2024). 50 U.S.C. §4534.

Before providing Title III assistance, the President must certify through a written Presidential Determination (PD) that:

- (A) the industrial resource, material, or critical technology item is essential to the national defense;
- (B) without Presidential action... United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and
- (C) purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need.³⁶

The President must also notify the congressional committees of jurisdiction of a shortfall prior to taking Title III action. If an action proposed under an existing PD would cause the total value of all actions taken under that PD to exceed \$50 million, the President must have prior congressional authorization, and the action may not be taken until 30 days after the committees of jurisdiction have been notified in writing.³⁷

The above certification, notification, and authorization requirements may be waived during a period of national emergency declared by Congress or the President, or if the President determines that “action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.”³⁸

E.O. 13603 provides for the delegation of Title III authorities (other than those explicitly identified in statute as nondelegable) to “the head of each agency engaged in procurement for national defense.”³⁹

As with Title I, DOD is involved in a large number of Title III uses. On a day-to-day basis, DOD’s Title III activities are overseen by the Manufacturing Capability Expansion and Investment Prioritization (MCEIP) office, which reports to the Assistant Secretary of Defense for Industrial Base Policy (ASD [IBP]). According to MCEIP, Title III assistance is intended to: 1) sustain critical production; 2) commercialize research and development efforts; and 3) scale emerging technologies. Current Title III projects include investments in “select kinetic capabilities, microelectronics, castings and forgings, critical materials, and batteries and energy storage.”⁴⁰ According to DOD, PDs or waivers are currently active for nineteen distinct defense-related industrial/technology areas.⁴¹ As of February 2024, DOD reported having obligated approximately \$683.4 million across 43 separate Title III projects for FY2023 and \$352.6 million across 13 separate Title III projects for FY2024.⁴²

In addition to DOD, other executive departments and agencies also administer Title III projects. For example, in June 2022 the Biden Administration issued a PD allowing the Department of Energy (DOE) to execute Title III projects relating to solar energy, transformers and other electrical grid components,

³⁶ 50 U.S.C. §4533(a)(5).

³⁷ 50 U.S.C. §4533(a)(6).

³⁸ 50 U.S.C. §4533(a)(7).

³⁹ Section 801(h) of E.O. 13603 includes “the heads of the Departments of State, Justice, the Interior, and Homeland Security, the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Aeronautics and Space Administration, the General Services Administration, and all other agencies with authority delegated under section 201 of this order.” Under Section 201 of the executive order, the additional agencies are the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, and Transportation. In addition, E.O. 13911 of March 27, 2020 delegated certain Title III authorities to the Secretaries of Health and Human Services and Homeland Security for the purposes of COVID-19 response.

⁴⁰ MCEIP, “Defense Production Act Title III,” January 2024.

⁴¹ Ibid.

⁴² DOD, “DPA Title III Status of Funds,” February 6, 2024.

heat pumps, insulation, and electrolyzers, fuel cells, and platinum group metals.⁴³ According to DOE, activities conducted under this PD will be funded by \$250 million of the \$500 million appropriated to the DPA Fund by the Inflation Reduction Act of 2022.⁴⁴

Title VII

Title VII contains various authorities and provisions pertaining to the DPA as a whole, including, *inter alia*, definitions of key terms, the authority to obtain information for industrial base assessments, the authority to form voluntary agreements with and among private businesses, the authority to establish a reserve of industry executives able to fill senior government positions in an emergency, a standing authorization for certain DPA appropriations, a provision for the termination of most DPA provisions, the authority to review and block certain transactions involving foreign investment in U.S. companies, and the establishment of a Defense Production Act Committee to coordinate the use of Title I authorities. More information on selected provisions is provided below.

Definitions of Key Terms

Title VII (50 U.S.C. §4552) defines seventeen key terms, the most significant of which are *national defense*, because this determines the purposes for which DPA authorities may be used, and *domestic source*, because this determines which businesses are eligible for Title III assistance (see inset textbox below for definitions).

National Defense and Domestic Source, as defined by 50 U.S.C. §4552

National Defense. “The term “national defense” means 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.”

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

50 U.S.C. §4552 also establishes additional restrictions on Title III assistance to Australia or UK-based businesses, stating that such businesses may be treated as domestic sources only for “national defense matters” that cannot be fully addressed with U.S. or Canada-based businesses.

⁴³ Department of Energy, “President Biden Invokes DPA to Accelerate Domestic Manufacturing of Clean Energy,” June 6, 2022, available online at <https://www.energy.gov/articles/president-biden-invokes-defense-production-act-accelerate-domestic-manufacturing-clean>.

⁴⁴ This has been the subject of some political controversy; see discussion in the “Overseeing Executive Branch Use” section below. Ibid.

Industrial Base Assessments

Title VII (50 U.S.C. §4555) authorizes the President, by regulation, subpoena, or otherwise, to

obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this chapter and the regulations or orders issued thereunder. The authority of the President under this section includes the authority to obtain information in order to perform industry studies assessing the capabilities of the United States industrial base to support the national defense.⁴⁵

This authority is most commonly associated with the conduct of surveys and investigations of the U.S. defense industrial base, often referred to as “industrial base assessments.”⁴⁶

Voluntary Agreements

Title VII (50 U.S.C. §4558) 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.” To protect such representatives from potential legal sanction, this section of the DPA establishes a special legal defense for parties to voluntary agreements whose actions may otherwise violate antitrust or contract statutes.⁴⁷

Nucleus Executive Reserve

Title VII (50 U.S.C. §4560) authorizes the President to create a volunteer body of industry executives known as the “Nucleus Executive Reserve” (also referred to as the National Defense Executive Reserve), who could be trained and appointed to fill executive positions within the federal government in the event of an emergency requiring their employment.

Standing Authorization of DPA Appropriations

Title VII (50 U.S.C. §4561) authorizes \$133 million in appropriations to carry out the DPA for each fiscal year, along with an additional \$117 million to carry out Title III activities for FY2020, FY2021, FY2022, FY2023, and FY2024.

Termination of the DPA

Title VII (50 U.S.C. §4564) provides that all DPA provisions not explicitly excepted will terminate on September 30, 2025.⁴⁸

⁴⁵ 50 U.S.C. §4555.

⁴⁶ For some examples, see Department of Commerce, “Industrial Base Assessments,” available online at <https://www.bis.doc.gov/index.php/other-areas/office-of-technology-evaluation-ote/industrial-base-assessments>.

⁴⁷ One example of such a voluntary agreement is the Voluntary Intermodal Sealift Agreement (VISA), an agreement with maritime shipping firms intended to provide the U.S. military with rapid mobilization, deployment, and transportation capabilities in a crisis. For more information, see discussion in CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*, p. 15.

⁴⁸ The provisions that are exempt from termination are 50 U.S.C. §4514 (which prohibits both the imposition of wage or price controls without prior congressional authorization and the mandatory compliance of any private person to assist in the production of chemical or biological warfare capabilities), 50 U.S.C. §4557 (which grants persons limited immunity from liability for complying with DPA-authorized regulations), 50 U.S.C. §4558 (which provides for the establishment of voluntary agreements), (continued...)

Committee on Foreign Investment in the United States

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee tasked with reviewing the national security risks of certain foreign investments in the U.S. economy. Although initially established by executive order and not typically considered of a piece with other DPA provisions, many elements of CFIUS were statutorily enacted via the amendment of Title VII of the DPA, and are thus codified within Chapter 55 of Title 50 (particularly 50 U.S.C. §4565).⁴⁹ For more information, refer to CRS In Focus IF10177, *The Committee on Foreign Investment in the United States* and CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*.

The Defense Production Act Committee

Title VII (50 U.S.C. §4567) establishes the Defense Production Act Committee, an interagency body, to “coordinate and plan for the effective use of the priorities and allocations authorities.”⁵⁰

Issues Facing Congress

Funding the DPA

One issue Congress regularly faces is the question of how much money to appropriate for DPA activities. As noted above, appropriations for DPA activities increased significantly beginning in 2020. Congress may consider whether or not to continue to make appropriations at this elevated level going forward. This decision could hinge on a number of factors, including the range of areas in which Congress assesses DPA uses are desirable or appropriate, as well as Congress’ confidence in the executive’s ability to effectively spend DPA appropriations.

Congress may also assess whether or not to change its appropriations practices, as they pertain to the DPA. If Congress wishes to exercise more control over how the President spends DPA funds, it could write into such appropriations language that designates particular departments or agencies to administer the funds, or that specifies the exact purposes for which the funds may be used. If Congress has concerns about the rate of executive expenditure, it could also provide for the expiration of DPA appropriations (currently, most appropriations to the DPA fund are made as ‘no-year money’). On the other hand, if Congress assesses that current requirements unnecessarily constrain executive action, it could relax or eliminate some funding requirements for Title III actions (such as the stipulation in 50 U.S.C. §4534 that the DPA Fund’s unobligated balance may not exceed \$750 million at the end of each fiscal year).

Overseeing Executive Branch Use of DPA authorities

Another issue facing Congress is how to oversee the executive branch’s use of its DPA authorities. Some commentators and policymakers have argued that some uses of DPA authorities have exceeded the intent of the statute, expanded executive power at the expense of Congress, and harmed the nation’s economic health and national security.⁵¹ Others maintain that the DPA has been used appropriately and productively,

and 50 U.S.C. §4565 (the so-called Exon-Florio Amendment, which gives the President and CFIUS review authority over certain corporate acquisition activities). 50 U.S.C. §4564.

⁴⁹ CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*, pp. 17-18.

⁵⁰ Membership includes “the head of each Federal agency to which the President has delegated authority under this chapter; and the Chairperson of the Council of Economic Advisors.” 50 U.S.C. §4567

⁵¹ For examples of this kind of argument, see Oliver McPherson-Smith, “Manufacturing a Crisis: The Biden Administration’s Abuse of the Defense Production Act,” The America First Policy Institute, January 11, 2024, available online at (continued...)

supporting necessary executive responses to major crises including the COVID-19 pandemic, the 2022 Russian invasion of Ukraine, and climate change.⁵² Still others have argued that, at least in the context of disaster response, the executive branch has not used the DPA expansively enough.⁵³

With respect to oversight of Title I, scrutiny has tended to focus on the unintended consequences of prioritizing non-defense contracts during the COVID-19 pandemic.⁵⁴ For instance, GAO observed in 2021 that the use of Title I authorities had the potential to exacerbate health-related material shortages, and a 2021 journal article—again in the context of COVID-19 response efforts—identified “significant ethical issues at stake in the use of the DPA to abruptly alter pharmaceutical manufacturing, even temporarily.”⁵⁵

As the DPA authority involving the largest expenditures, Title III tends to attract considerable attention from an oversight perspective. One usage that has been subject to acute criticism has been the issuance of a PD authorizing the Department of Energy to spend up to \$250 million on projects aimed at expanding the production of clean energy technologies (see “Title III” section above for more information).⁵⁶

Although Title VII has attracted less scrutiny than the DPA’s other titles, some analysts have criticized its presumed invocation (via E.O. 14110, issued in October 2023) to require certain artificial intelligence developers to share safety test results and related information, arguing that “the administration is bending the law to fit its policy goals.”⁵⁷

<https://americafirstpolicy.com/issues/manufacturing-a-crisis-the-biden-administrations-abuse-of-the-defense-production-act/>; Dominic Pino, “Biden’s Flagrant Abuse of Emergency Powers Must Be Stopped,” *National Review*, June 7, 2022, available online at <https://www.nationalreview.com/2022/06/bidens-flagrant-abuse-of-emergency-powers-must-be-stopped/>; Maiya Clark and Grace Hermanson, “Biden Abuses Executive Authority to Pursue His Environmental Agenda,” The Heritage Foundation, June 21, 2022, available online at <https://www.heritage.org/renewable-energy/commentary/biden-abuses-executive-authority-pursue-his-environmental-agenda>;

⁵² For examples of this kind of argument, see Evergreen Action, “The Defense Production Act Can Be Our Next Major Climate Tool,” June 14, 2023, available online at <https://www.evergreenaction.com/blog/the-defense-production-act>; Robinson Meyer, “Biden’s Climate Goals Rest on a 71-Year-Old Defense Law,” *The Atlantic*, June 8, 2022, available online at <https://www.theatlantic.com/science/archive/2022/06/defense-production-act-biden-climate/661215/>; and Joshua Gotbaum, “Use the Defense Production Act for More than just Ventilators,” Brookings Institution, March 30, 2020, available online at <https://www.brookings.edu/articles/use-the-defense-production-act-for-more-than-just-ventilators/>.

⁵³ Jared Brown, “The Defense Production Act and the Failure to Prepare for Catastrophic Incidents,” *War on the Rocks*, April 14, 2020, available online at <https://warontherocks.com/2020/04/the-defense-production-act-and-the-failure-to-prepare-for-catastrophic-incidents/>.

⁵⁴ One pre-COVID oversight issue involving Title I occurred in early 2001, when decisions by the Clinton and Bush Administrations to use Title I to compel natural gas suppliers to sell their products to California utilities provoked considerable debate, including congressional hearings on the subject. For more information, see United States Senate, *Hearing Before the Committee on Banking, Housing, and Urban Affairs on Review of the Defense Production Act in Relation to the California Energy Crisis – February 9, 2001* (Washington: Government Printing Office, 2002).

⁵⁵ According to GAO: “An HHS official told us that priority ratings were placed on multiple ventilator and N95 respirator contracts. Ventilators and N95 respirators share a common raw material—meltblown fabric, which was in short supply early in the pandemic—and the official said more than 10 companies with priority ratings were trying to obtain this material at the same time. To avoid material shortages, HHS officials worked with the ventilator and N95 companies to identify alternative suppliers and methods for producing meltblown fabric.” GAO, *COVID-19 Agencies Are Taking Steps to Improve Future Use of Defense Production Act Authorities*, December 2021, p. 14, available online at <https://www.gao.gov/assets/gao-22-105380.pdf>; and Gabriella Smith, “The Bioethical Problems in Applying the Defense Production Act to Pharmaceuticals,” *Voices in Bioethics*, Vol. 7 (2021), available online at <https://journals.library.columbia.edu/index.php/bioethics/article/view/8678>

⁵⁶ See footnote 51 for some examples of criticism of this action.

⁵⁷ See Gary J. Schmitt, “The Use and Abuse of the Defense Production Act,” American Enterprise Institute, November 3, 2023. Available online at <https://www.aei.org/social-cultural-and-constitutional-studies/the-use-and-abuse-of-the-defense-production-act/>. The DPA is invoked in Section 4.2 of E.O. 14110. “Executive Order 14110 of October 30, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence),” available online at <https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>.

If Congress were to assess that the executive branch is not using DPA authorities in an effective or appropriate manner, there are a number of possible responses. Congress could consider legislative provisions directing the President and/or Cabinet officials to modify their usage of DPA authorities to conform with congressional priorities (this has been done, for example, through the enactment of provisions in National Defense Authorization Acts).⁵⁸

In overseeing Title III actions specifically, Congress may assess the extent to which its own industrial base objectives and priorities are reflected in the choice of Title III projects pursued by the executive branch. In addition, it may assess the degree to which past Title III projects have successfully created, maintained, or expanded industrial base capabilities critical to national defense. It could also consider whether or not to impose conditions on DPA appropriations to ensure they are being used according to congressional intent, or create additional notification or authorization requirements to constrain the executive's ability to execute Title III projects without congressional involvement or awareness.⁵⁹

More broadly, if Congress were to determine that the existing statutory definitions afford the executive too much or too little latitude, it could amend those definitions (particularly *national defense* and *domestic source*) to encompass broader or narrower usages. And if Congress seeks more information concerning executive branch use of DPA authorities, it could institute additional reporting or notification requirements.

Finally, Congress may assess the efficacy of its own internal approach to overseeing the DPA, particularly given the large role played by both the committees of jurisdiction and the armed services committees. Congress may consider whether or not to pursue additional coordination practices or mechanisms (for example, a joint committee to consider DPA matters existed from 1950 to 1977).⁶⁰

Re-Authorization and Other Amendments

Another issue facing Congress is whether or not re-authorize the expiring provisions of the DPA. Per Title VII (specifically, 50 U.S.C. §4564), most of the DPA's provisions will expire on September 30, 2025, so, to retain effect, Congress would have to consider acting before that date to extend them.

Historically, the Act's re-authorization has served as an occasion to consider other changes to the statute. In addition to the potential legislative changes discussed above, Congress may consider whether or not other amendments to the Act might be needed to align the Act's authorities with Congress's assessment of broader national industrial strategy and objectives. For example, DOD's 2024 National Defense Industrial Strategy (NDIS) states that the United States must "update industrial mobilization authorities and planning to ensure preparedness."⁶¹ Although the NDIS does not provide specific recommendations regarding the DPA, Congress may consider whether to support, reject, or seek to modify DOD's approach to the four priorities the NDIS identifies (these are: resilient supply chains, workforce readiness, flexible

⁵⁸ For example, Sections 848, 852, 9904, and 9907 of the FY2021 NDAA (P.L. 116-283) provided direction to the executive branch concerning the use of DPA authorities.

⁵⁹ As an example of conditions placed on DPA funds, funds appropriated to the DPA Fund via the Inflation Reduction Act of 2022 (P.L. 117-169) expire at the end of FY2024. See discussion in "Funding the DPA" above. Congress recently amended Title III to impose additional requirements for certain Title III actions, for example. See Section 1080 of the FY2024 NDAA (P.L. 118-31).

⁶⁰ See footnote 4.

⁶¹ DOD, "National Defense Industrial Strategy," January 2024, available online at <https://www.businessdefense.gov/docs/ndis/2023-NDIS.pdf>.

acquisition, and economic deterrence), and whether or not changes to the Act may be needed accordingly.⁶² As part of this consideration, Congress could compare the efficacy of DPA actions with

⁶² Although the recommendation to “update industrial mobilization authorities” was made under the “flexible acquisition” priority, DOD has elsewhere identified DPA activities as efforts aligned with the “economic deterrence” priority. See, for example, MCEIP, “Defense Production Act Title III,” January 2024.

other congressionally-funded efforts to strengthen the defense industrial base, such as the Industrial Base Fund and the Manufacturing Technology (or ManTech) program, with an eye toward understanding the comparative advantages of each, considering whether to address any conflicts or redundancies, and, if so, how.

Conclusion

Thank you for the opportunity to testify. I look forward to responding to any questions that you may have. If additional research and analysis related to these issues would be helpful, CRS is prepared to assist.

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