

The Defense Production Act (DPA) and COVID-19: Key Authorities and Policy Considerations

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As the coronavirus (COVID-19) pandemic evolves, the United States faces [drug](#) and [medical supply](#) scarcities due to disrupted [supply chains](#) and increased demand. In response, the President may exercise emergency authorities under the Defense Production Act of 1950 (DPA; [50 U.S.C. §§4501 et seq.](#)) to address supply shortages and economic development impacts. During a [press conference](#) on March 18, 2020, the President indicated that he would invoke the DPA to address domestic [essential goods and materials shortages](#) caused by the pandemic. This Insight considers the various DPA authorities that may be used going forward and explores potential policy considerations for Congress.

For more information on the health and epidemiological aspects of COVID-19, see CRS Report R46219, *Overview of U.S. Domestic Response to Coronavirus Disease 2019 (COVID-19)* and CRS In Focus IF11421, *COVID-19: Global Implications and Responses*.

DPA Provisions and Recent Use

The DPA confers broad presidential authorities to mobilize domestic industry in service of the *national defense*, defined in statute as various military activities and “homeland security, stockpiling, space, and any directly related activity” ([50 U.S.C. §4552](#)) including emergency preparedness activities under the Stafford Act, which has been used for public health emergencies. Many of these authorities are delegated to executive agencies under [Executive Order 13603](#).

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 (1) prioritize and accept government contracts for materials and services, and (2) allocate or control the general distribution of materials, services, and facilities as necessary to promote the national defense. Title I prioritization authorities are regularly utilized by the [Department of Defense](#) (DOD) to acquire critical

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[military capabilities](#) and less frequently by the Department of Homeland Security (DHS) for [disaster response and preparedness](#) needs. The allocations authority has not been invoked since the Cold War, such as to [promote energy development](#) in 1974.

- **Title III: Expansion of Productive Capacity and Supply**, which allows the President to provide economic incentives to secure domestic industrial capabilities essential to meet national defense and homeland security requirements. DPA Title III is specifically intended to “create, maintain, protect, expand, or restore domestic industrial base capabilities” ([50 U.S.C. §4533](#)). Authorized incentives include loans, loan guarantees, direct purchases and purchase commitments, and the authority to procure and install equipment in private industrial facilities. DOD regularly utilizes Title III authorities and operates a standing [DPA Title III program](#) funded by [annual congressional appropriations](#).
- **Title VII: General Provisions**, which includes key definitions and other distinct authorities. These provisions grant the President 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.

For a more in-depth discussion of DPA authorities, see CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*.

DPA Authorities and COVID-19

As the DPA’s definition of national defense encompasses homeland security issues, DPA authorities extend to public health emergencies—prior to the COVID-19 pandemic, however, they had not been employed for such purposes. Following the invocation of DPA by the President, DPA authorities could be employed to address concerns over medical supplies shortages due to the COVID-19 pandemic.

Case Study: Using DPA to Expand Medical Protective Gear Production

As an example of how DPA authorities may be exercised, consider the [availability of personal protective equipment](#) (PPE), such as respirator masks, amid the pandemic. [Reported PPE shortages](#) may be due to significantly increased consumer demand related to the pandemic itself, and supply chain disruptions resulting from [containment measures in China](#) and elsewhere.

Under Title I, the President could prioritize domestic production of PPE to ensure sufficient national stockpiles, and allocate them according to the needs of the emergency. Under Title III, the federal government could use authorized incentives to expand domestic capacity for PPE manufacturing to meet the needs of the emergency. Under Title VII, the President could establish voluntary agreements with private industry—which might normally be subject to anti-trust statutes—to coordinate industry PPE production.

Policy Implications for Congress

Numerous [Members of Congress](#) have [engaged the Administration](#) to advocate for the use of DPA to secure an adequate supply of essential supplies and materials, such as PPE, medical supplies and devices (e.g., ventilators), and diagnostic testing supplies.

The President [declared](#) a national emergency on March 13, 2020. Following the invocation of DPA by the President on March 18, 2020, in addition to Congress's inherent oversight authority, the DPA statute outlines several specific congressional equities:

1. Title I authorities can only be used for wage and price controls if accompanied by a joint resolution of Congress ([50 U.S.C. §4514](#)). This could be applicable, in this case, in the production and sale of PPE, drug treatments or vaccines, or other necessary goods; it would require coordination between the Administration and Congress.
2. Budget authority for Title III direct loans and guarantees must be specifically included in an appropriations act passed by Congress ([50 U.S.C. §4531](#)).
3. Title III projects that cumulatively cost more than \$50 million must be authorized by an act of Congress; the President is required to notify the committees of jurisdiction (the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs), and to provide 30 days for comment ([50 U.S.C. §4533](#)). A large-scale effort to expand outbreak-related production capacity may require sums far greater than \$50 million.

The DPA also confers broad waivers to its Title III requirements:

During a period of national emergency declared by Congress or the President; or upon determination by the President, on a nondelegable basis, that action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability. ([50 U.S.C. §4531\(d\)\(1\)\(B\)](#))

Another area of possible congressional interest is DPA funding, which is appropriated annually. The FY2020 appropriation to the DPA fund was \$64.4 million; the [President's FY2021 budget](#) requested \$182 million for the DPA fund (p. 276). DPA appropriations could also be made as part of a supplemental appropriations package, if the DPA fund is exhausted, and/or to provide resources for other DPA authorities.

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