

Defense Production Act (DPA): Recent Developments in Response to COVID-19

July 27, 2020

The Administration has employed the [Defense Production Act of 1950](#) (DPA) as part of federal countermeasures to the Coronavirus Disease 2019 (COVID-19) pandemic. The DPA confers presidential authorities to mobilize domestic industry in service of the national defense, broadly defined, including emergency preparedness. The DPA includes provisions under Title I to prioritize the acceptance of contracts, and to allocate scarce goods, materials, and services; and under Title III, to provide for the expansion of productive capacity. Title VII provides definitions and other supporting provisions.

This Insight considers recent DPA actions in response to COVID-19 and is intended as a companion to [CRS Insight IN11387](#). See [CRS Report R43767](#) for an in-depth discussion of DPA history and authorities.

Recent DPA Implementation Actions

Since May 12, a number of DPA actions have occurred or been made public:

- [May 12](#): The Federal Emergency Management Agency (FEMA) and the Department of Justice (DOJ) announced a “voluntary agreement” pursuant to Title VII of the DPA to coordinate industry cooperation.
- [May 13](#): FEMA issued its “Emergency Management Priorities and Allocations System” to govern Title I implementation processes.
- [May 18](#): The Food and Drug Administration (FDA) and the Department of Agriculture (USDA) issued a memorandum of understanding (MOU) regarding DPA food security implementation.
- [May 30](#): The Department of Defense (DOD) reversed plans to allocate [approximately 75%](#) of the \$1 billion in DPA Title III funds appropriated for health resources under the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) in response to the pandemic, and instead allocated \$688 million for [defense industrial base investments](#).
- [June 22](#): DOD and the International Development Finance Corporation (DFC) signed an MOU in which the DFC would support lending activities under DOD’s Title III program.

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- July 7: According to Federal Procurement Data System [records](#), FEMA initiated a fourth DPA Title I priority-rated order of N95 respirators from the 3M Company.

In addition, DPA Title III projects facilitated by DOD's [Industrial Policy office](#) were announced:

- [May 12](#): Coordinating with the Department of Health and Human Services (HHS), DOD awarded \$138 million to support COVID-19 vaccine supply chain development.
- [May 28](#): DOD and HHS awarded \$2.2 million to Hollingsworth and Vose Company to increase N95 ventilator and filter production.
- [May 29](#): DOD awarded \$18.45 million for the space-based defense industrial base.
- [June 10](#): DOD awarded \$135 million for the textile, aviation, and shipbuilding defense industrial base.
- [June 16](#): A Title III funding opportunity announcement (FOA) was posted in the System for Award Management (SAM) for space launch services, but withdrawn [on July 1](#).
- [June 19](#): DOD awarded \$187 million for shipbuilding, aviation, and textile defense industrial base.
- [July 10](#): DOD awarded \$84.4 million for the unmanned aerial systems, space, and shipbuilding defense industrial base.
- [July 15](#): A Title III FOA was posted in SAM for upgrading military clothing manufacturing facilities to mitigate workplace COVID-19 transmissibility.
- [July 17](#): DOD awarded \$36.9 million for the aviation and shipbuilding defense industrial base.
- In May and July, the DOJ's COVID-19 Hoarding and Price Gouging Task Force arrested persons in [Staten Island](#) and [Suffolk County](#), New York and [New Jersey](#) for separate actions violating DPA anti-hoarding/price gouging provisions.

These may not be exhaustive of all recent DPA activity, as there is no standing requirement for publishing DPA actions, and no centralized repository where they are collected.

Additional DPA Developments

In addition, other recent developments occurred with DPA relevance:

- On [May 14](#), Deputy Assistant Secretary of Defense for Industrial Policy Jennifer Santos was reassigned from head of DOD's Industrial Policy office. The DOD did not issue public comment on the reason for her departure, but [updated reporting](#) suggested her handling of DPA authorities was a potential factor.
- On [July 14](#), the House Committees on Financial Services, Homeland Security, Armed Services, Foreign Affairs, and Energy and Commerce released a letter addressed to the HHS and DOD secretaries. The letter outlined concerns over the Administration's COVID-19 response, including DPA implementation. In particular, the letter objects to DOD's use of DPA Title III CARES Act appropriations, noting that congressional intent was for those funds to be reserved for health and medical countermeasures, and not defense industrial base support. The letter also listed concerns regarding the use of DFC as a lending authority for Title III projects, and solicited greater clarity over its use.
- On July 1, a new factory for nasal swab production funded under DPA Title III was scheduled to open in Pittsfield, ME, but no opening announcement has been made by DOD, which had awarded the contract, or by the company performing the contract,

- Puritan Medical. According to a [June 5 press release](#), the company hosted the President and reported its new facility would open on July 1. No updates have been issued since then on the new factory, though the company advertises multiple [vacant positions](#) for the new factory.

Policy Considerations

The Administration's DPA implementation pattern appears [sporadic and relatively narrow](#). Although the volume of DPA actions has increased over time, no new DPA Title I prioritization orders for health articles have been observed [since April 14](#). Most DPA Title III funding has been awarded to support the defense industrial base.

Despite continued [congressional concerns](#) over personal protective equipment (PPE) availability, the Administration has not consistently employed DPA authorities to expedite PPE contracts. For example, on [July 19](#), DOD and HHS announced a \$3.5 million award for surgical mask production (with production not expected until May 2021). However, this action did not appear to be accomplished under DPA authorities. In an interview with the media, White House trade advisor Peter Navarro reiterated past assertions that the Administration wielded DPA authorities to [compel voluntary action](#) without the need to actually implement them.

It is unclear which executive agency leads overall efforts under DPA authority, in response to the pandemic. Reporting on DPA activities remains dispersed among multiple agency sources and appears incomplete. In addition, it is not clear under which authorities agencies are undertaking certain DPA-attributed activities, such as DOD's redirection of Title III funds, or DOJ's enforcement of anti-hoarding/price gouging.

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