

New Presidential Directives on the Defense Production Act (DPA) and the COVID-19 Pandemic

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On January 21, 2021, the Biden Administration issued several executive orders invoking the Defense Production Act of 1950 (DPA) to address the COVID-19 pandemic. The DPA authorizes the President to mobilize domestic industry in service of the national defense, including emergency preparedness. DPA authorities include (1) provisions under Title I to prioritize contracts and allocate scarce goods, materials, and services; (2) financial incentives under Title III to expand productive capacity for critical materials and goods; and (3) coordination, information-gathering, and other supporting provisions under Title VII.

This Insight examines the new Administration's recent DPA actions and related congressional policy considerations. See [CRS Report R43767](#) for an in-depth discussion of DPA history and authorities, and [CRS Report R46628](#) for an analysis of the Trump Administration's COVID-19 DPA policies regarding personal protective equipment (PPE).

What New DPA Actions Has the Administration Taken?

President Joseph R. Biden Jr. issued two Executive Orders (E.O.s) directly referencing the DPA on January 21:

1. **E.O. 13987**: Establishes White House positions of COVID-19 Response Coordinator and Deputy Coordinator to manage government-wide public health countermeasures, including coordination of: (1) the production of pandemic response supplies using the DPA, (2) vaccine deployment, (3) school reopening, and (4) intergovernmental and interagency processes.
2. **E.O. 14001**: Directs the Secretaries of State, Defense, Health and Human Services, Homeland Security, and other relevant agency heads to: (1) review and assess availability of "critical materials, treatments, and supplies" to combat COVID-19 ("[pandemic response supplies](#)"); (2) examine how DPA and other emergency authorities could address shortfalls; and (3) use DPA authorities as necessary—for PPE and vaccines.

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E.O. 14001 also directs a review of existing scarcity determinations and pricing for pandemic response supplies, as well as the development of a long-term manufacturing strategy for “future pandemics and biological threats.”

On January 26, the President issued three more EOs with potential relevance to the DPA:

- **E.O. 13994:** Establishes data collection and collaboration for “high consequence public health threats,” including COVID-19. Data collection under this E.O. could be used to inform future DPA actions, or draw on DPA Title VII authority to solicit industry data to assess supply chain vulnerabilities.
- **E.O. 13996:** Creates a “Pandemic Testing Board” composed of the COVID-19 Response Coordinator and interagency representatives to coordinate federal COVID-19 testing efforts and intergovernmental outreach. Testing shortages could lead to employment of DPA authorities to prioritize production, allocate inputs and finished tests, or expand productive capacity—perhaps in coordination with EO 14001.
- **E.O. 13999:** Directs the Labor Secretary to: (1) issue revised guidance on pandemic workplace safety, to include potentially issuing new standards; (2) review COVID-19 Occupational Safety and Health Administration (OSHA) worker protections enforcement; and (3) engage with interagency and intergovernmental partners regarding pandemic workplace protections. This E.O. appears to reverse elements of President Donald J. Trump’s [E.O. 13917](#), which delegated DPA authority to the Agriculture Secretary in an effort to compel the reopening of meat processing plants closed over concerns about state and local worker protections, though the [practical impact](#) of that E.O. [remains unclear](#).

How Are DPA Directives Being Implemented?

It is not yet clear how President Biden’s DPA directives will be implemented. According to the Administration’s [COVID-19 strategy](#), the DPA will address supply shortfalls “for vaccination supplies, testing supplies, and PPE.” The strategy also suggests the DPA may be employed to bolster the public health industrial base and access to critical materials, which may involve Title III incentives to expand productive capacity.

[Media reports](#) note the Administration may be negotiating with companies rather than issuing priority orders without consultation. Although it may compel action, including [criminal and civil penalties](#) (15 C.F.R. §700.74), the DPA can also confer [contract immunity](#) and financial incentives to private industry, and it is typical for negotiations to precede DPA contract actions to ensure contract viability. With potentially broader use of DPA authorities, the Administration may require more involved negotiations with private parties.

How Might the DPA Help with Vaccines?

The Biden Administration’s COVID-19 response strategy emphasizes using DPA to develop and deploy vaccines, PPE, and tests. As an illustrative example of how DPA might address these challenges, the companies [Moderna](#) and [Pfizer](#), which received [Emergency Use Authorizations](#) for their COVID-19 vaccines, have reported production bottlenecks with their component supply chains. DPA Title I authority could prioritize vaccine production directly, as well as production of constituent inputs. Other companies with available production capacity could also be employed under Title I. Title III incentives could be employed to expand upon existing productive capacity for vaccines and their material components. Title VII may be used to coordinate vaccine production among producers through the recently established

[Voluntary Agreement](#), or to “map” supply chains to identify production bottlenecks and future vulnerabilities.

What Is Congress’s Role?

The DPA statute includes a limited role for Congress (e.g., approving the use of price and wage controls and employing certain Title III instruments, many of which may be waived by the President). In addition to its inherent oversight authority, the appropriations process provides Congress with influence over the DPA Fund, a statutory account used for Title III actions. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) appropriated \$1 billion to the DPA Fund, though the intent for, and use of, those funds remain a [source of dispute](#). Future appropriations to the DPA Fund could include a more explicit statement of intent. (The [Consolidated Appropriations Act of 2021](#) included language specifically reserving amounts for military-related purposes.)

If Congress seeks to ensure long-term DPA planning and coordination, it may consider legislation to create permanent executive branch capabilities—such as those duties assigned to the COVID-19 Response Coordinator and Pandemic Testing Board—that consider other future emergency situations. Pursuant to its oversight authority, and in support of data collection and transparency, Congress may also consider legislation that requires the tracking, collection, and appropriate public disclosure of all DPA authorized actions.

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