

# Defense Production Act Authorities and U.S. Domestic Energy Supplies

March 11, 2022

On March 8, 2022, as part of a broader response to Russia's invasion of Ukraine, President Joseph R. Biden, Jr. issued an [order](#) prohibiting the U.S. import of and investment in oil, liquefied natural gas (LNG), and coal supplies from the Russian Federation. Some Members of Congress have also introduced legislation that would prohibit the U.S. import of mineral fuels and byproducts from Russia (see for example H.R. 6968, as passed by the House).

While [U.S. imports of Russian petroleum](#) are relatively small and refiners have access to many substitutes, there is broader concern that a material reduction of Russia's total [petroleum supply](#) could put upward pressure on oil and gasoline prices. In response, some have called on the President to exercise authorities under the Defense Production Act of 1950 (DPA; [50 U.S.C. §4501 et seq.](#)) to [expand](#) domestic energy production. Media reports also indicated that Administration officials have considered using DPA authorities to increase [U.S. production of energy-efficient heat pumps and other equipment](#) for U.S. allies in Europe.

## DPA Authorities Specific to Domestic Energy Applications

The DPA confers broad presidential authorities to mobilize domestic industry in service of the *national defense*, including programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, and "homeland security, stockpiling, space, and any directly related activity" ([50 U.S.C. §4552](#)). The President has delegated authorities related to the production, conservation, use, control, distribution, and allocation of energy supplies under DPA [Title I and Title III](#) to the Secretary of Energy in [Executive Order \(E.O.\) 11790](#), and [E.O. 13603](#). For a more in-depth discussion, see CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*. The Senate Banking Committee and the House Financial Services Committee have [jurisdiction](#) over the DPA.

Several provisions, particularly under Title I, specify authorities concerning domestic energy:

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- [50 U.S.C. §4511\(c\)](#) allows the President to allocate or prioritize contracts relating to materials, equipment, and services to maximize domestic energy supplies. Such use must be accompanied by a presidential finding that such materials, services, and facilities are scarce, critical, and essential to (1) maintain or expand exploration, production, refining, or transportation; (2) to conserve energy supplies; or (3) to construct or maintain energy facilities. Furthermore, this finding must conclude that any such efforts cannot be accomplished without requiring priority performance of contracts or orders, or controlled distribution of any supplies of materials, services, and facilities in the marketplace.
- [50 U.S.C. §4514](#) limits the President’s use of the DPA to impose wage or price controls without prior authorization through a joint resolution of Congress. [50 U.S.C. §4515](#) further limits the use of the DPA to institute a gasoline rationing program without congressional approval.
- [50 U.S.C. §4516](#) designates *energy* as a *strategic and critical* material. This designation enables other DPA authorities, such as those under Title III, to be used for energy-related purposes. [50 U.S.C. §4516](#) also specifies that no provision of the DPA should be interpreted as granting any “new direct or indirect authority to the President for the mandatory allocation or pricing of any fuel or feedstock (including, but not limited to, crude oil, residual fuel oil, any refined petroleum product, natural gas, or coal) or electricity or any other form of energy.”

## DPA and Energy Supplies: Background

Past congressional actions to amend the DPA in response to the [oil crises of the 1970s](#) have sought to clarify that an executive response under the DPA should be made to “actions taken outside of the United States” that could impact domestic energy supplies, in order “to assure the availability of domestic energy supplies for national defense needs.” Currently the DPA policy statement ([50 U.S.C. §4502](#)) specifies that “to the maximum extent possible” U.S. domestic energy supplies should be augmented through “reliance on renewable energy sources (including solar, geothermal, wind, and biomass sources), more efficient energy storage and distribution technologies, and energy conservation measures.”

The Executive Branch previously employed DPA authorities domestically on a limited basis to respond to the [2000-2001 California electricity crisis](#) when the Department of Energy (DOE) made use of DPA Title I prioritization authorities “to ensure that emergency supplies of natural gas continued to flow to California utilities.” This use of DPA authorities generated some congressional concern, with [some Members](#) contending that these authorities applied “only in the case of emergencies that had clear national security implications.” DOE countered that DPA authorities to “[maximize domestic energy supplies](#)” had been “an element of the inventory of energy agency authorities for a very long time” and had been used to prioritize contracts associated with pipeline construction and upgrading DOE strategic petroleum reserve storage facilities, among other purposes, as part of the “ordinary business of the federal government.”

## Policy Implications for Congress

The President has the discretion to invoke, activate, and implement DPA authorities for specific purposes, and to determine how that process occurs. Although the DPA does provide limited congressional equities, the President may waive most of them, with the exception of the ability to set price and wage controls under Title I ([50 U.S.C. §4514](#)). However, Congress may enact laws, provide or deny funding, or provide guidance to signal intent for using DPA authorities as part of a broader U.S. response to Russia’s invasion of Ukraine.

- Members may use signaling mechanisms, such as letters to the President and Executive Branch officials; hearings; or resolutions calling for the implementation of DPA authorities to respond to domestic energy requirements.
- Congress may also consider supplemental appropriations for DPA activities, such as expanding U.S. production of heat pumps and other energy-efficient alternatives under Title III.
- Congress may advise, or otherwise encourage, the administration to make use of other DPA authorities as appropriate, such as Title VII, which provides for the establishment of industry coordination mechanisms and advisory bodies in carrying out other DPA activities.

## Author Information

Heidi M. Peters  
Analyst in U.S. Defense Acquisition Policy

Erica A. Lee  
Analyst in Emergency Management and Disaster  
Recovery

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