

Use of Defense Production Act Authorities to Support the Pandemic Response

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The Defense Production Act (DPA) of 1950, as amended (50 U.S.C. 4501 et seq.) is the primary source of presidential authorities to expedite and expand the critical supplies and services from the private sector that are needed to promote national defense. This includes both emergency preparedness and response activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act as well as for the protection and restoration of critical infrastructure operations.

The Act requires companies to prioritize government orders and contracts that are necessary to meet the response efforts associated with the coronavirus COVID-19 pandemic. Authorities can also be used to provide financial incentives and assistance to private industry to expand production and capacity for necessary supplies and resources. Four Defense Production Act authorities could be important tools in ongoing efforts to combat the threat of the coronavirus.

Title 1 Priorities Authority

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- Title I of DPA provides the Federal government the authority to require contracts and orders are accepted and receive priority to ensure all necessary materials, services and facilities are available for national defense.
- The President delegated DPA authority and responsibilities to six federal departments to manage the use of the priority's authority for resources in their jurisdictions. The six departments with delegated authority include:
 - The U.S. Department of Agriculture for food resources, food resource facilities, livestock resources, veterinary resources, plant health resources and the domestic distribution of farm equipment and commercial fertilizer;
 - The U.S. Department of Defense for water resources;
 - The U.S. Department of Energy for all forms of energy;
 - The U.S. Department of Health and Human Services (HHS) for health and medical resources which can include personal protective equipment;



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- The U.S. Department of Transportation for civil transportation resources; and
- The U.S. Department of Commerce for all other materials, services, and facilities.
- Priority ratings can be included in contracts and orders to procure health resources such as personal protective equipment to ensure the federal government has necessary resources to combat COVID-19.

Title I Allocations Authority

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- Title I also provides the authority to allocate limited supplies of materials, services and facilities which could be used to control the distribution of over-taxed health resources. The allocations authority resides with each department for resources within that department's resource jurisdiction (e.g., health resources for HHS). President Trump's March 18 Executive Order formalized HHS's priorities.
- The Act provides for three types of allocation orders that can be used for COVID-19 response:
 - Set-aside: Requires a company to reserve material, services or facilities in anticipation of receiving a priority-rated order.
 - Directive: Requires a company to take or refrain from taking certain actions (i.e. stop or reduce production of an item).
 - Allotment: Specifies the maximum quantity of materials, services or facilities authorized for a specific use.

Title III Financial Incentives Authorities

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- DPA Title III authorizes using various financial incentives to encourage private industry to expedite and expand production and services for national defense purposes.
- For a pandemic, these authorities could be used to encourage private sector investment in additional production capacity for medical equipment, personal protective equipment, vaccines and antivirals.
- These incentives include:
 - Government purchases;
 - Purchase commitments, (when the government encourages increased production, but doesn't take the inventory if another buyer can be found);



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- Allowing private businesses to use government-owned equipment; and
- Guaranteed loans, which require additional Congressional legislation.

Title VII Voluntary Agreements

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- A voluntary agreement is between the federal government and two more representatives of industry, business, finance, agriculture, labor or other private interests to plan and coordinate actions to support national defense or emergency preparedness and response activities.
- Participants in a voluntary agreement are granted relief from antitrust laws under DPA activities.
- A voluntary agreement among health resources manufacturers could be used to plan and coordinate expanded production of personal protective equipment and ventilators.
- A voluntary agreement among medical providers and first responders could be used to plan and coordinate treatment and quarantine during a pandemic.

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