



COVID-19: Defense Production Act (DPA) Developments and Issues for Congress

Updated May 15, 2020

The White House is employing the [Defense Production Act of 1950](#) (DPA) in response to the Coronavirus Disease 2019 (COVID-19) pandemic to facilitate the production and availability of essential goods, supplies, and services. This Insight considers recent DPA actions and associated policy considerations for Congress. It is a companion to CRS Insights IN11337, IN11280, and IN11231. See CRS Report R43767 for a more in-depth discussion of DPA history and authorities.

New DPA Actions in Response to COVID-19

Since April 15, eight DPA actions have been made public:

- According to Federal Procurement Data System (FPDS) [COVID-19 records](#), the Federal Emergency Management Agency (FEMA) issued four DPA priority-rated orders to the 3M company for N95 respirators on April 16, April 21, and April 28, per an [April 2 White House memorandum](#). FEMA announced the DPA priority-rated orders for N95 respirators from 3M on [April 14](#).
- On [April 20](#), the Department of Defense (DOD) announced it set aside \$750 million of \$1 billion in new DPA Title III appropriations for health resources, with \$250 million reserved for defense industrial base investments.
- On April 21, DOD announced a [\\$133 million Title III investment](#) in N95 respirator production, per a previous [April 11 announcement](#).
- The Department of Justice (DOJ) [charged a New York resident](#) on April 24, and [two individuals](#) on April 28, with violating DPA anti-hoarding/price-gouging provisions.
- On April 28, President Trump issued [Executive Order \(E.O.\) 13917](#) directing the Department of Agriculture (USDA) to exercise DPA authorities to address [meat processing plant closures](#), and any other food supply chain issues, due to the pandemic.
- On [April 29](#), DOD announced \$75 million in DPA Title III investments to increase nasal swab production, per the President's [April 19 DPA invocation](#).

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- On May 5, pursuant to E.O. 13917, the USDA [publicized letters](#) to [state governors](#) and [meat processing plants](#), directing plants to continue or resume operations utilizing [COVID-19 meat processing guidelines](#) developed on April 28 by the Centers for Disease Control and Prevention (CDC) and the Department of Labor’s Occupational Safety and Health Administration (OSHA).
- On May 14, the President [issued a new E.O.](#) delegating DPA Title III authority to the International Development Finance Corporation (DFC) in response to the pandemic.

These actions were made publicly available, but may not be exhaustive. There are no statutory reporting requirements for DPA actions.

DPA Issues for Congress

The Administration has employed the DPA selectively, focusing on individual companies (e.g., GM, 3M) or industry sub-sectors (e.g., meat processing). There have been sporadic DPA efforts, and an opaque process, in response to complaints from Congress and some governors regarding ongoing shortages of [personal protective equipment](#), [testing supplies](#), and other such resources. The Administration’s announced actions have primarily framed the DPA as a coercive instrument (the President called the DPA a “[tremendous hammer](#)”) with relatively narrow application.

Recent DPA actions present a number of issues that may be of interest to Congress:

- Control over the statutory DPA Title III account, the DPA Fund, is a potential issue. Currently, Title III appropriations are made to the DPA Purchases (DPAP) account, which serves the DPA Fund’s [statutory role](#)—a fund for Title III activities that does not expire (a “no-year” fund), capped at \$750 million annually. According to Section 304 of the statute, and Section 309 of [E.O. 13603](#), DOD manages the DPA Fund, which is available to support Title III activities across government. However, according to some congressional offices, certain DOD officials interpret DPAP appropriations—including the \$1 billion appropriated in the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#)—as available at DOD’s sole discretion. Being the fund manager and possessing the only standing Title III program in government, the DPA Fund has functioned as an exclusive DOD account despite being technically available to other agencies. As a result, notwithstanding its statutory and administratively-defined role, DOD may require further guidance to perform its custodial obligations to make DPAP funds available to the government as a whole in emergency situations.

- The Administration has exercised DPA’s [anti-hoarding/price gouging provisions](#) to make arrests and [seize goods for redistribution](#). However, the DPA does not define an “excess of prevailing market price” or include operational standards on when and how these provisions may be used.
- FEMA announced the existence of DPA rated orders on April 14, but did not include details. While orders matching FEMA’s description were identified in the FPDS, there were discrepancies in the dates. There is no statutory requirement for DPA actions to be reported in FPDS or elsewhere.
- The USDA’s May 5 letters reference DPA authorities to reopen and ensure production in meat processing facilities, which could be interpreted to supersede more stringent state directives. However, USDA statements do not specify the operative DPA authorities in its policy. The agency also did not state whether CDC/OSHA guidance is intended to “preempt” state guidance, and what DPA authorities support that interpretation. For a legal analysis of E.O. 13917, see CRS Legal Sidebar LSB10456.
- The E.O. delegating Title III authorities to DFC was issued as part of the Administration’s broader policy to expand national stockpiles. However, as an international development agency created in 2019, DFC’s capacity for making domestic DPA investments is unknown.

Policy Considerations

Given these issues, Congress may wish to consider several policy options:

- Congress may conduct oversight or pursue legislation to obtain clarity over differing interpretations of DPA authorities, such as the use of the DPA fund by DOD vs. other federal agencies; congressional authorization for promulgating DPA regulations; the need for increased DPA reporting and transparency; and parameters for anti-hoarding/price gouging actions.
- Congress may consider creating a centralized office for DPA implementation, reporting, and coordination. The Office of Defense Mobilization, created alongside the DPA in 1950, established [executive administrative infrastructure](#) to plan and execute DPA authorities. One [current proposal](#) provides for an “executive officer” to fulfill this function in a limited, temporary fashion.
- Congress may amend the DPA to expand congressional oversight and involvement in DPA actions, and curtail or constrain presidential discretion in employing DPA authorities outside congressional intent.

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