

# Office of the Assistant Secretary of Defense Industrial Base Policy



## Defense Production Act Title III



# Defense Production Act (40 U.S.C. 4501 et seq.)



- The Defense Production Act (DPA) authorizes the **President** to **ensure the availability of U.S. and Canadian industry for U.S. defense, essential civilian, and homeland security requirements.**
- The **House Committee on Financial Services** and the **Senate Committee on Banking, Housing, and Urban Affairs** have jurisdiction over DPA.

## DPA Authorities

Title I	Title III	Title VII
Priorities and Allocations	Expansion of Productive Capacity and Supply	General Provisions
<ul style="list-style-type: none"> <li>• Prioritize Federal contracts over all other orders</li> <li>• Control distribution of scarce materials within the civilian economy</li> <li>• Allocate scarce materials against Federal or private contracts</li> <li>• Prevent hoarding of scarce materials</li> </ul>	<ul style="list-style-type: none"> <li>• Incentives to develop, maintain, modernize, and expand production capacity or critical technologies:               <ul style="list-style-type: none"> <li>- Loans/ loan guarantees</li> <li>- Purchases/ purchase commitments</li> <li>- Grants and subsidies</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Mandatory survey authority of any U.S.-registered business entity</li> <li>• Anti-trust immunity for industry, to develop and implement national emergency preparedness plans</li> <li>• Committee on Foreign Investment in the U.S. (CFIUS)</li> <li>• Civilian Executive Reserve, called into Federal service during a national emergency</li> </ul>



# Title III Authorities and Priority Areas



## Authorities

Loan Guarantees §301 (50 U.S.C. 4531)	Loans §302 (50 U.S.C. 4532)	Purchase Commitments §303 (50 U.S.C. 4533)	Purchases §303 (50 U.S.C. 4533)
<ul style="list-style-type: none"> <li>• May be extended when credit is not available to the loan applicant under reasonable terms and conditions sufficient to finance the activity</li> <li>• Prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed</li> </ul>	<ul style="list-style-type: none"> <li>• May be extended when private financing is beyond the risk of the commercial market</li> <li>• Projected earnings following the loan are sufficient to cover repayment costs</li> </ul>	<ul style="list-style-type: none"> <li>• Create a guaranteed demand to reduce risks for industry to make their own investments</li> </ul>	<ul style="list-style-type: none"> <li>• Provide direct subsidies to companies to assist in establishing production capabilities including:               <ul style="list-style-type: none"> <li>- Purchase and installation of production equipment in privately owned or Government owned facilities</li> <li>- Engineering support to improve quality and yield of production facilities</li> <li>- Sample quantities for process validation and customer qualification testing</li> </ul> </li> </ul>

## Priority Areas

Sustain Critical Production	Commercialize Research and Development Efforts	Scale Emerging Technologies
<p>“To create, maintain, protect, expand, or restore domestic industrial capabilities essential for National Defense”</p>	<p>“From Government sponsored research and development to commercial applications” and “from commercial research and development to National Defense”</p>	<p>“For the increased use of emerging technologies in security program applications and the rapid transition of emerging technologies”</p>



# DPA Title III Statutory Criteria



- **The execution of Section 303 (50 U.S.C. § 4533) authorities requires the President, on a non-delegable basis, to identify a domestic industrial base shortfall as meeting three specific criteria:**
  - The industrial resource, material, or critical technology item is essential to national defense;
  - Without Presidential action under [50 U.S.C. § 4533], United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and
  - Purchases, purchase commitments, or other action pursuant to [50 U.S.C. § 4533] are the most cost effective, expedient, and practical alternative method for meeting the need
- **Presidential Determinations (PDs) are:**
  - Non-expiring and able to be leveraged for different projects addressing the same shortfalls
  - Varying in breadth and scope depending upon the shortfall/challenge addressed
- **PDs are not:**
  - An appropriation or funding mechanism
  - A mandate to address a specific shortfall or pursue a specific course of action



# DPA Title III Statutory Criteria Cont.



- **Under peacetime conditions, the DPA statute imposes constraints on the exercise of Section 303 authorities:**
  - All investments require a PD
  - All actions >\$50M require Congressional notification and a 30-day waiting period before action can be taken
  - All actions >\$50M require Congressional authorization
- The law currently allows for the **waiver of statutory criteria** in two specific instances:
  - During a period of **national emergency** declared by the Congress or the President
  - Upon a determination by the President, on a nondelegable basis, that action is **necessary to avert an industrial resource or critical technology item shortfall** that would severely impair national defense capability. (50 U.S.C. § 4533).



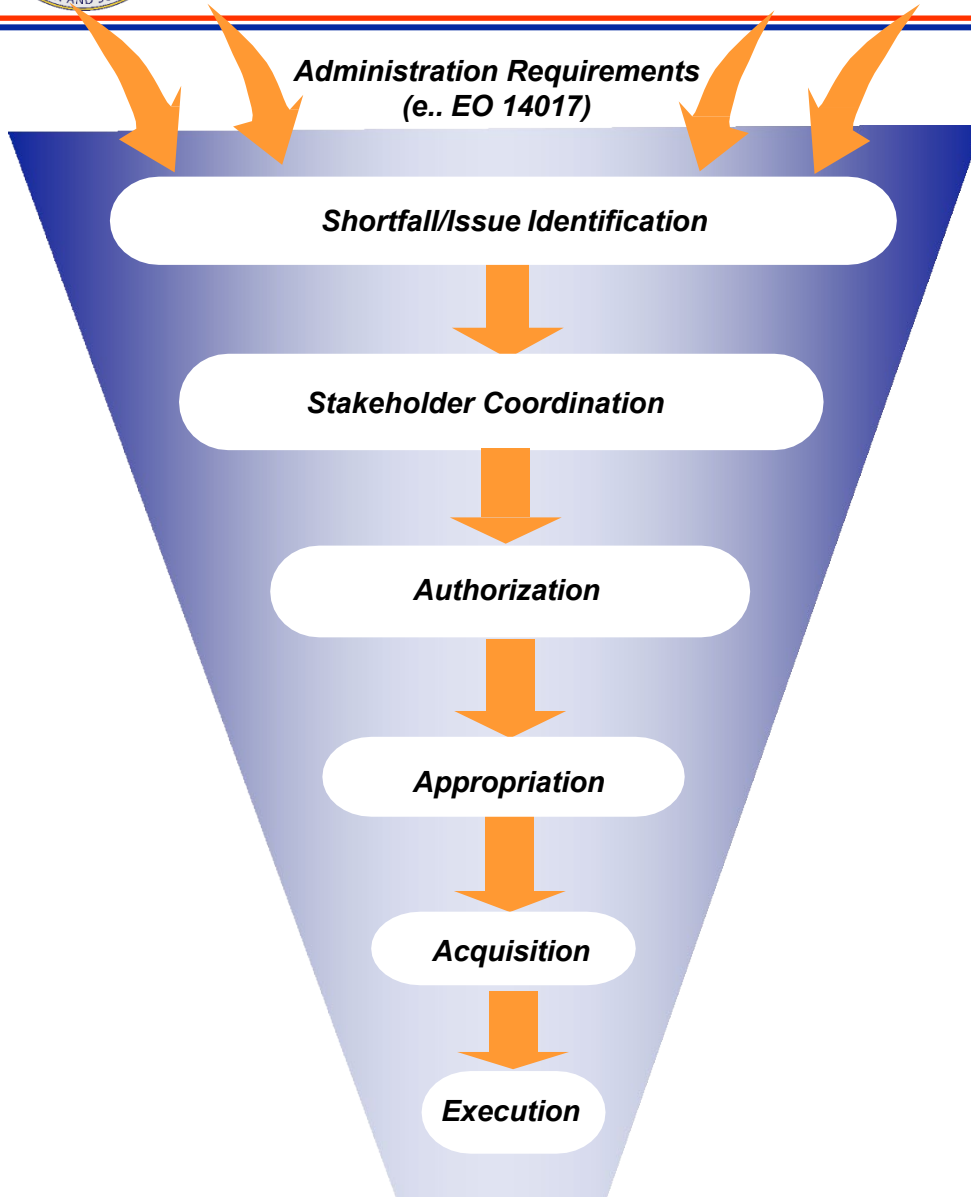
# History of Presidential Determinations and Waivers

Presidential Determination/Waiver	Signature Date	Authorization Value
Energetic Materials Production for DoD Munitions	16 January 2019	\$50M
Precursors Production for DoD Munitions	16 January 2019	\$50M
Inert Materials Production for DoD Munitions	16 January 2019	\$50M
Advanced Manufacturing Techniques for DoD Munitions	16 January 2019	\$50M
Sonobuoys Production	12 March 2019	\$50M
Small Unmanned Aerial Systems	12 June 2019	\$50M
Rare Earth Permanent Magnets Production (2x PDs)	22 July 2019	\$100M
Rare Earth Separation and Processing Capability (2x PDs)	22 July 2019	\$100M
Rare Earth Metal and Alloy Processing Capability	22 July 2019	\$50M
Domestic Capacity Expansion for F135 Integrally Bladed Rotors	22 July 2019	\$50M
COVID-19 Response (Waiver)	27 March 2020	No Limit
High/Ultra High Temperature Composite for Hypersonics	24 June 2020	\$50M
Submarine Industrial Base Production Capacity Essential to the VCS Program (3x PDs)	21 December 2021	No Limit
Radiation-Hardened and Strategic Radiation-Hardened Microelectronics	21 December 2021	No Limit
Critical Materials in Large-Capacity Batteries	31 March 2022	No Limit
Material Critical to Support the Defense Against Adversarial Aggression (Waiver)	3 October 2022	No Limit
Supply Chain Resilience (Waiver)	27 February 2023	No Limit
Airbreathing Engines, Advanced Avionics Position Navigation and Guidance Systems, and Constituent Materials for Hypersonic Systems	1 March 2023	No Limit
Printed Circuit Boards and Advanced Packaging	27 March 2023	No Limit

Distribution Statement A: Approved for public release. Distribution is unlimited.



# Requirements Evaluation



- **Issue Identification**
  - Industry- Open Funding Opportunity Announcement
    - <https://sam.gov/opp/f373370cf504a0c9ac0ad41dccee52e/view>
  - Industry Mailbox –
    - [osd.pentagon.ousd-a-s.mbx.dpa-title-iii-industry-inquiries@mail.mil](mailto:osd.pentagon.ousd-a-s.mbx.dpa-title-iii-industry-inquiries@mail.mil)
- **Authorization and Appropriation**
  - Development of new/increase spending limit on Presidential Determinations
- **Acquisition**
  - Develop DoD requirements
  - Select T3 investment requirements
  - Develop statement of objectives



# Why is everyone talking about DPA?

- While the DPA was enacted in 1950, the past few years have seen an **increased interest** in the authorities from the Executive and Legislative Branches, Government agencies, and the public.
- In March 2020, Congress **appropriated \$1B** to the DPA Purchases account via the **CARES Act** “to prevent, prepare for, and respond to coronavirus”.
  - Greatly **reduced acquisition timelines** resulting in the obligation of \$800M in ~10 months
- In FY2022, the DPA was appropriated **\$600 million by the Additional Ukraine Supplemental Appropriations Act** to mitigate industrial base constraints for faster **missile production** and expanded domestic capacity for **strategic and critical minerals**.
  - A **further \$146 million was added** into the DPA Fund for increased production of solid rocket motors
- Also in FY2022, the **Inflation Reduction Act appropriated \$500 million** for enhanced use of the DPA.
  - The funds were split equally between Department of Energy and the DoD
  - The **\$250 million** provided to the DoD will be applied to expanding capabilities for **domestic mining, mineral processing**, and related industrial sectors for **large-capacity batteries**.
- The Executive and Legislative branches are increasingly viewing DPA authorities as valuable tools to be leveraged against urgent, critical issues.





# Executive Order (E.O.) 14017, America's Supply Chains



- **Executive Order 14017** required a **whole-of-government effort** to assess risk, identify impacts, and propose recommendations in support of a healthy manufacturing and defense industrial base – a critical aspect of economic and national security.
- Leverage assets:
  - Bipartisan support
  - Interagency knowledge
  - Established program
- Mitigate Pricing Threats





# Title III Support to E.O. 14017

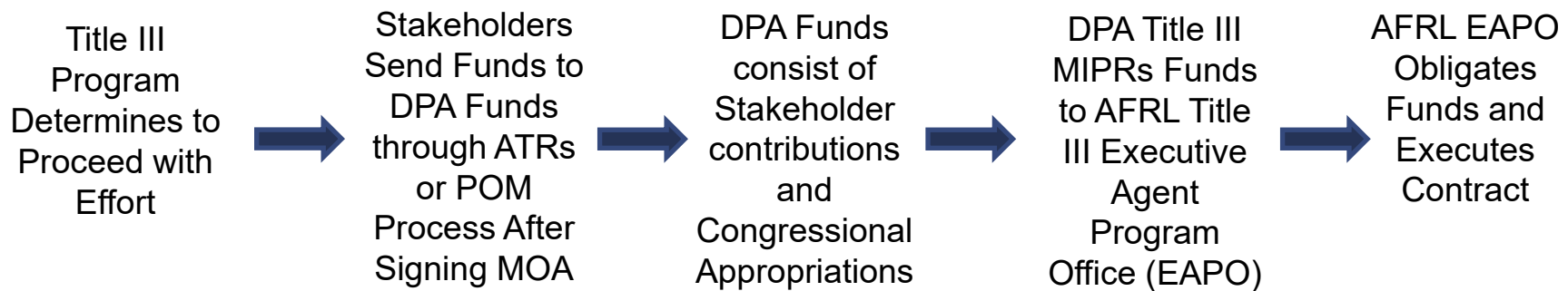


- **A whole-of-government effort** to assess risk, identify impacts, and propose recommendations in support of a healthy manufacturing and defense industrial base – a critical aspect of economic and national security
- **Select Kinetic Capabilities**
  - **Chemicals**
    - On-shore or secure US source for DoD critical chemicals for propulsion and lethality
  - **Hypersonic Industrial Base**
    - Improve and expand the industrial base to support the building, testing, and deployment of strategic and quick strike weapons
- **Energy Storage and Batteries/Strategic and Critical Materials**
  - **Rare Earth Elements**
    - Re-establishing domestic mine-to-magnet production for EV's and weapon systems
- **Microelectronics (ME)**
  - **Electronics**
    - Maintain and increase the U.S. share of global semiconductor production to strengthen and secure DIB
  - **Space**
    - Develop and sustain domestic capabilities for radiation-hardened manufacturing and testing
- **Castings and Forgings**
  - **Thin Wall Castings**
    - Expansion of sole source supplier for aerospace grade magnesium and aluminum products for rotorcraft



# DPA Title III Funds & Execution

- DPA Title III appropriations are **non-expiring procurement funds** and are valid until expended.
- **Congress must be notified** of planned expenditures.
- **Congress must write into law authorization** to spend more than \$50 million in aggregate action on a single shortfall.
- Title III requests Government stakeholders provide funding towards projects.
- All transfers to the DPA Fund must be done through Above Threshold Reprogramming (ATR) or through the POM Process.



## ATRs

- ATRs move funding from one appropriation to another appropriations and must be approved by Congress (HAC-D, SAC-D, HASC, SASC)
- Additional guidance on ATRs may be found in the Financial Management Regulation (FMR) Volume 3, Chapter 6

## POM

- Stakeholder organization includes the reprogramming to DPA Fund in its POM submission
- Funding realignment occurs during the President's Budget Build in Decision Document System (DDS)
- Realigned funds are reflected in DPA Title III's Budget Submission to Congress



# Defense Production Act Title III



- **IS:**
  - **Efficient and effective** way to improve the industrial base
    - Modernize, expand, transform
  - **One method** for creating and sustaining market demand
  - Final stop (sometimes) on the way to production
  - **Cross-cutting investment vehicle** to solve root causes, not symptoms
  - Able to **engage** tactically with industry and strategically with policy and legislation
  - **Planned over a five year period to address challenges and shortfalls in priority order**
- **IS NOT:**
  - Title I
  - **A magic bullet**
  - The **solution to all industrial base problems**
  - Appropriate for **service specific** challenges
    - Single platform/service
    - A solution for service specific challenges