



## Preventing Abuse of the Defense Production Act

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House Financial Services Committee Subcommittee on National Security, Illicit Finance, and International Financial Institutions

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Dear Chairman Luetkemeyer,

Thank you for the opportunity to provide our view on the Defense Production Act (DPA) and for holding this important hearing. The Defense Production Act of 1950 grants the President authority to centrally plan industry for national defense purposes, but lacks checks and balances and transparency requirements, making it ripe for abuse and mismanagement. In recent years, and especially during the COVID-19 pandemic, the DPA has been abused for non-defense purposes and to avoid fixing bad policies.

Americans for Prosperity Foundation recently [launched the Emergency Powers Reform Project](#) to educate the public about the White House's rampant abuse of emergency powers, including misuse of the Defense Production Act, Strategic Petroleum Reserve, and National Emergencies Act. Congress intended for such delegations of authority to the president to be temporary to respond to emergent crises that require swift action. However, presidents are increasingly using emergency powers to address long-standing policy failures, impose policy preferences, and circumvent our system of checks and balances.

**The DPA was intended to be used for national defense, but the broad definition in the statute leaves it vulnerable to abuse.**

The DPA is being misused for non-defense purposes to avoid fixing bad policy choices. For example, harmful government policies underly self-inflicted production capacity shortages for baby formula and mineral mining.

The repeated invocation of the DPA for non-defense purposes, such as mineral mining, baby food, solar panel components, heat pumps, and possibly now gasoline refining, is irresponsible. It disrupts complex supply chains, wastes taxpayer money, and undermines Congress' intent that the program be available for actual emergencies that threaten our national security. – [Then-Senator Pat Toomey in 2022](#)

The DPA statute includes extremely limited transparency requirements and, even then, it provides the President with the ability to waive certain notification provisions during a period of "national emergency." As a result, there is scant information about DPA projects after the White House announcement, which makes it difficult to determine if it's an effective and accountable use of emergency powers. A Presidential Determination under the DPA requires the President give notice to Senate Banking and House Financial Services, but it also allows the President to waive this requirement. In some cases, the president delegates the authority to a federal agency, making it even harder to track its use.

DPA presidential determinations do not expire unless the President expressly indicates so in the determination, or the determination is otherwise amended or revoked. The DPA does not require the President to report these determinations to the public. – [2022 CRS Report](#)

It is unclear which executive agency leads overall efforts under DPA authority, in response to the pandemic. Reporting on DPA activities remains dispersed among multiple agency sources and appears incomplete. In addition, it is not clear under which authorities agencies are undertaking certain DPA attributed activities, such as DOD's redirection of Title III funds, or DOJ's enforcement of anti-hoarding/price gouging. – [2020 CRS Report](#)

## DPA Abuse in the Executive Order on Artificial Intelligence

President Biden's recent [executive order](#) on artificial intelligence (AI) abuses the DPA to impose restrictive regulations and reporting requirements on an emerging technology with use cases spanning the entire economy. Developers of certain AI technologies will have to submit safety test results, development plans, details of model weights, and more to government agencies. Apparently, even developers without existing government contracts will be subject to the order's onerous regulations. Worse, the administration is likely relying on and stretching the authorities of a rarely used but [very coercive provision](#) of the law to enact an overreaching regulatory scheme without any input from Congress.

Utah Attorney General Sean D. Reyes [led a 20-state letter](#) to Secretary Gina Raimondo of the U.S. Department of Commerce responding to the Department's request for information on the regulation of AI:

While there is serious debate as to the best approach to regulate AI, one thing is clear—the Biden administration cannot simply bypass congressional authority to act here. Any regulation must comport with the Constitution including only authorized executive action, as well as protecting against government censorship... The Executive Order relies on a generic citation to the Defense Production Act, which allows for the federal government to promote and prioritize production, not to gatekeep and regulate emerging technologies.

If such broad and significant oversight of AI development is warranted, then it is Congress's responsibility to do so through legislation. Biden treating AI as an emergency fabricates a never-ending crisis that transfers to the president major powers over the economy that are constitutionally reserved for Congress.

### Reform Principles

The DPA is scheduled to expire in 2025 unless reauthorized. Without [significant reform](#) that tightens definitions, gives Congress a more prominent role in the process, and provides for stronger transparency and oversight, Congress should consider allowing the DPA to lapse.

- Tighten the definitions in the statute so that the DPA is reserved only for defense purposes.
- DPA determinations should sunset after 30 calendar days unless approved by Congress. After that, determinations should sunset every six months unless reapproved by Congress.
- Require proactive transparency of actions taken under DPA authority.
  - For example, each agency with DPA authority should have a dedicated transparency website detailing its actions under DPA authority (e.g., [commerce.gov/DPA](#) or [hhs.gov/DPA](#)).
- Inspectors General should be required to conduct annual oversight over the use of the DPA in each respective agency.
- Eliminate congressional notification waivers.

We appreciate your leadership in holding a hearing on this matter. With the DPA expiring next year, this is an incredible opportunity for Congress to assert its oversight authority over a blatantly abused law. Emergency powers should be reserved for actual emergencies, and the DPA should be reserved for *defense* purposes, not for reimagining the American economy via executive fiat.