

# PUBLICATION

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## The Defense Production Act: Rebuilding U.S. Surge Capacity and What Investors in Projects Need to Know

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### From Markets to Strategy

Over the past decade, the role of the U.S. government in economic development has shifted markedly. Once largely reliant on market-led outcomes, Washington has increasingly embraced proactive intervention and coordination to strengthen industrial capacity. This reflects a forward-looking approach to ensuring that strategically vital production remains robust and responsive to national priorities.

This shift is most evident in the defense sector. The U.S. defense industrial base – long assumed to be resilient and self-sustaining – has become a focus for strategic enhancement, with renewed attention to surge capacity and supply chain diversification. As a result, economic development policy has become closely intertwined with military readiness, deterrence, and strategic autonomy.

At the center of this evolving approach stands the Defense Production Act (DPA), enacted in 1950 at the outset of the Korean War to ensure that domestic industry could meet national defense requirements. Originally conceived as a tool for coordinating and directing private production under conditions of strategic stress, the DPA has reemerged as a core instrument for mobilizing industrial capacity and shaping investment incentives in the contemporary U.S. economy.

### The Defense Production Act

The DPA's most consequential legal provisions are found in Title I and Title III. Title I authorizes the government to prioritize certain contracts and allocate materials and production capacity, effectively allowing the state to reorder market outcomes. Title III, in turn, allows for direct interventions to expand productive capacity through financing, purchase commitments, and other incentives. While these authorities were once viewed as exceptional measures, they now form a core part of the federal economic policy toolkit.

Congress and the executive branch have expanded the operative meaning of "national defense" and "national security" under the DPA, legitimizing its use beyond strictly military items to include public health emergencies, critical infrastructure, energy security, and supply chain resilience. As a result, the law has been invoked for everything from medical gear during the COVID-19 pandemic to easing infant formula shortages and jump-starting clean-energy inputs – alongside classic defense surges for munitions and energetics. In late 2025, recognizing how central the statute has become for U.S. industrial strategy, lawmakers extended the DPA's sunset in two steps – first from September 30, 2025, to January 30, 2026, and then again to September 30, 2026, via the FY2026 National Defense Authorization Act (NDAA). The successive extensions underscore a bipartisan judgment: the DPA remains a cornerstone of America's 21st-century production policy.

### How the DPA Works in Practice

In practice, Title I is the workhorse. Through the Defense Priorities and Allocations System (DPAS), agencies issue millions of rated orders that legally require suppliers to meet federal delivery dates ahead of commercial customers, cascading priority through entire supply chains. Between FY2018 and FY2024, DPAS was the most frequently used DPA authority. Title III complements this by de-risking capital expenditure: when the

government provides a purchase commitment or co-finances equipment, it reduces the investment hurdle for firms to add lines for artillery shells, rocket motors, or specialized components.

Today's geopolitical environment further increases the relevance of the DPA. Strategic competition with China, ongoing regional developments, and sustained military support for allies have heightened awareness of supply chain resilience across defense programs. For the U.S. defense sector, these considerations directly inform readiness planning, deterrence strategy, and the capacity to sustain production during extended operations.

A clear example is rare earth elements for high-performance magnets, which are essential for radar systems, guided munitions, aircraft engines, and naval platforms. To build a more diversified supply base, the Pentagon combines DPA-enabled capacity measures with long-term offtake agreements and allied price-stabilization mechanisms, such as those embedded in the multiyear framework with Lynas Rare Earths. The aim is to develop a robust and diversified production ecosystem – from Australian mining to Malaysian processing and North American defense customers – ensuring that critical weapons programs retain predictable inputs even when markets fluctuate. This approach reflects thoughtful industrial policy through defense procurement, designed to anchor private investment and resilience in defense-critical sectors.

### **Beyond the DPA: The Legal Toolkit and What Investors in Projects Need to Know**

The Defense Production Act is the most visible tool, but it is embedded in a wider set of legal authorities granted by Congress. As a result, the Department of War is not only a buyer; it has clear statutory powers to influence industrial capacity where national security requires it.

Three elements matter most: (1) reliable demand, (2) risk-sharing, and (3) authority across the supply chain. Reliable demand comes from multiyear procurement and advance purchase commitments. Risk-sharing is provided through co-investment and instruments linked to Title III of the DPA. Recent NDAs also give the Department of War more flexibility to act from upstream materials through to final integration. Programs like the Office of Strategic Capital connect these legal tools to private finance, aligning public objectives with investor interests.

In practice, the DPA operates as the anchor of a lasting legal framework. Within that framework, defense procurement functions as a continuous governance instrument to build, secure, and surge critical production capacity – without re-litigating broader economic policy questions each time.

Investors in such projects need to be aware of the compliance costs and operational constraints, not just the capital benefits. These types of projects are subject to federal audit, reporting, and performance monitoring through the Department of War or delegated agencies. Title I may require companies to prioritize rated government contracts over commercial contracts, affecting revenue predictability. Compliance failures could create repayment, clawback, or reputational risks.

### **Implications for U.S. Economic Development: Key Considerations for Investors**

Taken together, these developments point to a broader transformation in U.S. economic development policy. Rather than relying primarily on tax incentives or horizontal subsidies – such as those embodied in the CHIPS and Science Act or the Inflation Reduction Act – the federal government, led by the Department of War, has increasingly used demand, procurement, and capacity guarantees as tools to shape industrial outcomes. In this model, economic development is less about maximizing short-term efficiency and more about ensuring resilience, scalability, and strategic reliability. In other words, U.S. economic security is national security.

The defense sector functions as a testing ground for this approach. Measures aimed at rebuilding the defense industrial base – such as long-term procurement commitments, DPA-backed capacity investments, and allied supply chain coordination – are simultaneously revitalizing domestic manufacturing capabilities and attracting

private capital into capital-intensive, high-risk segments. The result is a form of economic development in which national security objectives and industrial policy are tightly interwoven. As these practices diffuse beyond defense into adjacent sectors, they are likely to redefine how the U.S. government conceives of its role in shaping markets and sustaining industrial capacity over the long term.

**For investors considering participation in DPA-backed or defense-linked projects, the key considerations are:**

- Compliance and regulatory exposure – these projects are subject to federal audit, reporting, and performance monitoring requirements that create ongoing operational obligations;
- Contract prioritization risk – Title I authority may require companies to prioritize rated government contracts over commercial work, affecting revenue predictability and commercial flexibility;
- Capital structure and clawback risk – non-compliance or underperformance can trigger repayment obligations, clawback provisions, or reputational harm; and
- Long-term strategic alignment – while procurement commitments and capacity guarantees can provide revenue visibility, investors should assess whether the company's strategic direction remains aligned with shifting government priorities over the investment horizon.

**Conclusion: Public-Private Coordination**

The renewed prominence of the DPA underscores how effectively economic development in the U.S. now integrates strategic and security considerations. In an environment of geopolitical competition and industrial opportunity, the defense sector has become both a driver and a proving ground for a more engaged and coordinated role of the state. The expanded use of the DPA and related instruments rests on repeatedly renewed statutory authorizations and has evolved from an exceptional crisis power into an established and effective component of national economic strategy.

This evolution reflects a maturing framework for economic resilience. The clarity with which responsibilities are now defined, the transparency with which these instruments are applied, and the deliberate manner in which these intervention powers are exercised all point toward a sustainable model for public-private coordination in strategic industries.

If you have any questions or concerns about the expanded use of the DPA and its potential impact on a project, please contact the authors, [Felix Faerber](#) or [Lee Smith](#), or any member of our [Economic Development Practice](#).