EXECUTIVE SUMMARY OF THE DEFENSE PRODUCTION ACT
(50 U.S.C. §§4501 ET SEQ.)

Overview:

The Defense Production Act of 1950 ("DPA"), which was initially passed during the Korean War, was originally for the purpose of ensuring military capability and readiness. It has since been expanded to address a variety of national emergencies. The DPA provides the President of the United States with broad authority to manage national defense preparedness programs and to maintain and enhance the domestic industrial base. This authority has been delegated though Executive Order 13603 to various department and agency heads. The DPA, which is authorized through September 30, 2025, is most familiar to federal contractors as a result of its priorities and allocations authority that is implemented by the Defense Priorities and Allocation System ("DPAS").

Key Authorizations

The DPA authorizes the President of the United States to take several actions, the most common of which are:

- To prioritize the performance of certain contracts to promote the national defense.
- To reduce current or projected shortfalls of certain resources, items, or materials needed for national defense purposes, through the use of, among others, loan guarantees and purchase commitments.
- Authority to establish issue regulations and orders, create voluntary agreements with private industry, block actions that threaten national security such as proposed or pending foreign corporate mergers, acquisitions, or takeovers, and employ and/or establish a volunteer pool of industry executives who could be called to government service in the interest of the national defense.

Use of DPA Authority

The DPA is commonly used in DOD acquisition through the use of the DPAS rating system. Typical prioritizations involve contracts for materials, services, and the like that are assigned priority ratings that prioritize performance under the contract for the purpose of national defense. The DPA authority has also been used by civilian agencies such as FEMA, to respond to natural disasters through the prioritization of contracts for products such as food and bottled water, and restoration of electrical services.

Less common is the use of the DPA to reduce current or projected shortfalls of certain resources, items, or materials needed for the national defense. In particular, the Defense Production Act Committee has reported that the federal government has not used the loan authorities in more than 30 years. The DOD has however, reported that it actively manages multiple projects under the DPA.

DPA Authority, COVID-19 and the Advanced Medical Technology Industry

Although the DPA has not previously been used to address public health emergencies, it has nonetheless been used to address needs similar to those being confronted in the present COVID-19 pandemic. For example, in 2014, DOD was granted authority by the Secretary of HHS to place priority ratings on orders for the Adenovirus vaccine. At present, there is speculation that the DPA could be used to speed the acquisition

and/or production of technology that is necessary to confront COVID-19, such as the production of equipment such as ventilators, as well as the production of supplies such as face masks, gloves, and gowns. This could be accomplished through the issuance of a DPAS rated order which must be accepted and filled, unless certain exceptions apply. The use of other authorities such as allocations authority, is used less often and, accordingly, there is less experience as to how these authorities would be used in the Advanced Medical Technology Industry. Finally, there are limitations on the use of DPA authority. For example, DPA authority cannot be used to control prices (such as for protective equipment or vaccines) unless it is accompanied by a joint resolution of Congress; budget authority for loans must be included in an appropriations act passed by Congress; projects established under 50 U.S.C. 4533 must be authorized by Congress and a 30 day notice period must be provided for comments.