



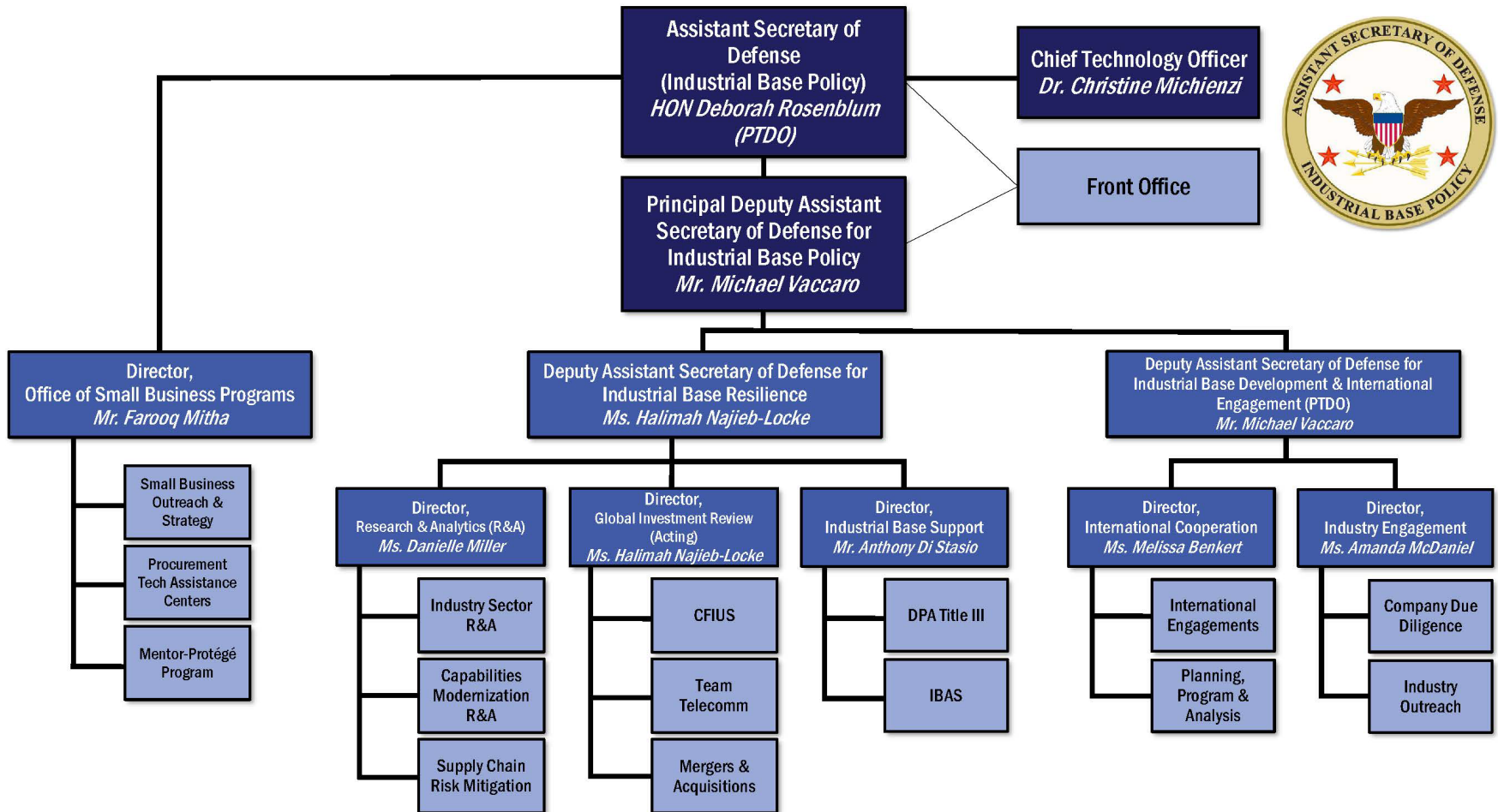
# Defense Production Act (DPA) Title III NDIA IMEMTS 18 October 2022



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# IBP Organizational Chart





# 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

<b>Loan Guarantees</b> §301 (50 U.S.C. 4531)	<b>Loans</b> §302 (50 U.S.C. 4532)	<b>Purchase Commitments</b> §303 (50 U.S.C. 4533)	<b>Purchases</b> §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

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





# 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 and Status of Presidential Determinations and Waivers

- 105 total active PDs and 2 Waivers dating to 1987
- 20 PDs and 2 Waivers signed since FY 2019

Presidential Determination/Waiver	Signature Date	Authorization Value
Alane Fuel Production	5 October 2018	\$50M
Circular Lithium-Sea Water Batteries Production	5 October 2018	\$50M
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



# 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.
- Congress **appropriated \$1B** to the DPA Purchases account via the **CARES Act** “to prevent, prepare for, and respond to coronavirus”.
  - **DoD’s DPA-Title III program developed three lines of effort**:
    - o Health Resources (\$213M)
    - o Defense Industrial Base (DIB) (\$687M)
    - o DFC Loans (\$100M)
  - Greatly **reduced acquisition timelines** resulting in the obligation of \$800M in ~10 months
- The COVID response has encouraged the Executive and Legislative branches to view the DPA authorities as **valuable tools** to be leveraged outside of its historical DoD applications.





# 5-Year Investment Plans Critical Chemicals



- DPA Title III Program has developed a 5 year strategy and investment plans focused increased leveraging of authorities to address most critical shortfalls.

**Awarded Efforts:** Obligation (Fully or Partially) Occurred

**Planned Efforts:** Not Awarded to Date

Targeted Investment Areas	FY20	FY21	FY22	FY23	FY24	FY25	FY26
Precursors				\$103.0M			
Inerts				\$6.0M			
Explosive		\$0.5M		\$96.9M			
Advanced Manufacturing Techniques (AMT)				\$20.0M			

◆ New PD Required



# 5-Year Investment Plans Hypersonics



- DPA Title III Program has developed a 5 year strategy and investment plans focused increased leveraging of authorities to address most critical shortfalls.

**Awarded Efforts:** Obligation (Fully or Partially) Occurred

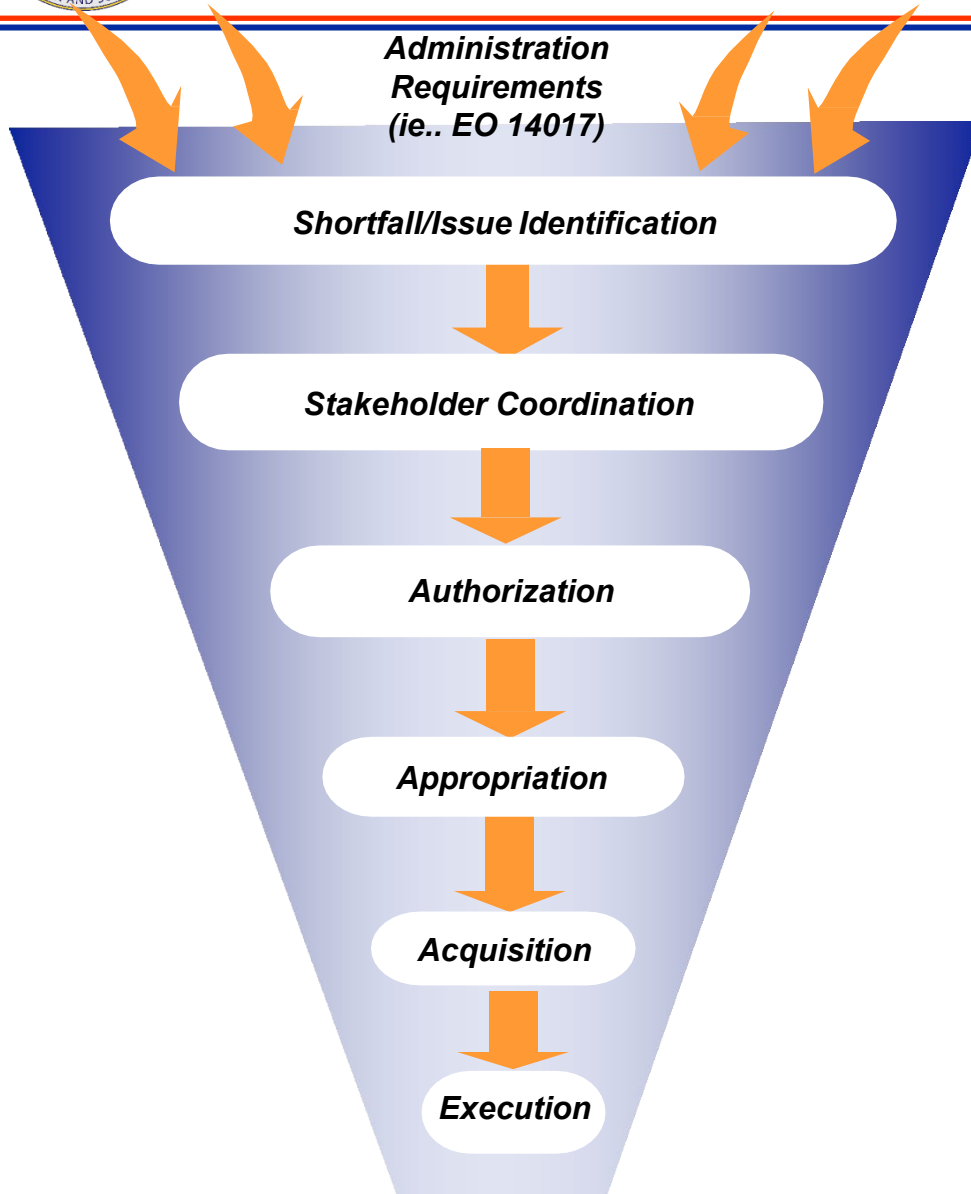
**Planned Efforts:** Not Awarded to Date

Targeted Investment Areas	FY20	FY21	FY22	FY23	FY24	FY25	FY26
Guidance and Control				<div style="border: 1px dashed black; padding: 2px;">                     ◆ \$ 19.0M-- Avionics                 </div>	<div style="border: 1px dashed black; padding: 2px;">                     \$31.5M– GNC Upgrades (GPS Denied)                 </div>		
Propulsion				<div style="border: 1px dashed black; padding: 2px;">                     ◆ \$19.0M – Conventional Boost &amp; Air Breathing (LFRJ / SFRJ)                 </div>	<div style="border: 1px dashed black; padding: 2px;">                     \$45.0M– Advanced Air Breathing (LFRDE, SFRDE, VFDR)                 </div>		
Lethality			<div style="border: 1px dashed black; padding: 2px;">                     See Critical Chemicals Roadmap                 </div>				
Vehicle			<div style="border: 1px solid black; padding: 2px;">                     \$25.0M – High Temp Materials                 </div>		<div style="border: 1px dashed black; padding: 2px;">                     \$25.0M - Fibers                 </div>		

◆ New PD Required



# Requirements Evaluation



- **Issue Identification**

- Industry- Open Funding Opportunity Announcement
  - <https://sam.gov/opp/f373370cfe504a0c9ac0ad41dccee52e/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)
- DoD or Other Government Agency – “Intake” Form

- **Authorization and Appropriation**

- Development of new/increase spending limit on Presidential Determinations

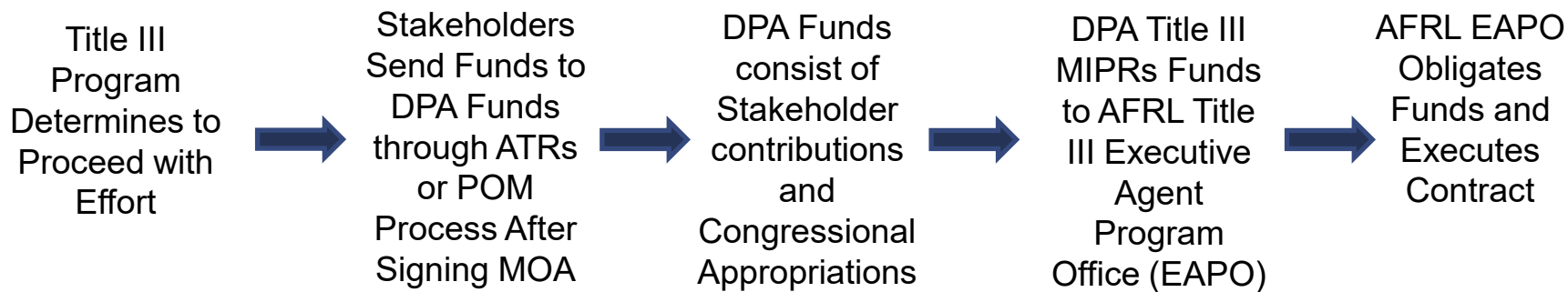
- **Acquisition**

- Develop DoD requirements
- Select T3 investment requirements
- Develop statement of objectives



# 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



# 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
  - **Small Unmanned Arial Systems**
    - Re-establishing U.S. capability for secure, interoperable systems for DoD and commercial use
- **Castings and Forgings**
  - **Thin Wall Castings**
    - Expansion of sole source supplier for aerospace grade magnesium and aluminum products for rotorcraft



# 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



# Burning Questions

