Defense Production Act Lapse: Effects on Rated Contracts and Orders

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On Sept. 30, 2025, most of the federal government's authorities under the Defense Production Act (DPA) expired amid ongoing policy debate over the statute's scope and other potential reforms. Although this development has received less attention than the lapse of the SBIR and STTR programs, it is a significant event for the defense industrial base. The government's Defense Priorities and Allocation System (DPAS) authority under Title I of the DPA likely has the most widespread effects on government contractors. DPAS allows certain federal agencies to issue priority ratings based on national security needs, requiring specified government contracts and orders to take precedence over lower-rated or unrated work, including commercial customer orders. GAO recently reported that from FY 2018-2024 federal agencies issued more than 2.5 million rated contracts and orders.

The lapse of DPAS authority raises several key questions for government contractors, including:

1. What effect does the lapse have on existing rated contracts and orders?
2. Do the DPA's liability protections remain in force?
3. How does the lapse affect the award of new rated contracts and orders?

The DPA statute itself addresses these questions in the "sunset" provision, Title VII, Section 717, codified at 50 U.S.C. § 4564.

- **Existing Contracts.** Section 717(c), Disbursement of funds or fulfillment of obligations not affected, states: "The termination of any section of this chapter...shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this chapter prior to the date of such termination." 50 U.S.C. § 4564(c).

- **Liability Protection.** A critical component of the DPAS framework is Section 707 of the DPA, which provides in pertinent part: "No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this chapter." 50 U.S.C. § 4557. This provision allows contractors performing rated orders to prioritize those orders without exposing themselves to breach-of-contract claims from commercial customers whose unrated orders are delayed or displaced. Importantly, while most DPA authorities terminated on Sept. 30, 2025, the DPA sunset provision specifically exempts Section 707 (subchapter III, section 4557) from termination. 50 U.S.C. § 4564(a).

- **New Awards and Modifications.** Federal agencies are prevented from issuing new rated contracts, or modifying unrated contracts to add priority ratings, until the DPA is reauthorized. However, agencies are arguably permitted to issue new rated orders under already awarded rated IDIQ contracts, as the "carrying out of" such contracts is not affected by the termination. 50 U.S.C. § 4564(c).

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Questions remain about how long it will take Congress to reauthorize the DPA, whether reauthorization will be clean or include substantive changes, and how long any extension of the Act's authorities will last. Reauthorization is likely, however, as DPAS is widely recognized as a critical national defense tool. Among other legislative proposals, Section 6027 of the Senate's FY 2026 NDAA would provide a clean, one-year extension.

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