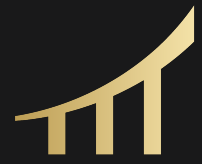


Revitalizing the Defense Production Act Committee

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Introduction

The Defense Production Act of 1950 (DPA) is one of the federal government’s most powerful and adaptable industrial policy tools. Enacted to support the country’s industrial and economic mobilization during the Korean War, the DPA gained renewed prominence as a key lever to expand production of vital public health materials and other critical resources during and after the COVID-19 pandemic. The DPA contains several important authorities, including those empowering the government to mandate prioritization of its orders from private producers and to direct the allocation of scarce resources, and to engage in financial transactions to prompt increased production of strategic goods and materials.

The power of the DPA, however, has been limited by a lack of effective deployment by most executive agencies. The federal government currently fails to effectively plan for and coordinate agency use of DPA authorities. Without meaningful intergovernmental coordination, agency capacity to deploy DPA authorities has languished. The Department of Defense (DOD)—historically the primary user of the DPA—dominates agency use of the law: in 2020, DOD used Title I of the DPA to place more than 300,000 “rated orders” to assert priority over other buyers. By comparison, the Department of Homeland Security (including the Federal Emergency Management Agency (FEMA)) placed 150 such orders, and the Department of Health & Human Services (HHS) placed 34—and that was the first time Title I authorities were used in response to a public health emergency.¹

¹ FED. EMERGENCY MGMT. AGENCY, THE DEFENSE PRODUCTION ACT COMMITTEE REPORT TO CONGRESS: CALENDAR YEAR 2020 REPORT TO CONGRESS 10 (2021), https://www.fema.gov/sites/default/files/documents/fema_DPAC-report-Defense-production-act-committee_2020.pdf.

Moreover, as manager of the DPA Fund,² DOD enjoys outsized control over how the Fund is spent under the DPA's Title III transaction authority.³

The government particularly failed to ensure that agencies effectively planned to use the DPA for emergency preparedness in advance of the COVID-19 pandemic. Agencies failed to develop plans for how they could use Title III's transaction authority during a crisis.⁴ Title VII's voluntary agreement authority was almost completely unused (outside of two minor Department of Transportation programs), and without adequate advanced planning, it took the government six months into the pandemic before deploying this authority to promote private sector cooperation for manufacturing medical supplies.⁵ No agency made use of Title VII's authority to maintain a reserve of private sector experts and civilian professionals who can be mobilized in a crisis, such as a public health emergency.⁶ And agencies failed to develop a plan to use Title I's authority to prioritize and allocate scarce resources, such as medical supplies, during a crisis—only DOD and the Department of Commerce had a process in place for executing the Act's allocation authority.⁷

Since the pandemic, agencies have taken only modest steps to improve their use of the DPA. HHS created a DPA office, and built its DPA capacity through partnerships

² Executive Order - National Defense Resources Preparedness, 77 Fed. Reg. 16,651 (Mar. 16, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/03/16/executive-order-national-defense-resources-preparedness/>.

³ See Lee Harris, *Biden's New Favorite Industrial-Policy Tool Isn't Funded*, AM. PROSPECT (June 9, 2022), <https://prospect.org/economy/bidens-new-favorite-industrial-policy-tool-isnt-funded/> (stating that "although the [DPA] fund sits at the Treasury Department, it is largely controlled by the Defense Department" and that "DOD has had a de facto policy veto" over DPA transactions).

⁴ Jared Brown, *The Defense Production Act and the Failure to Prepare for Catastrophic Incidents*, WAR ON THE ROCKS (Apr. 14, 2020), <https://warontherocks.com/2020/04/the-defense-production-act-and-the-failure-to-prepare-for-catastrophic-incidents/>.

⁵ *Id.*; see also Voluntary Agreement Under Section 708 of the Defense Production Act; Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic, 85 Fed. Reg. 50,035 (Aug. 17, 2020).

⁶ Brown, *supra* note 4.

⁷ Dan Else, *The History of the Defense Production Act and What it Means for COVID-19*, WAR ON THE ROCKS (Apr. 13, 2020), <https://warontherocks.com/2020/04/the-history-of-the-defense-production-act-and-what-it-means-for-covid-19/>; see also FED. EMERGENCY MGMT. AGENCY, USE OF THE DEFENSE PRODUCTION ACT TO REDUCE INTERRUPTIONS IN CRITICAL INFRASTRUCTURE AND KEY RESOURCE OPERATIONS DURING EMERGENCIES: CALENDAR YEAR 2010 REPORT TO CONGRESS 8-9 (2011), <https://irp.fas.org/agency/dhs/fema/reduce.pdf> (discussing the Priority Allocation of Industrial Resources Task Force).

with DOD.⁸ The Biden administration has expanded use of the DPA by HHS and the Department of Energy (DOE),⁹ but few other agencies appear to have built significant DPA capacity, and cross-agency knowledge sharing has been limited due to a lack of personnel and funding.

This paper lays out steps that policymakers can take to address these DPA deployment issues by revitalizing the executive branch body designed to manage and coordinate the law's usage: the Defense Production Act Committee (DPAC). The paper makes a series of recommendations for how the President, Congress, and individual executive agencies can strengthen DPAC's leadership, improve cross-agency DPA planning and coordination, expand agencies' capacity to use the DPA's authorities, and to restore DPAC's scope to address all of the DPA. These reforms can help the federal government to move beyond reactive use of the DPA's powerful authorities, and toward strategic and proactive deployment of them. This would turn the Defense Production Act Committee into the type of industrial policy institution we need to meet today's challenges.

I. DPAC has not solved DPA deployment problems

The Defense Production Act Committee was intended to solve agencies' DPA deployment issues, but it has fallen short. DPAC is the executive branch body charged with organizing and overseeing the government's deployment of these authorities, envisioned by its original congressional proponents as a "Cabinet level forum on industrial policy" when it was created in 2009.¹⁰ However, DPAC—

⁸ U.S. GEN. ACCOUNTING OFFICE, GAO-22-105380, COVID-19: AGENCIES ARE TAKING STEPS TO IMPROVE FUTURE USE OF DEFENSE PRODUCTION ACT AUTHORITIES 12 (2021), <https://www.gao.gov/assets/gao-22-105380.pdf>.

⁹ See FACT SHEET: President Biden Announces New Actions to Strengthen America's Supply Chains, Lower Costs for Families, and Secure Key Sectors, THE WHITE HOUSE (Nov. 27, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/27/fact-sheet-president-biden-announces-new-actions-to-strengthen-americas-supply-chains-lower-costs-for-families-and-secure-key-sectors/>; FACT SHEET: President Biden Takes Bold Executive Action to Spur Domestic Clean Energy Manufacturing, THE WHITE HOUSE (June 6, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/fact-sheet-president-biden-takes-bold-executive-action-to-spur-domestic-clean-energy-manufacturing/>.

¹⁰ Press Release, U.S. Senate Comm. on Banking, Hous. & Urban Affairs, SENATE APPROVES DODD'S BILL TO STRENGTHEN MANUFACTURING CRITICAL TO AMERICA'S SECURITY (Sept. 17, 2009), <https://www.banking.senate.gov/newsroom/minority/senate-approves-dodds-bill-to-strengthen-manufacturing-critical-to-americas-security>.

comprised of the agencies designated by the president as DPA authorities, and led by the Federal Emergency Management Agency (FEMA)—has not achieved that promise.

DPAC is the latest in a series of executive branch bodies overseeing industrial policy and defense mobilization. The National Security Resources Board, established by the National Security Act in 1947, advised the president on military and industrial mobilization, and was led by a chairman and a board of seven agency heads.¹¹ After Congress passed the Defense Production Act in 1950, President Truman created the Office of Defense Mobilization (ODM) to plan and coordinate mobilization activities, economic stabilization, and industrial production during the Korean War.¹² Truman appointed General Electric president Charles E. Wilson to run ODM, who became a “virtual mobilization czar” as the office coordinated wartime production and implemented economy-wide wage and price stabilization regulations.¹³ A powerful authority during the war, ODM was merged into the Office of Civil and Defense Mobilization (later known as the Office of Emergency Planning) in 1958, and was ultimately eliminated in 1973.¹⁴

No other executive branch body existed to manage DPA deployment until Congress created DPAC in 2009. Congress felt that a new coordinating body was necessary following intergovernmental reports finding that agencies were failing to effectively plan, coordinate, and utilize the DPA’s authorities.¹⁵ Congress therefore saw fit to create a new “Cabinet level forum on industrial policy,” as leading proponent Senator Chris Dodd (D-CT) described DPAC.¹⁶ Dodd envisioned DPAC as “a new

¹¹ DOUGLAS I. BELL, “A LITTLE-KNOWN BILL OF GREAT NATIONAL SIGNIFICANCE”: THE USES AND EVOLUTION OF THE DEFENSE PRODUCTION ACT, 1950-2020, U.S. ARMY HERITAGE & EDU. CTR. 8 (2020), https://ahec.armywarcollege.edu/documents/Defense_Production_Act_1950-2020.pdf.

¹² Executive Order 10193 -- Providing for the Conduct of the Mobilization Effort of the Government (Dec. 16, 1950), <https://www.presidency.ucsb.edu/documents/executive-order-10193-providing-for-the-conduct-the-mobilization-effort-the-government>; see also Paul Pierpaoli, *Truman’s Other War: The Battle for the American Homefront, 1950-1953*, 14 OAH MAGAZINE OF HIST.. 3, 15 (2000), <https://www.jstor.org/stable/25163359>.

¹³ Pierpaoli, *supra* note 12, at 17.

¹⁴ BELL, *supra* note 11, at 15.

¹⁵ ADAM G. LEVIN, CONG. RSCH. SERV., IF11767, THE DEFENSE PRODUCTION ACT COMMITTEE (DPAC): A PRIMER 1 (2021), <https://crsreports.congress.gov/product/pdf/IF/IF11767>.

¹⁶ Press Release, U.S. Senate Comm. on Banking, Hous. & Urban Affairs, SENATE APPROVES DODD’S BILL TO STRENGTHEN MANUFACTURING CRITICAL TO AMERICA’S SECURITY (Sept. 17, 2009),

interagency body that will elevate DPA policy discussions to Cabinet-level posts, so that administrations going forward will be able to reassess the law's provisions and applications, and never lose sight of the importance of coordinating with critical segments of our industry to meet national defense needs.”¹⁷ Dodd believed that DPAC would be “particularly essential” for deployment of the DPA’s Title III transaction authorities, which he deemed both “critically important—and underused.”¹⁸ Senator Sherrod Brown (D-OH) likewise stated that DPAC would “ensure more agencies use the DPA to the benefit of manufacturers and our emergency preparedness.”¹⁹

DPAC as enacted in 2009 had several key features. First, Congress mandated that the body “shall advise the President on the effective use of the authority under [the DPA].”²⁰ Its membership included each agency head designated as a DPA authority by the president, as well as the chair of the Council of Economic Advisers.²¹ The president would designate one member agency head as the chair of DPAC, and also hire a dedicated executive director to run DPAC’s operations.²² DPAC was also required to submit an annual report to Congress addressing each agency’s DPA authorities, recommendations for effective use of these authorities, and proposed reforms to the DPA authorities.²³

Unfortunately, DPAC was never effectively implemented. President Obama issued an executive order designating seventeen agencies as DPA authorities (and thus DPAC members), and designating the Secretary of the Department of Homeland

<https://www.banking.senate.gov/newsroom/minority/senate-approves-dodds-bill-to-strengthen-manufacturing-critical-to-americas-security>.

¹⁷ 155 CONG. REC. 131 (daily ed. Sept. 16, 2009) (statement of Sen. Dodd),

<https://www.govinfo.gov/content/pkg/CREC-2009-09-16/html/CREC-2009-09-16-pt1-PgS9480.htm>.

¹⁸ *Id.*

¹⁹ Press Release, Sen. Sherrod Brown, Sen. Brown Statement on Senate Passage of Defense Production Act Reauthorization (Sept. 17, 2009),

<https://www.brown.senate.gov/newsroom/press/release/sen-brown-statement-on-senate-passage-of-defense-production-act-reauthorization>.

²⁰ Defense Production Act Reauthorization of 2009, Pub. L. 111-67, § 11, 123 Stat. 2006 (2009).

²¹ *Id.*

²² *Id.*

²³ *Id.*

Security (DHS) as the DPAC chair.²⁴ However, DHS then subdelegated the DPAC chair to the FEMA administrator.²⁵ Because the president failed to appoint an executive director, management of DPAC fell to deputies to the FEMA administrator, and DPAC never operated at the Cabinet level as its congressional champions had hoped.²⁶

In response, Congress scaled back DPAC in 2014. Openly dissatisfied with DPAC's performance to date,²⁷ Congress narrowed the scope of DPAC's responsibilities to planning and coordinating Title I authorities only, removing its mandate to address Title III and Title VII authorities.²⁸ Congress also eliminated DPAC's vacant presidentially-appointed executive director position, replacing it with a coordinator appointed by and reporting to the DPAC chairperson (i.e., the FEMA administrator).²⁹ Even with these reforms, DPAC still appears to be underperforming its reduced mandate: as a Congressional Research Service report found, "The DPAC's principal function appears to be developing its annual report to Congress. [...] The DPAC's other statutory functions, such as planning and coordinating DPA Title I activities across government, do not appear in the annual report or in other publicly available documents."³⁰

²⁴ Executive Order -- National Defense Resources Preparedness, 77 Fed. Reg. 16,651 (Mar. 16, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/03/16/executive-order-national-defense-resources-preparedness/>. This superseded a May 2010 presidential memorandum that created a shared DPAC chair between DHS and DOD, with the chair rotating annually. See Presidential Memorandum: Designating the Chairperson of the Defense Production Act Committee, 75 Fed. Reg. 32,087 (May 19, 2010).

²⁵ LEVIN, *supra* note 15, at 2.

²⁶ *Id.* Some of these implementation failures may have been driven by apparent philosophical opposition to the DPA by some officials in the Obama administration. See Thomas Frank, *How the Defense Production Act became a disaster law*, E&E NEWS (Mar. 31, 2020), <https://www.eenews.net/articles/how-the-defense-production-act-became-a-disaster-law/> (former FEMA administrator "faced opposition in the Obama administration from officials who said [the DPA] was disruptive to the nation's manufacturing.").

²⁷ LEVIN, *supra* note 15, at 2 ("During House deliberations, the Congressional Record includes broad references to the changes as a means to 'improve the effectiveness of' and 'restructure and refocus' the DPAC.").

²⁸ See 50 U.S.C. § 4567(a).

²⁹ *Id.* at § 4567(c).

³⁰ LEVIN, *supra* note 15, at 2. DPAC hasn't even consistently issued annual reports to Congress: it has not issued a report in the last three years. See *infra* note 31 and accompanying text.

DPAC as currently structured suffers from a number of shortcomings that weaken the ability of federal agencies to maximize their use of the DPA’s authorities. DPAC’s leadership by DHS (which is delegated to FEMA) has not been able to make the Committee an effective planning body. DPAC has not adequately facilitated planning for and coordination of agency use of DPA authorities, as demonstrated by agencies’ lack of readiness to deploy the DPA during COVID-19. DPAC’s calendar year 2020 report to Congress—the most recent publicly-available report the Committee has issued—includes a short section on general contingency planning, but does not detail how agencies could make use of DPA authorities.³¹ DPAC has also failed to significantly expand agency capacity to use the DPA’s authorities, and the minimal advances in agency DPA capacity in recent years have been driven by the White House. Finally, DPAC’s revised scope of authority is too narrow: pursuant to Congress’s 2014 reauthorization, DPAC exclusively focuses on the Act’s Title I priorities and allocations authority, and no longer has a mandate to plan or coordinate around the DPA’s other authorities, such as loans and other transactions under Title III, or the authority to facilitate voluntary private sector cooperation and civilian mobilization reserves under Title VII.

II. Recommendations

Revitalizing DPAC should center around four goals: (1) strengthening DPAC’s leadership; (2) improving DPA planning and coordination across agencies; (3) expanding DPA capacity among more agencies; and (4) restoring DPAC’s scope to address all of the DPA’s authorities.³²

There are pathways to achieving these reforms through the White House, Congress, and individual federal agencies, as summarized in Table 1 and detailed below:

³¹ See FED. EMERGENCY MGMT. AGENCY, THE DEFENSE PRODUCTION ACT COMMITTEE REPORT TO CONGRESS: CALENDAR YEAR 2020 REPORT TO CONGRESS 21-24 (2021), https://www.fema.gov/sites/default/files/documents/fema_DPAC-report-Defense-production-act-committee_2020.pdf.

³² More foundationally, the President (or Congress) could obviate the need for DPAC at all by reassessing the current decentralized model of DPA authorities spread across individual agencies. DPA operations could instead be centralized within a single office under the President, consistent with the intent of the statute. See 50 U.S.C.A. § 4502(a)(4) (“provid[ing] *the President* with an array of authorities to shape national defense preparedness programs and to take appropriate steps to maintain and enhance the domestic industrial base”) (emphasis added).

Table 1: Pathways to DPAC Reform

<i>Goal</i>	White House	Congress	Agencies
<i>(1) Strengthen DPAC's leadership</i>	To assist DPAC, create a DPA Coordination Council led by the Director of the National Economic Council and the National Security Advisor, with an assigned staffer coordinator, to lead DPA planning and coordination.	-	Assign Senior Accountable Officials with decision-making authority (Assistant Secretary level or above) to DPAC work.
<i>(2) Improve DPA planning and coordination</i>	Instruct the DPA Coordination Council to coordinate and plan for the effective use of the DPA across all agencies. Commission reports from each agency on how they can better use the DPA. Instruct agencies to develop and perform industrial mobilization planning exercises.	Appropriate funding for the DPAC to hire staff.	Initiate internal DPA assessments. Develop and perform industrial mobilization planning exercises.
<i>(3) Expand agency DPA capacity</i>	Formalize an executive branch program to temporarily embed agency officials with experienced DPA agencies (e.g., DOD).	Appropriate funding for the DPAC to hire staff.	Set up ad hoc partnerships to embed agency officials with experienced DPA agencies. Establish DPA offices.
<i>(4) Restore DPAC's scope</i>	Instruct DPAC to additionally coordinate Title III and Title VII authorities.	Expand DPAC's mandate to address all DPA authorities.	Include all titles of the DPA within internal assessments.

(1) Strengthen DPAC's leadership

DPAC's current leadership by DHS (which it has delegated to FEMA) has not proven capable of effectively planning and coordinating DPA activities. DPAC needs support to lead interagency coordination from officials in the White House.

To strengthen DPAC's leadership, the President could create a new DPA Coordination Council led by the Director of the National Economic Council and the National Security Advisor, and assign a Deputy to assist with the Council's day-to-day business. (See *Proposed Executive Order in Appendix A.*) All members of DPAC would be members of the Coordination Council. This structure would be similar to that of the White House Competition Council.³³ The Coordination Council would reinforce DPAC's capacity to manage agency DPA deployment: FEMA (or another designee) would continue as DPAC chair and would resume its role authoring annual reports to Congress, while the Coordination Council chairs would have the primary responsibility for advancing DPAC's planning and coordination goals.

To further elevate DPAC's leadership, agencies could also assign Senior Accountable Officials with decision-making authority (i.e., Assistant Secretary level or above) to DPAC's work.

(2) Improve DPA planning and coordination

DPAC has failed to effectively facilitate DPA planning and coordination across all agencies authorized to use the law. This has hampered the federal government's ability to make maximal use of the DPA's authorities, and to adequately prepare for crises.

To improve DPAC's ability to plan and coordinate interagency DPA deployment, the President could issue an "Executive Order on Revitalizing the Defense Production Act Committee." (See *Proposed Executive Order in Appendix A.*) This Order should instruct the new DPAC Coordination Council to coordinate and plan for the effective use of the DPA across all agencies by commissioning reports from each DPA agency undertaking an assessment on how they can use the DPA both to advance their goals and in response to an emergency. Agencies should detail how they can utilize

³³ Executive Order 14036 - Promoting Competition in the American Economy, 88 Fed. Reg. 36,987 (Jul. 14, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

each of the DPA's key authorities, including the ability to prioritize orders and allocate materials under Title I; the ability to expand productive capacity and supply through loans, guarantees, purchases, and subsidies under Title III; the ability to facilitate voluntary cooperation among private firms under Title VII; and the ability to create civilian mobilization reserves under Title VII. Where applicable, these reports could draw from supply chain reviews conducted by agencies pursuant to Executive Order 140147 to identify high-priority uses of DPA authority.³⁴ Each report should also include areas where agencies need help building DPA capacity, and a plan to build that capacity (for example, by enlisting support from DOD) or recommendations to Congress on additional authorities and funding needed to build that capacity. The Order should also instruct agencies to develop and regularly perform industrial mobilization planning exercises to enhance their preparedness for future emergencies.

Individual agencies could also initiate these DPA self-assessments without waiting for an executive order. These assessments would help agencies think creatively about how to use the DPA, and identify capacity gaps that need to be addressed. Similarly, agencies could also develop and perform industrial mobilization planning exercises to bolster their emergency preparedness.

Congress could also appropriate funding for the DPAC to hire staff who have DPA expertise and can be a resource for cross-agency planning and coordination.

(3) Expand agency DPA capacity

Too many authorized agencies still lack the institutional capacity to make effective use of the DPA—a problem that DPAC was intended to solve when it was created fifteen years ago. Before the COVID-19 pandemic, few agencies beyond DOD and two small offices within the Department of Commerce and FEMA were expected to have capacity to use the DPA. That has changed, and agencies need capacity to meet these updated expectations. Leveraging and increasing the number of skilled

³⁴ See Executive Order 140147 - America's Supply Chains, 86 Fed. Reg. 11,849 (Feb. 24, 2021); see also The Biden-Harris Plan to Revitalize American Manufacturing and Secure Critical Supply Chains in 2022, THE WHITE HOUSE (Feb. 24, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/24/the-biden-harris-plan-to-revitalize-american-manufacturing-and-secure-critical-supply-chains-in-2022/>.

DPA personnel is critical to enabling agencies to more effectively deploy the law's authorities.

To expand agency DPA capacity, as part of the "Executive Order on Revitalizing the Defense Production Act Committee," the President could create a formal executive branch rotation program to temporarily embed agency officials with experienced DPA agencies, such as DOD or offices with financing expertise (such as the DOE Loan Programs Office or the Export-Import Bank). This would share DPA knowledge and expand expertise by allowing officials from inexperienced DPA agencies to "learn by doing" while shadowing experienced DPA peers from other agencies. This rotation of personnel also would create inter-agency connective tissue that, in a national emergency, could be leveraged for a stronger rapid response.

Authorized agencies that do not already have a formal or robust DPA office should create one, or could embed their DPA work in a complementary office (as the DOE has done in its Office of Manufacturing and Energy Supply Chains). They could also initiate ad hoc individual partnerships, supervised and approved by DPAC, on an agency-by-agency basis to set up embed programs where their staff would be cross-trained by experienced DPA agencies.

Congress could appropriate funding for the DPAC to hire staff who have DPA expertise and can help individual agencies plan and execute DPA actions.

(4) Restore DPAC's scope

While DPAC originally had a mandate to plan and coordinate across all of the DPA's authorities, Congress scaled this mandate back to just Title I in 2014 in response to the Committee's slow start.³⁵ While this response was understandable, it has also left too many important levers in the DPA unaddressed.

To restore DPAC's full scope, Congress should revert to DPAC's original 2009 mandate, and strike the reference to "priorities and allocations" in Section 4567(a). This would require DPAC to lead executive branch planning and coordination of all of the DPA's authorities, including Title III's authority to expand productive capacity and supply through loans, guarantees, purchases, and subsidies; Title VII's authority

³⁵ See 50 U.S.C. § 4567(a) (DPAC "shall coordinate and plan for ... the effective use of the priorities and allocations authorities").

to facilitate voluntary cooperation among private firms; and Title VII's authority to create civilian mobilization reserves.

Even without congressional action, Section 4567(a)'s reference to "priorities and allocations" is a floor, and not a ceiling. That means that the President could instruct DPAC to address authorities beyond just Title I, as discussed above. Likewise, agencies could voluntarily initiate planning and coordination assessments of all DPA authorities on their own outside of DPAC, as discussed above.

Conclusion

The United States has recognized that industrial policy is necessary to meet today's challenges, from blunting China's dominance across strategic sectors like critical minerals to repairing a hollowed out industrial base to enhancing American energy security. Now is the time to stand up stronger institutions to execute industrial policy with deliberate strategy and coordination to maximize our ability to prevail against those challenges. The DPA has been one of the legal cornerstones of American industrial policy. Revamping DPAC to achieve its founding potential would be a step toward a stronger American industrial strategy.

Appendix A

Proposed Executive Order on Revitalizing the Defense Production Act Committee

By the authority vested in me as President by the Constitution and the laws of the United States of America, including authority under the Defense Production Act of 1950, as amended (the “Act” or “DPA”) (50 U.S.C. 4567), it is hereby ordered as follows:

Section 1. *Policy.* The United States must increase its capacity to secure production of critical goods and materials to ensure our national security and economic prosperity. The Defense Production Act of 1950 provides a broad set of authorities for the government to catalyze and partner with domestic industry in the interest of national defense. The Act has proven critical to helping the United States meet a number of challenges and exigencies, including military equipment needs, public health threats, energy crises, and food shortages.³⁶

More effective use of the Act is crucial to meeting future security and economic challenges. Toward that end, section 722 of the Act established the Defense Production Act Committee (the “Committee”) to coordinate and plan for the effective use of the Act’s authorities by federal agencies. The Committee has served a valuable information-gathering function since its inception. We must now expand the Committee’s capacity to assist agencies in planning and coordinating to use the Act to meet contemporary national defense needs.

Therefore, it is the policy of my Administration to revitalize and strengthen the Committee.

Section 2. *The White House Defense Production Act Coordination Council.* (a) There is established a White House Defense Production Act Coordination Council (the “Council”) within the Executive Office of the President.

(b) To assist and strengthen the Committee’s work, the Council shall have primary responsibility for advancing cross-agency planning and coordination under the Act. The Council shall work across agencies to coordinate capacity-building and emergency preparedness to secure production of critical goods and materials to

³⁶ See, e.g., Executive Order 14001 (Executive Order on a Sustainable Public Health Supply Chain); Presidential Determination No. 2022-13 (Delegating Authority Under the Defense Production Act To Ensure an Adequate Supply of Infant Formula); U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *California Energy Crisis and Use of the Defense Production Act*, 107th Cong., 1st sess., February 9, 2001, S.Hrg. 107-215 (Washington: GPO, 2001).

ensure our national security and economic prosperity, and to catalyze and partner with domestic industry in the interest of national defense pursuant to the Act.

(c) The Council shall be led by the Assistant to the President for Economic Policy and the Assistant to the President for National Security Affairs, who shall serve as Co-Chairs of the Council.

(d) In addition to the Co-chairs, the Council shall consist of the following members:

- (1) The Secretary of State;
- (2) The Secretary of the Treasury;
- (3) The Secretary of Defense;
- (4) The Attorney General;
- (5) The Secretary of the Interior;
- (6) The Secretary of Agriculture;
- (7) The Secretary of Commerce;
- (8) The Secretary of Labor;
- (9) The Secretary of Health and Human Services;
- (10) The Secretary of Transportation;
- (11) The Secretary of Energy;
- (12) The Secretary of Homeland Security;
- (13) The Director of National Intelligence;
- (14) The Director of the Central Intelligence Agency;
- (15) The Chair of the Council of Economic Advisers;
- (16) The Administrator of the National Aeronautics and Space Administration;
- (17) The Administrator of General Services; and
- (18) Any other agency head that the co-chairs find appropriate to include.

Section 3. *Planning and Coordination.* The Council is henceforth responsible for coordinating and planning for the effective use of all authorities under the Act by DPA agencies. The Council shall commission reports due within 180 days of the date of this order from each DPA agency. Each report shall:

- (a) detail how the DPA agency can use authorities under titles I, III, and VII of the Act to advance elements of its mission related to protecting the national defense,
- (b) discuss how the DPA agency can use authorities under titles I, III, and VII of the Act during a national emergency.

- (c) identify the DPA agency's current capacity limitations to deploy the Act's authorities, and (i) propose a plan to enhance its capacity, or (ii) make recommendations to Congress on additional authorities and funding needed to build that capacity.
- (d) where applicable, be informed by any supply chain review conducted by the DPA agency pursuant to Executive Order 14017 to identify high-priority uses of the Act.

Section 4. *Capacity Building.* To build government-wide capacity under the Act, the Council shall initiate a Defense Production Act Rotation Program (the "Program"). Under the Program, the Council shall (a) identify DPA agencies and other governmental offices with significant expertise in effectively using the Act's authorities and/or with relevant incidental expertise related to the Act's authorities ("Experienced Agencies"), and (b) design and facilitate a program to temporarily embed officials from across government with Experienced Agencies.

Section 5. *Planning Exercises.* (a) The Council shall instruct each DPA agency to develop industrial mobilization planning exercises to enhance emergency preparedness within 180 days of the date of this order.

(b) The Council shall ensure that each DPA agency shall perform its industrial mobilization planning exercise at least once per calendar year.

Section 6. *Quarterly Meetings.* The Council shall convene quarterly meetings for the purpose of planning and coordinating agency usage of the Act.

Section 7. *Definitions.* For purposes of this order:

(a) "DPA agency" means any authority of the United States, including any component of the Executive Office of the President, designated to deploy and enforce the Defense Production Act pursuant to Executive Order 13603 or any superseding executive order.

(b) "Critical goods and materials" means goods and raw materials currently defined under statute or regulation as "critical" materials, technologies, or infrastructure.

(c) "National defense" means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of The

Robert T. Stafford Disaster Relief and Emergency Assistance Act and critical infrastructure protection and restoration.

Section 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect (i) the authority granted by law to an executive department or agency, or the head thereof; or (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
