



The Defense Production Act Committee Report to Congress

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Preface

This report of the Defense Production Act Committee (DPAC) has been prepared for submission to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and the Committee on Financial Services of the United States House of Representatives, in accordance with subsection 722(d) of the Defense Production Act of 1950, as amended 50 U.S.C. [App. § 2061 et seq.] (DPA). This report provides an overview of DPA authorities and activities of Federal departments and agencies during Calendar Year 2013 and describes ongoing DPAC activities to assess the use of DPA authorities in support of the national defense, including military, space, and energy programs, disaster preparedness and response activities, critical infrastructure protection and restoration, and counterterrorism programs.

Executive Summary

The Defense Production Act Committee (“DPAC” or “Committee”) was established by an amendment to the Defense Production Act (DPA) in 2009 to advise the President on effective use of DPA authorities and to develop recommendations for changes to the law and the use of these authorities.

This report provides a review of the DPAC operations and describes activities within the Executive Branch related to the use of DPA authorities. The report does not include any recommendations for legislative action involving DPA authorities.

Pursuant to subsection 722(b)(2) of the DPA, the President has designated the Secretary of Homeland Security and the Secretary of Defense as rotating chairpersons of the DPAC. The DPAC Chairperson rotates annually on April 1. The Administrator of the Federal Emergency Management Agency, representing the Secretary of Homeland Security will assume the DPAC Chair on April 1, 2014, until March 31, 2015. The Committee’s membership includes the heads of seventeen Federal departments and agencies to which the President has delegated DPA authorities and responsibilities.

Sec. 722(d) of the DPA stipulates that the report shall be signed by each member of the Committee. Member signatures are at Annex B.

During 2013, the Committee continued several studies focused on:

- Providing recommendations for use of DPA Title III authorities;
- Use of DPA priorities and allocations authority to support disaster preparedness and response activities, and critical infrastructure protection and restoration; and
- Use of the DPA voluntary agreements authority.

1. Introduction

1.1. *Defense Production Act*

The Defense Production Act of 1950, as amended (50 U.S.C. App., §2061 et seq.) (DPA), is the primary source of Presidential authorities to expedite supply and expand productive capacity of materials and services needed to promote the national defense. For the purposes of the DPA, “national defense” means programs for military and energy production or construction, military or critical infrastructure¹ assistance to any foreign nation, homeland security,² stockpiling, space, and any directly related activity. “National defense” also includes emergency preparedness³ activities conducted pursuant to Title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. § 5195 et seq.] (Stafford Act)⁴ and critical infrastructure protection and restoration.

Major DPA provisions include:

- The authority to require acceptance and priority performance of contracts and orders to promote the national defense [DPA section 101];
- The authority to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as deemed necessary or appropriate to promote the national defense [DPA section 101];
- Various forms of financial incentives and assistance for industry to reduce current or projected shortfalls of resources essential for the national defense or to create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense [DPA Title III];
- Antitrust protection for voluntary agreements and action plans among business competitors to enable cooperation to plan and coordinate measures to increase the supply of materials and services needed for the national defense [DPA section 708]; and

¹ The DPA defines “critical infrastructure” to mean “any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.”

² The DPA defines “homeland security” to mean: (A) to prevent terrorist attacks within the United States; (B) to reduce the vulnerability of the United States to terrorism; (C) to minimize damage from a terrorist attack in the United States; and (D) to recover from a terrorist attack in the United States.

³ “Emergency preparedness” includes all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard.

⁴ The purpose of title VI of the Stafford Act is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. This title is carried out by the Administrator of the Federal Emergency Management Agency.

- The authority to establish a cadre of persons with recognized expertise for employment in executive positions in the Federal Government in the event of an emergency [DPA section 710(e)].

1.2. Defense Production Act Committee

The Defense Production Act Committee (DPAC) is established by section 722 of the DPA to advise the President on the effective use of these authorities in support of the national defense. The position of DPAC Chairperson rotates between the Secretaries of Defense and Homeland Security annually on April 1. On April 1, 2013, the Chair rotated from Homeland Security to Defense. The DPAC is comprised of the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Energy, the Secretary of Homeland Security, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Chair of the Council of Economic Advisers, the Administrator of the National Aeronautics and Space Administration, and the Administrator of General Services. The Director of the Office of Management and Budget and the Director of the Office of Science and Technology Policy are invited to participate in all Committee meetings and activities in an advisory role. The DPAC Chairperson may, also, invite the heads of other departments and agencies to participate in DPAC meetings, as appropriate.

1.3. Organization of the Report

This report addresses the subjects listed in subsection 722(d) of the DPA. Chapter 2 describes programs in place to make effective use of the DPA authorities to support national defense programs. Chapter 3 includes information about ongoing DPAC assessment activities. Chapter 4 describes procedures and actions to share information among Federal agencies regarding DPA issues. Annex A provides a review of the DPA authorities of Federal departments and agencies. Annex B contains the signature of each member of the Committee as required by Sec. 722(d) of the DPA.

2. Use of DPA Authorities

This chapter describes activities of federal departments and agencies to make effective use of DPA authorities to promote the national defense. These activities include: (1) development of consistent priorities and allocations regulations by Departments to whom the President has delegated these authorities; (2) coordinated implementation of a Federal Priorities and Allocations System; and (3) implementation of the Title III authorities, including actions to increase collaboration between the Department of Defense (DOD) Title III Program Office and other Federal agencies in conducting Title III projects that support energy, space, critical infrastructure, and homeland security programs, in addition to military programs.

2.1. Use of Title I Authorities: Priority Ratings

Title I of the DPA provides the President the authority to require preferential performance on contracts and orders, as necessary or appropriate, to meet national defense requirements. EO 13603 delegates these authorities to various federal departments. EO 13603 directs the Secretary of each department that is delegated priorities and allocations authority by the President (“resource department”) to plan for and issue regulations to establish standards and procedures by which the authority shall be used to promote the national defense under both emergency and non-emergency conditions and to authorize the heads of other agencies, as appropriate, to place priority ratings on contracts and orders for materials, services, and facilities needed in support of programs approved under section 202 of the EO. The Department of Commerce (DOC) is currently in the process of updating its rule for the Defense Priorities and Allocations System (DPAS). New priorities and allocations rules have been published by the Department of Energy (DOE) and the Department of Transportation (DOT), and new rules are being prepared by the Department of Agriculture and the Department of Health and Human Services. At this time, however, only the priorities system established under the DOC regulation is actively used.

To implement its authority, DOC administers DPAS (15 C.F.R. Part 700), which has been a cornerstone of DOD procurement activity since 1950. DOC has delegated authority to DOD, DOE, the General Services Administration, and the Department of Homeland Security (DHS) to place rated orders for industrial resources in support of programs determined eligible for priorities and allocations support, in accordance with the provisions of section 202 of EO 13603. DOC also authorizes other government agencies, foreign governments, and owners and operators of critical infrastructure to place DPAS-rated orders on a case-by-case basis. Such requests must first be determined “necessary or appropriate to promote the national defense” by DOD, DOE, or DHS, depending on the purpose of the program targeted for support (i.e., military, energy, or homeland security and other essential civilian, respectively). As the primary user of the authority, DOD places priority ratings on DOD-approved national defense program contracts and subcontracts for industrial resources, including construction and Foreign Military Sales contracts.

Use of priority authorities by Government organizations to support non-military programs has been relatively limited. DHS uses DPAS-rated orders to obtain industrial resources in support of such activities as: hurricane and flood preparedness and response; Homeland Security Technology Programs; the Customs and Border Protection Air and Marine P-3 Aviation Program; and the Federal Emergency Management Agency (FEMA) National Radio System

Program. Other Federal departments and agencies also use DPAS priority ratings in support of DHS-approved programs. For example, the U.S. Army Corps of Engineers used DPAS priority ratings to support timely completion of the Hurricane and Storm Damage Risk Reduction System following Hurricane Katrina and its actions in response to the Missouri River flooding in 2011.

2.2. Use of Title III Authorities

Title III of the DPA authorizes various actions by the President to create, expand, maintain, or modernize domestic production capabilities for industrial resources and critical technology items needed for national defense purposes. DOD is the only Federal department with Title III funding and a program office dedicated to the use of Title III authorities. As a result, the DOD DPA Title III Program Office coordinates and executes government-wide use of Title III authorities to address industrial base shortfalls on behalf of all Federal departments and agencies engaged in procurement related to the national defense.⁵ Since the 1980s, most Title III projects have been funded entirely by DOD, but other agencies have also occasionally participated.

The DPA requires that the President make two determinations before a Title III project is initiated: (1) the project is essential for national defense; and (2) industry cannot or will not provide needed capacity in a timely manner without Title III assistance. Under EO 13603, determination authority is delegated to the head of each federal department or agency engaged in procurement for the national defense. Within DOD, this authority is further delegated to the Under Secretary of Defense for Acquisition, Technology & Logistics. Once a determination is made, the House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs must be notified of such action.

Title III projects may address industrial base shortfalls in several ways. First, government purchases and purchase commitments reduce the financial risks that discourage potential producers from creating new capacity. Second, the new production capabilities stimulated by Title III incentives are generally more efficient and result in lower production costs and product prices. Third, Title III projects commonly generate information about the performance characteristics of new materials and support testing and qualification to promote the use of these materials in defense systems. It is important to note that, in the case of any DOD Title III Program expenditure, cost-sharing on the part of the private sector is required.

The Title III Program executes projects ranging from process improvement to production plant construction. Project objectives may include: expanding and sustaining production capacity; ensuring government access to technology and resources; and ensuring long-term commercial viability. While Title III projects target national defense needs, they generally result in broader benefits to the U.S. economy, such as reducing foreign dependencies, increasing greater economic and technological competitiveness, and advancing American work skills. Additionally, improvements in production capabilities result in decreased production costs, lowered prices, and improved product quality.

⁵ DOD Directive 4400.01E (October 12, 2001) delegates authority and responsibilities within DOD regarding use of the DPA authorities and designates the Secretary of the Air Force as the DOD Executive Agent for the Defense DPA III Program.

During 2013, the DPA Title III Program had 45 domestic firms under agreement/contract. Four projects reached completion during the year, while four new projects were awarded. An additional four projects were in active acquisition in 2013.

The following projects awarded contracts/agreements to domestic firms in 2013:

- Advanced Drop-In Biofuel Production
- Gallium Nitride Advanced Electronic Warfare Monolithic Microwave Integrated Circuit Producibility
- Lithium-Ion Battery Production for Military Applications
- Read Out Integrated Circuit Foundry Improvement and Sustainability (second contractor)

DPA Title III projects with ongoing contracts/agreements during 2013 included:

- Advanced Carbon Nanotube Volume Production
- Advanced Complementary Metal Oxide Semiconductor Focal Plane Arrays for Visible Sensors for Star Trackers
- ALON[®] and Spinel Optical Ceramics
- Atomic Layer Deposition Hermetic Coatings Project (Concluded in 2013)
- Bio-Synthetic Paraffinic Kerosene
- CO₂ Absorbent Plastic
- Coal-Based Carbon Foam
- Conductive Composites Nano-Materials Scale-Up Initiative
- Extremely Large Domestic Expendable and Reusable Structures
- Gallium Nitride Radar and Electronic Warfare Monolithic Microwave Integrated Circuit Producibility
- Gallium Nitride X-Band Monolithic Microwave Integrated Circuits (Concluded in 2013)
- Heavy Forgings Capacity Improvement
- High Homogeneity Optical Glass
- Integrated Advanced Composite Fiber Placement Program
- Light-Weight Ammunition
- Lithium Ion Battery Production for Space
- Low Cost Military Global Positioning Receivers
- Military Lens System Fabrication and Assembly
- Mini-Refrigerant Compressors for Man-Portable Cooling
- Non-Aerospace Titanium for Armor and Structures Transformation
- Polyhedral Oligomeric Silsesquioxane Nanotechnology
- Radiation-Hardened Microprocessors (Concluded in 2013)
- Read Out Integrated Circuit Foundry Improvement and Sustainability
- Silicon Carbide Powder Production and Ceramic Armor Manufacturing
- Small Secure Satellite Communication Transceiver
- Space Qualified Solar Cell Germanium Substrate Supply Chain Improvement
- Terahertz Spectrometer
- Thermal Battery Production

- Traveling Wave Tube Amplifiers for Space
- Vacuum Induction Melting, Vacuum Arc Remelting Furnace Capacity
- Silicon Carbide Powder Production and Ceramic Armor Manufacturing
- Terahertz Spectrometer
- Thermal Battery Production
- Titanium Metal Matrix Composites
- Reactive Plastic Carbon Dioxide Absorbent
- Vacuum Induction Melting, Vacuum Arc Remelting Furnace Capacity

DPA Title III projects in active acquisition in 2013 included:

- Additive Manufacturing for Liquid Rocket Engines
- Solid Rocket Motors Production
- Submarine Valve Regulated Lead Acid Batteries
- Tungsten Rhenium Wire Production Sustainment

2.3. Use of Title VII Authorities: Voluntary Agreements and Plans of Action

The purpose of a voluntary agreement is to allow cooperation among business competitors to expedite or expand the supply of critical materials or services to meet national defense needs, particularly under emergency conditions. Participants in a voluntary agreement, established in accordance with section 708 of the DPA, are granted relief from antitrust laws. Before a voluntary agreement may take effect, the Attorney General is required to make a written finding that conditions exist which may pose a threat to the national defense or its preparedness programs and that voluntary agreements are necessary to help provide for the national defense. Guidance and procedures for use of the section 708 authority are provided in 44 CFR 332, “Voluntary Agreements Under Section 708 of the Defense Production Act of 1950, as Amended.”

There are two active voluntary agreements, both sponsored by the Maritime Administration in DOT: (1) the Voluntary Intermodal Sealift Agreement (VISA); and (2) the Voluntary Tanker Agreement (VTA). The purpose of the VISA is to provide DOD with assured access to commercial, dry cargo sealift capacity and intermodal equipment and systems to support emergency deployment and sustainment of U.S. military forces. The purpose of the VTA is to provide DOD with assured access to commercial tanker capacity in support of DOD contingency requirements.

3. DPAC Assessment Activities

To inform and support any potential recommendations to the President and Congress for the effective use of DPA authorities or amendments to improve these authorities, the DPAC has initiated a number of assessment activities.

3.1. DPAC Industrial Capability Assessment Activities

In accordance with a Memorandum of Agreement between DHS and DOD, the DPAC has designated DOD as coordinator of industrial capability study groups to conduct assessments and develop long-term strategies for addressing the supply chain problems of various industrial sectors. Each of these study groups is chaired by a senior subject-matter expert from a civilian agency, who directs the group's work, while DOD provides operational staff and funding for assessment activities.

During the past year, the DPAC has operated four industrial capability study groups in the areas of metal fabrication, telecommunications, power & energy, and lightweight materials. Each of these groups is tasked with identifying industrial base shortfalls related to unmet or potentially unmet Government needs essential to multiple Federal departments and agencies to inform recommendations for mitigation (e.g., use of DPA Title III authorities). To facilitate their work, the study groups have engaged in a number of data-gathering and analytical activities, including holding broad and specialized interagency meetings of subject-matter experts and acquisition specialists, discussions with industry, market analysis, and site visits. Additionally, elements of the DOD Sector-by-Sector, Tier-by-Tier (S2T2)⁶ activity are contributing to study group analyses.

The number and scope of potential DPA Title III activities is governed by the availability of funds. Title III is an authority, not a source of funds. Funding for Title III initiatives is provided by the Joint or Service Program Offices of Record, Defense agencies or other Federal agencies as funding offsets for specific Title III efforts. Consequently, when exercising the Title III authorities, a premium is placed on developing a ranked order of merit for identified supply chain risks. Requirements are prioritized based on interagency supported analysis of factors, such as (1) how cross-cutting is an issue within the interagency, (2) how critical are the capabilities affected, (3) how difficult is it to replace the supply chain component if it is disrupted, and (4) how fragile is the supply chain component to deviations in Government procurement. Any study group recommendations involving Title III authority are focused on short-term activities that will ensure long-term economic viability for a particular sector.

⁶ S2T2 collects and analyzes industrial base data to create a DOD-wide repository held in a consistent format that gives the DOD the opportunity to systematically identify critical and fragile niches of the industrial base, to consider interdependencies between seemingly unrelated acquisition programs because their supply chains intersect at the lower tiers, and to otherwise improve decision-making as it relates to the industrial base.

3.1.1. *Metal Fabrication Study Group*

During 2013, the Metal Fabrication Study Group continued its investigation of industrial base shortfalls with respect to the sourcing, fabrication, and finishing of complex metal parts. Analysis conducted in calendar year 2012 and early 2013 revealed that a viable, modern domestic heavy forging industrial base is needed to guarantee the timely availability of quality parts, and the ability to scale-up production during times of national emergency. The Group also determined that domestic heavy forging capabilities are currently at risk because of market segmentation due to the low-volume, specialty demand of the DOD. To address this issue, the Defense Production Act Title III Program made an investment of \$17.6m in Fiscal Year 2013 to modernize, upgrade, and rebuild the 10,000-ton and 3,000-ton open die presses at Lehigh Heavy Forge Corporation in Bethlehem, PA, the sole producer of heavy forgings used in propulsion shafts and nuclear reactor containment vessels. This investment will also address manufacturing issues downstream from the forging operations, such as upgrading inspection techniques and machine tools.

3.1.2. *Telecommunications Study Group*

In support of the telecommunications infrastructure supply chain policy objective of “enhancing the viability of U.S. science, technology, and advanced manufacturing capabilities to achieve national security objectives,” the National Security Council Deputies Committee (DC) tasked the DPAC with assessing the market viability and emerging trends of pertinent U.S. supply chains. In response to the DC tasking, the DPAC established a Telecommunications Study Group, co-chaired and staffed by DOD and the White House Office of Science and Technology Policy personnel.

In its second full year of operation, the DPAC Telecommunications Study Group continued to assess the capability gaps and Government needs of the sector and develop recommendations that address U.S. Government and critical infrastructure needs and support long-term U.S. competitiveness. The Study Group’s analysis is focused on six essential equipment subsectors: (1) routing and switching equipment; (2) optical transport equipment; (3) professional services; (4) sub-components; (5) operating system software with a focus on network management software; and (6) wireless networking equipment.

The Telecommunications Study Group’s comprehensive assessment of the U.S. position in the global telecommunications equipment market found diminishing capabilities of the U.S. industrial base persists in key sectors of the market. Four primary consequences of the market’s transformation include:

1. The U.S. is losing its capabilities in key equipment sectors;
2. Access to competitively priced components produced by trusted and reliable manufacturers is no longer assured in all equipment subsectors and very likely will further diminish unless mitigation strategies are developed and implemented;

3. There are fewer leading U.S. vendors for agencies and universities to partner with on R&D and technology transition; and
4. The options for, and opportunities to, successfully translate domestic innovation to U.S. telecom equipment production are increasingly limited.

Over the past year, the Study Group centered its assessment of mitigation efforts on long-haul data transmission solutions, which included analysis of responses to a formally issued Request for Information (RFI). The Study Group's efforts are expected to result in a DPA Title III investment during 2014.

3.1.3. *Power and Energy Study Group*

For its initial assessment cycle, the Power and Energy Study Group surveyed pertinent senior acquisition officials and subject-matter experts from across the Federal Government to identify cross-cutting shortfalls, risks, and concerns related to fulfillment of current and future Government requirements. Based on this survey, preliminary analysis, and follow-up interagency conversations, it was determined that the Study Group should focus on shortfalls related to (1) fuel cells; (2) lightweight materials; and (3) gallium nitride (GaN) substrates. The Power & Energy Study Group later determined to maximize focus on fuel cell manufacturing; lightweight materials were handled jointly with the Metal Fabrication Study Group; and the Department of Energy has led interagency exploration of gallium nitride substrate manufacturing concerns.

Fuel Cells

The U.S. Government has an essential need for adaptable and highly-efficient energy production and conversion devices. The 2011 DOD Operational Energy Strategy emphasized the requirement for enhanced combat energy effectiveness that reduces the risk and cost of military missions. Specific U.S. Government systems in need of these energy advancements include unmanned aerial, undersea, and ground capabilities (increased loiter time and endurance), silent watch tactical vehicles (limited noise and thermal signature), auxiliary power units (APUs), APUs for Class 8 trucks, decreased logistics fuel trains, wearable power, and stationary tactical capabilities (e.g., counter rocket/mortar systems on the edge of operating bases).

Fuel cell systems are highly efficient energy conversion devices that can support many U.S. Government energy requirements. Fuel cell systems create operational and tactical advantages for the user, as they extend the range of batteries and reduce the requirement for backup batteries. They can be powered with universally available logistics fuel (such as propane or methanol), can reduce the number of inefficient combustion generators required, and can reduce system noise and/or thermal signatures. Widespread implementation of these devices, however, has been hindered by manufacturing inefficiencies and industrial base shortfalls. These include a lack of manufacturing automation, wasted materials, inadequate real-time quality control, and inadequate component standardization due to limited production lines.

The Power and Energy Study Group determined that there are commercial fuel cell systems available that could help meet some of the Government's requirements listed above. Yet, uncertain demand and continued improvements in technology readiness have resulted in an inadequate incentive for the private sector to invest in scaling-up production to the levels necessary to achieve efficiencies and price points enabling commercial viability. Mitigating the technical and financial risks by addressing manufacturing shortfalls in these areas would likely increase efficiencies, reduce prices, and stabilize demand.

Based on its analysis, the Study Group issued a formal RFI on fuel cell systems to confirm its preliminary conclusions and fill identified gaps in knowledge. The RFI polled industry on the standardization, improved manufacturing, and improved design/performance of fuel cell balance-of-plant equipment; fuel cell stack and stack component standardization and improved manufacturing; and the acquisition and deployment of tactical fuel cell systems. The Study Group completed an iterative process of RFI review, industry engagement, and interviews with U.S. Government stakeholders to further characterize fuel cell manufacturing challenges as identified through the RFI process. The Study Group developed broad approaches to mitigating these manufacturing challenges; however, approaches for solving specific critical manufacturing issues require further development, due to the evolving nature of leading edge fuel cell technology.

3.1.4 *Lightweight Materials*

Availability of advanced lightweight materials (e.g., carbon fiber) is a cross-cutting requirement crucial to improving energy efficiency. Critical government systems affected range from vehicles and aircraft to alternative energy sources such as wind power. The Study Group's analytical team has determined, however, that development of advanced lightweight materials and expansion of their availability has been hindered by the difficulty of predicting demand. The supply uncertainty and price volatility of these materials has prevented their adoption for commercial applications. Consequently, technical breakthroughs – such as, alternative precursors, composite forming, or material joining – may be slow to develop and insufficient to spur the level of commercialization necessary to expand the availability and affordability of advanced lightweight materials to meet government needs.

3.2. DPAC Investment Recommendation Board

The DPAC Investment Recommendation Board (IRB) was established and convened two meetings in February 2014. The goal of the DPAC IRB is to bring together representatives involved in acquisition and manufacturing issues from DPAC Member agencies to present and review industrial base issues that create risk across multiple agencies and propose DPA Title III projects to address those issues. The IRB met for the first time on 4 February 2014. During this kickoff meeting, senior working-level interagency officials received an overview of the DPAC and the DPA Title III Program, discussed DPAC Study Group activities and projects to date, and created a forum for working group members to propose and consider DPA Title III project recommendations on a quarterly basis. A second meeting of the IRB was convened on 27 February 2014, during which members reviewed and discussed five topics for potential DPA Title III action. These topics included: Activated Carbon for Chemical/Biological Protection, Additive Manufacturing for Liquid Rocket Engines, Next Generation Aluminum Smelting Technology, Flexible High-Efficiency Solar Cells, and Secure Hybrid Composite Shipping Containers. Two new topics were proposed for the next meeting, scheduled to be held in May 2014. HHS will present and lead discussions related to Protective Masks and Vaccine Production to stem pandemics, and DOE will present and lead discussions on High Voltage Transformers for the Nation's Electric Grid. In addition to these topics, further analysis on the DoD topics previously mentioned will be presented to the IRB members for their consideration.

3.3. DPAC DPA Authorities Assessment Activities

The Study Group on Defense Production Act Issues was established by the DPAC to address a number of questions involving use of DPA authorities. These questions focus on:

1. Use of the DPA priorities authority: (a) by State and local governments in support of disaster preparedness and response activities; (b) by the private sector for protection or restoration of critical infrastructure operations; and (c) for critical infrastructure assistance to foreign nations;
2. Use of the DPA Title III authorities by other Federal agencies (in addition to DOD); and
3. Use of voluntary agreements (under DPA section 708) to respond to emergency requirements for critical supplies and services and barriers to such use.

The Study Group is still assessing both the adequacy of current statutory language and Executive Branch guidance with respect to these possible uses.

4. Information Sharing on DPA Issues

There are a wide variety of guidance, procedures, and activities that promote information sharing on industrial base capabilities and DPA issues among federal departments and agencies. Guidance and procedures are provided in a number of orders, directives, regulations, interagency agreements, and other guidance documents. Information is also shared on a continuing basis via government websites and meetings between representatives of the federal departments and agencies engaged in industrial base assessment activities, and DPA plans and programs.

4.1. DPA-Related Guidance and Procedures Involving Information Sharing

Executive Orders, beginning with EO 10161 (September 9, 1950) and continuing with EO 13603 (March 16, 2012) have provided for information sharing among federal departments and agencies for more than 60 years. EO 13603, alone, contains more than 20 separate provisions for coordination, consultation, assistance, and information sharing among federal departments and agencies on the use of DPA authorities. Both EO 13618 and EO 12656 contain numerous similar provisions, relating specifically to DPA authorities, and more generally, to emergency preparedness plans and guidance.

4.2. Interagency Working Groups and Agreements

DHS is directed by a number of Presidential orders and directives to provide coordination and guidance for DPA and other emergency preparedness plans and programs. DHS fulfills the coordination by convening periodic interagency working groups and meetings with representatives of individual agencies. DHS also convenes an interagency working group each year to share information and prepare a report to Congress on the use of DPA section 101 authority to ensure the preparedness of industry to reduce interruptions in critical infrastructure and key resource operations during emergencies.

4.3. DOC Defense Industrial Capability and Technology Assessments

DOC's Bureau of Industry and Security (BIS) conducts industry analyses to assess the capabilities of the U.S. industrial base to support the national defense pursuant to section 705 of the DPA and EO 12656. These studies are conducted in cooperation with experts from other Government agencies (including DOD and DHS) and the private sector. The goal is to enable Government agencies to monitor trends, benchmark industry performance, raise awareness of diminishing manufacturing capabilities, and support national resource preparedness, as appropriate.

4.4. Offsets in Defense Trade

DOC's BIS, in consultation with DOD, the Department of State, the Department of Labor, and the United States Trade Representative, prepares an annual report to Congress on the impact of

offsets in defense trade pursuant to Section 723 of the DPA.⁷ The United States Government has established an interagency team to consult with foreign nations on limiting the adverse effects of offsets in defense procurement. The data collected by DOC's BIS are utilized in the multilateral and bilateral consultations of the team and its working group.

4.5. DPA Websites

Federal departments and agencies maintain a number of websites and web pages focused on DPA issues:

4.5.1. DOD Websites

Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy (DASD)(MIBP) – <http://www.acq.osd.mil/mibp/>

Defense Contract Management Agency (DCMA): “Defense Priorities and Allocations System (DPAS)” – <http://guidebook.dcma.mil/38/dpas.htm>

DOD/OSD: “Defense Production Act Committee” – <http://www.dpacommittee.com>

DOD/OSD: “Defense Production Act Title III Homepage” – <http://www.dpatitle3.com>

4.5.2. DHS Websites

FEMA, Office of Policy and Program Analysis, The Defense Production Act Program Division – <http://www.fema.gov/defense-production-act-program-division>

Emergency Management Institute Courses:

- IS-245.a - Introduction to the Defense Priorities and Allocations System (DPAS) – <http://training.fema.gov/EMIWeb/IS/IS245a.asp>
- IS-245.a - IS-246.11 - Implementing the Defense Priorities and Allocations System (DPAS) – <http://training.fema.gov/EMIWeb/IS/is246.11.asp>

4.5.3. DOC Website

DOC/BIS: “Defense Priorities and Allocations System (DPAS) Program” – <http://www.bis.doc.gov/dpas/default.htm>

⁷ Offsets in defense trade encompass a range of industrial compensation arrangements required by foreign governments as a condition of the purchase of defense articles and services from a non-domestic source.

Annex A

Delegation of DPA Authorities

A.1. *Summary of Executive Order 13603*

Executive Order (EO) 13603 of March 16, 2012, National Defense Resources Preparedness, supersedes EO 12919 of June 3, 1994 and sections 401(3) and (4) of EO 12656 of November 18, 1988. While largely containing the same text as these two prior EOs, the new EO updates delegations of Presidential Defense Production Act (DPA) authorities and functions to reflect amendments to the DPA since 1994.

A.2. *Delegation of DPA Authorities*

This annex provides a review of the delegations of DPA authority by the President to the heads of Federal departments and agencies. Presidential documents that delegate DPA authority include:

- EO 13618 (July 6, 2012), "Assignment of National Security and Emergency Preparedness Communications Functions," establishes a requirement for survivable, resilient, enduring, and effective communications, both domestic and international.
- EO 13603 (Mar. 16, 2012), "National Defense Industrial Resources Preparedness," delegates DPA authorities and addresses national defense industrial resource policies and programs under the DPA.
- Presidential Memorandum, "Designating the Chairperson of the Defense Production Act Committee," May 19, 2010.
- EO 12742 (Jan. 8, 1991), "National Security Industrial Responsiveness," as amended by EO 13286, delegates authorities with respect to the placing of orders for prompt delivery of articles or materials.
- EO 12656 (Nov. 18, 1988), "Assignment of Emergency Preparedness Responsibilities," as amended by EOs 13074, 13224, and 13286, delegates emergency preparedness responsibilities, based, in part, on DPA authorities.

A.3. *Title I Priorities and Allocations Authorities*

The President's priorities and allocations authority under section 101 of the DPA and Section 18 of the Selective Service Act of 1948 are delegated to:

- (1) The Secretary of Agriculture (USDA) with respect to food resources (including potable water packaged in commercially marketable containers), food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic

distribution of farm equipment and commercial fertilizer (EO 13603); and all food resources (EO 12742, as amended);

- (2) The Secretary of Energy (DOE) with respect to all forms of energy (both EO 13603 and EO 12742, as amended);
- (3) The Secretary of Health and Human Services (HHS) with respect to health resources (EO 13603 only);
- (4) The Secretary of Transportation (DOT) with respect to all forms of civil transportation (both EO 13603 and EO 12742, as amended);
- (5) The Secretary of Defense (DOD) with respect to water resources, except potable water packaged in commercially marketable containers (EO 13603); and
- (6) The Secretary of Commerce (DOC) for all other materials, services, and facilities, including construction materials (EO 13603); and all other articles and materials including construction materials (EO 12742).

The authority delegated under EO 12742, as amended is limited to use for articles or materials for the exclusive use of the Armed Forces of the United States or for DOE atomic energy programs.

EO 13603 directs the Secretary of each agency delegated priorities and allocations authority to plan for and issue regulations to prioritize and allocate resources and establish standards and procedures by which the authority shall be used to promote the national defense, under both emergency and non-emergency conditions. Each Secretary is also directed to authorize the heads of other agencies, as appropriate, to place priority ratings on contracts and orders for materials, services, and facilities needed in support of approved programs.

EO 13603 also provides that the priorities and allocations authorities may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

- (1) By DOD with respect to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by DOD, space, and directly related activities;
- (2) By DOE with respect to energy production and construction, distribution and use, and directly related activities; and
- (3) By DHS with respect to all other national defense programs, including civil defense and continuity of government.

EO 12742 requires similar determinations (but applying a "national security" standard) by DOD regarding prompt delivery of the articles or materials for the exclusive use of the Armed Forces

of the United States and DOE regarding prompt delivery of the articles or materials for DOE's atomic energy programs.

A.4. Title III Authorities

EO 13603 delegates authorities of the President under Sections 301, 302, and 303 of the DPA. The head of each Federal department or agency engaged in procurement for the national defense⁸ is authorized to:

- Make loan guarantees (DPA section 301), direct loans (DPA section 302), purchase commitments and purchases (DPA section 303(a)), and subsidy payments (DPA section 303(c));
- Make provisions to encourage the exploration, development, and mining of critical and strategic materials and other materials (DPA section 303(a)(1)(B));
- Procure and install equipment in industrial facilities (DPA section 303(e));
- Transfer materials acquired under section 303 of the DPA to the National Defense Stockpile, if such transfer is determined by the Secretary of Defense as the National Defense Stockpile Manager to be in the public interest (DPA section 303(f));
- Make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources (DPA section 303(g));
- Make the required determinations, judgments, statements, certifications, and findings required by the DPA with respect to use of these authorities [after appropriate consultation];
- Utilize Title III authority or any other provision of law to provide appropriate incentives to develop, maintain, modernize, and expand the productive capacities of domestic sources for critical components, critical technology items, and industrial resources essential for the execution of the national security strategy of the United States (DPA section 107(a)); and
- Utilize the authority of Title III of the Act to guarantee the purchase or lease of advance manufacturing equipment and any related services for purposes of the DPA section 108(b).

⁸ This includes the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Interior, Transportation, and the Treasury; the General Services Administration; the Government Printing Office; the National Aeronautics and Space Administration; and the Tennessee Valley Authority.

EO 13603 directs the heads of Federal departments or agencies engaged in procurement for the national defense to take appropriate action to ensure that critical components or critical technology items are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency (DPA section 107(b)).

EO 13603 designates the Secretary of Defense as the Defense Production Act Fund Manager and directs the Secretary to carry out the duties specified in DPA section 304(f), in consultation with the agency heads having approved Title III projects and appropriated Title III funds.

A.5. *Title VII Authorities*

Generally, EO 13603 delegates the authorities of the President provided in Title VII of the DPA to the heads of each Federal department and agency. These authorities involve:

- Voluntary agreements and plans of action (DPA section 708);
- Employment of personnel for the purposes of the DPA, including establishment of units of the National Defense Executive Reserve (DPA sections 703 and 710);
- The power to re-delegate DPA authorities to subordinates (with certain exceptions provided in the DPA and EO 13603); and
- The power of subpoena with respect to priorities and allocations, Title III authorities, and the offsets provisions.

A.6. *Preparedness Measures*

Based, in part, on DPA authorities, EO 12656, as amended, directs the head of each federal department and agency, as appropriate, to design preparedness measures to permit a rapid and effective transition from routine to emergency operations and to make effective use of the period following initial indication of a probable national security emergency. This EO assigns lead responsibilities to various departments and agencies to develop plans, procedures, and programs for national security emergencies with respect to resources within their jurisdictions. Such departments and agencies include: USDA, DOC, DOD, DOE, HHS, the Department of Interior, the Department of Labor, DOT, the Department of the Treasury, the Environmental Protection Agency, DHS, and the Veterans Administration.

A.7. *Coordination and Guidance for Use of DPA Authorities*

EO 13603 provides that DHS shall: (1) serve as an advisor to the President on issues of national defense resource preparedness and the use of DPA authorities by federal departments and agencies; (2) provide for the central coordination of DPA plans and programs; (3) provide guidance to agencies assigned functions under the order, developed in consultation with such agencies, for use of DPA authorities; and (4) report to the President periodically concerning all program activities conducted pursuant to the order.

EO 12656, as amended, directs DHS to serve as an advisor to the NSC on issues of national security emergency preparedness and to assist in the implementation of national security emergency preparedness policy, by coordinating with the other federal departments and agencies and with state and local governments and by providing periodic reports to the NSC on implementation of national security emergency preparedness policy. It also directs DHS to: (1) coordinate and support the initiation, development, and implementation of national security emergency preparedness programs and plans among federal departments and agencies; (2) coordinate the implementation of policies and programs for efficient mobilization of Federal, State, local, and private sector resources in response to national security emergencies; and (3) provide guidance to the heads of federal departments and agencies on the appropriate use of defense production authorities, including resource claimancy, in order to improve the capability of industry and infrastructure systems to meet national security emergency needs.

Annex B
2014 DPAC Report to Congress
Member Agency Signatures



Department of State

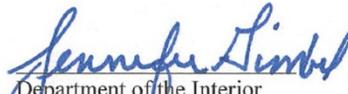


Department of the Treasury

Department of Defense



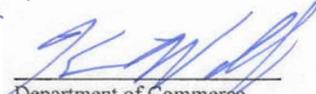
Department of Justice



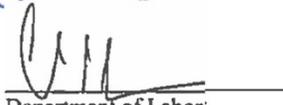
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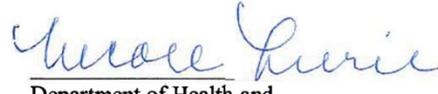
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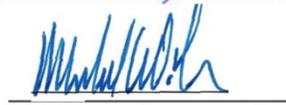
Department of Commerce



Department of Labor



Department of Health and Human Services



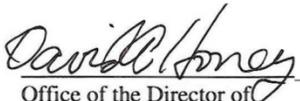
Department of Transportation



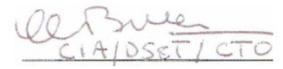
Department of Energy



Department of the Homeland Security



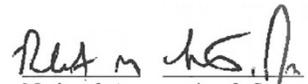
Office of the Director of National Intelligence



CIA/DSEI/CTO
Central Intelligence Agency



Council of Economic Advisers



National Aeronautics & Space Administration



General Services Administration