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The Defense Production Act Committee (DPAC): A Primer

The Defense Production Act of 1950 (DPA, 50 U.S.C. §4501 et seq.) confers on the President authorities to mobilize domestic industry in service of national defense, broadly defined, including emergency preparedness. In 2009, the DPA statute was amended to create the DPA Committee (DPAC), which would serve as an interagency platform for advising the President and coordinating DPA activities across the government. This In Focus considers the establishment, development, and policy issues surrounding the DPAC, given ongoing congressional interest in DPA authorities and existing mechanisms for their current and future implementation.

About the DPA

The DPA provides the President with powers to mobilize the domestic civilian economy in response to emergencies. DPA authorities include (1) provisions under Title I to prioritize contracts and allocate scarce goods, materials, and services; (2) financial incentives under Title III to expand productive capacity for critical materials and goods; and (3) coordination, information-gathering, and other supporting provisions under Title VII. See CRS Report R43767 for more information about DPA authorities and history; and CRS Report R46628 for a survey of DPA actions made in response to the COVID-19 pandemic, with an emphasis on personal protective equipment (PPE).

Except in relatively narrow circumstances involving defense-related procurement and investments, DPA authorities have been used sparingly since the Korean War. When the DPA was enacted, its activities were routed through the Office of Defense Mobilization (ODM), an independent executive branch agency which oversaw other executive branch offices and sub-agencies in executing DPA and other mobilization functions. However, as DPA fell into disuse, the ODM and its offices were dismantled. As the ODM's successor agency, FEMA is the designated lead for government-wide DPA planning and coordination.

FEMA's role notwithstanding, oversight assessments have frequently identified coordination issues in utilizing DPA authorities in response to emergencies. A 2009 amendment to the DPA statute established the DPAC as a means of facilitating interagency DPA coordination. However, as recently as 2019, a pandemic simulation identified confusion among interagency participants about the applicability and use of DPA authorities. Amid the COVID-19 pandemic, DPA coordination and implementation issues have been frequently raised as an area of concern by Members of Congress.

DPAC Functions and History

The DPAC is authorized under Title VII of the statute (50 U.S.C. §4567) and was established as part of the Defense

Production Act Reauthorization of 2009 (P.L. 111-67). The DPAC was intended to serve as an interagency mechanism for advising the President and coordinating DPA activities across government. However, it has never organizationally fulfilled that role—even during emergency situations like the COVID-19 pandemic—and its scope has narrowed and diminished with time. In an effort to improve its effectiveness, the DPAC was restructured when the DPA was reauthorized in 2014 (P.L. 113-172).

Establishment of the DPAC in 2009

Congressional deliberations over the Senate-introduced 2009 DPA reauthorization suggest the DPAC was created to serve as the locus of DPA coordination and implementation. Specifically, the *Congressional Record* shows that the DPAC's proposed establishment was linked to Department of Homeland Security (DHS) and Government Accountability Office (GAO) reports citing insufficient agency planning and employment of DPA authorities and a lack of related interagency coordination. In response, Congress proposed the DPAC to “advise the President on the effective use of [the DPA]” and “elevate DPA policy discussions to Cabinet-level posts, so that administrations going forward will be able to reassess the [DPA's] provisions and applications, and never lose sight of the importance of coordinating[.]”

The DPAC membership was to include “the head of each federal agency to which the President has delegated [DPA] authority” as well as the Chairperson of the Council of Economic Advisors. One of these members would be designated Chairperson of the committee. The President was also directed to appoint an executive director, without Senate confirmation, at the rank “of a Deputy Assistant Secretary (or a comparable position)” at the federal agency of the DPAC chairperson, and paid for by that same agency. Additionally, the 2009 legislation required the DPAC to submit an annual report to Congress, signed by each DPAC member, containing specified elements:

- A review of DPA authorities of each federal agency to which the President has delegated DPA authority;
- Recommendations for effective use of DPA authorities;
- Recommendations for legislation, regulations, executive orders, or other actions to improve use of DPA authorities; and
- Recommendations for improving information sharing between federal agencies for use of DPA authorities.

DPAC Presidential Directives

Following the DPAC's establishment, two presidential directives provided additional guidance for the DPAC's development. First, a 2010 presidential memorandum designated the Secretaries of Homeland Security and Defense (DOD) as rotating DPAC chairpersons. It also directed DHS and DOD to formalize DPAC funding and administrative support through interagency agreement.

Second, Executive Order (E.O.) 13603, *National Defense Resources Preparedness* (2012), created a coordination framework for use of DPA authorities, and further specified the membership of the DPAC to include the following Cabinet secretaries and other officials: (1) State; (2) Treasury; (3) Defense; (4) Attorney General; (5) the Interior; (6) Agriculture; (7) Commerce; (8) Labor; (9) Health and Human Services; (10) Transportation; (11) Energy; (12) Homeland Security (delegated to FEMA); (13) Director of National Intelligence; (14) Director of the Central Intelligence Agency; (15) Chair of the Council of Economic Advisers; (16) Administrator of the National Aeronautics and Space Administration; and (17) Administrator of General Services. The OMB Director and the Director of the Office of Science and Technology Policy are also invited to participate in an advisory role.

E.O. 13603 also directed the DHS Secretary to provide DPA coordination and guidance, and granted sole DPAC chairmanship. However, DPA responsibilities were sub-delegated to the FEMA Administrator, given FEMA's role as interagency DPA convener prior to DHS's existence (see E.O. 12919). The FEMA Administrator is the current DPAC chairperson and the coordinator for all federal DPA activities. FEMA's working-level DPA responsibilities, including for DPAC, are managed within the Office of Program and Policy Analysis (OPPA).

However, the President never appointed an executive director. Instead, the DPAC's day-to-day coordination fell to deputies of the chairperson, and did not operate at the Cabinet-level as its original advocates appeared to have intended. The DPAC's only publicly visible activities were its annual reports to Congress.

2014 DPA Reauthorization

The 2014 DPA reauthorization, introduced in the House, included significant reforms to the DPAC. 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. Such characterizations, congressional endorsement of the bill, and the nature of the reforms themselves suggest congressional dissatisfaction with the DPAC's performance. Specifically, the 2014 DPAC reforms:

- Narrowed the remit of the DPAC to Title I priorities and allocations authorities;
- Replaced the presidentially-appointed executive director with a coordinator at an unspecified rank, appointed by and reporting to the DPAC chairperson; and

- Modified the scope of the annual report to Congress to focus on Title I authorities and required formal attestations from DPAC members in lieu of signatures.

DPAC Composition and Activities

Since the 2014 DPA reauthorization, the structural composition of the DPAC, as defined by E.O. 13603, is unchanged. According to FEMA, the DPAC provides "central coordination of DPA plans and programs of federal agencies," per E.O. 13603. DPA activities are organized under FEMA's DPA Program Division at OPPA, which includes four full-time staff (a director and three analysts) as well as supplemental contractor support. In response to the pandemic, FEMA reported its DPA staff increased to 30 using interagency personnel. The DPA Program Division director reports to the OPPA Associate Administrator, who reports to the FEMA Administrator. The OPPA Associate Administrator has been appointed DPAC coordinator, per the 2014 statutory revisions, as a "collateral duty."

The DPAC's principal function appears to be developing its annual report to Congress. This report is a high-level survey of Title I activities, and typically includes varying detail and analysis of these activities by agency. 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.

Policy Issues

The COVID-19 pandemic has renewed congressional interest in developing clear mechanisms for government-wide DPA planning and coordination. Congress may again consider DPAC reforms to strengthen such a role:

- Congress could restore certain elements of the 2009 DPA reauthorization to expand DPAC's remit to all DPA authorities, and restore a presidentially-appointed executive director position;
- Congress could authorize and provide appropriations for DPAC activities, particularly contingency planning and interagency coordination regarding DPA authorities;
- The DPAC could include an interagency detailee program to augment staffing, foster interagency collaboration, and build long-term agency links; and
- Congress could statutorily codify the DPAC as the President's chief advisor and coordinating mechanism for the planning and implementation of DPA authorities.

Congress may also specify DPAC membership in statute, and include other officials such as the Secretary of Veterans Affairs, given its emergency management "fourth mission," the National Security Advisor, and any others as necessary.

Alternatively, Congress may also preserve the DPAC in its current form, and subordinate its efforts to the direction of another office or agency charged with DPA coordination. The Biden Administration's COVID-19 Response Coordinator and Pandemic Testing Board, for example, could be made into permanent DPA coordination platforms.

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