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Options for Strengthening the Use of Defense Production Act Title VII

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Research Overview

Executive Summary

The objective of this innovation project was to explore options for using Sections 708 and 710 of Defense Production Act (DPA) Title VII to strengthen the ability of the Department of Defense (DoD) and the defense industrial base to prepare for major conflict while possibly achieving peacetime benefits. The DPA is a U.S. federal law enacted in 1950 which grants the President broad authorities for influencing and incorporating domestic industrial capacities to support national defense needs. George Mason University's Greg and Camille Baroni Center for Government Contracting examined past and potential future uses of DPA Title VII, Sections 708 (50 U.S.C. § 4558) and 710 (50 U.S.C. § 4560). These sections respectively outline authorities for the use of voluntary agreements and a National Defense Executive Reserve (NDER). These two sections could be used to facilitate advanced planning and coordination with industry, but are they employed much less frequently than other DPA authorities.

The research focused on assessing Sections 708 and 710's mechanisms for use and activation, their structures and processes, and their benefits and challenges. This report provides several overall findings for each section, as well as recommendations for increasing the use of voluntary agreements and the NDER. By design, this innovation project had a very short period of performance. As a result, these recommendations are directional in nature and require follow-on analysis and actions to facilitate implementation. Overall, though, these DPA Title VII authorities have significant implications for DoD as well as the broader Executive Branch.

Section 708 allows for voluntary agreements and plans of action between government and industry that provide peacetime benefits as well as wartime industrial capacity for national emergencies. While there were originally over a dozen voluntary agreements in the 1950s, only three voluntary agreements remain today. Two of these voluntary agreements, the Voluntary Tanker Agreement (VTA) and the Voluntary Intermodal Sealift Agreement (VISA), provide multiple benefits to DoD and U.S. warfighter, although they are primarily administered by the Department of Transportation's Maritime Administration (MARAD). The remaining voluntary agreement, set to expire this year, was created by FEMA to address healthcare needs during the COVID-19 pandemic.

This report makes five findings on the use of voluntary agreements:

1. Voluntary agreements provide crucial access to industrial capacity in the event of a national emergency.
2. Voluntary agreements create an effective environment for government and industry to closely collaborate on important national security concerns, even in peacetime.
3. Voluntary agreements are best focused on specific industrial sectors, not broad sectors or individual companies.
4. Consistent commercial incentives for companies to participate in voluntary agreements are important for both government and industry.
5. Voluntary agreements are best established before a national emergency.

This report makes four recommendations for the potential future use of voluntary agreements:

1. Identify industry sectors where voluntary agreements could be most helpful.
2. Maximize the collaborative power of voluntary agreements for peacetime preparedness and for future emergencies.
3. Strengthen the business case for voluntary agreements.
4. Examine alternatives to voluntary agreements to determine the best fit.

Section 710 enables the convening of an NDER of industry executives to be trained for government service in the event of a national emergency. NDER units were in existence from the 1950s through approximately the end of the 1990s. Today, there are no NDER units, as national mobilization efforts largely drew to a close after the end of the Cold War. However, the authority still exists for a modern-day NDER function. This report makes three top-level findings on NDER use:

1. The NDER is a powerful authority to form on-call groups of individuals in case of national emergencies.
2. The NDER model did not work in practice.
3. An NDER today would need to be structured differently from the past model.

This project makes two recommendations for the potential future use of an NDER:

1. Establish a model for and create a modern-day NDER.
2. Assess the viability of utilizing the NDER authority to establish a modern-day War Production Board.

Study Objective

This research examines two sections of DPA Title VII that have been underutilized by the DoD: Section 708, which allows for voluntary agreements between government and industry; and Section 710, which allows for the convening of an NDER consisting of industry executives volunteering to be trained for government service in the event of a national emergency. In coordinating this research, the Baroni Center has partnered with the Office of Global Investment and Economic Security (GIES), Office of the Assistance Secretary of Defense for Industrial Base Policy (OASD IBP) in the DoD. DoD partners are interested in expanding the use of DPA Title VII to support acquisition and mobilization priorities, and this study provides draft options for DoD to consider regarding the use of voluntary agreements or an NDER for future mobilization efforts.

Study Approach and Methodology

The research team for the study consisted of one faculty principal investigator and one research faculty member. The period of performance for the study lasted from November 12, 2024 through February 14, 2025, with one interim briefing delivered in December 2024. Research findings were derived from literature review on DPA Title VII as well as selected discussions with subject matter experts who could speak to DPA Title VII, especially regarding past uses or ideas for the use of voluntary agreements or an NDER.

In conducting a literature review on DPA Title VII, the research team consulted a number of sources, including legal language regarding Sections 708 and 710, a variety of government reports, Federal Register documents, articles, and historical documentation secured from interview participants. Given the time constraints of the research and a lack of availability of documentation, further research is recommended to gather and analyze internal documentation, historical congressional testimony, and other resources which have not yet been made public on official government databases or which have not been accessed through initial research efforts.

Over an approximately two-month period, the research team held discussions with 19 subject matter experts in total to include members of industry, research, and government domains. Among the subject matter experts were individuals working for the MARAD, DoD, Federal Emergency Management Agency (FEMA), Congress, and the White House. All discussions and recording of the ensuing findings followed the Chatham House Rule, whereby the identities of the interview participants and their contributions are anonymized. The list of government and industry experts on DPA, particularly DPA Title VII, is small, but discussions have helped the research team uncover a more extensive history of the use of voluntary agreements and the NDER which could not be readily ascertained or appreciated through a cursory literature review.

First, this report provides a brief overview of the DPA, especially Title VII authorities. The next section focuses on voluntary agreements, describing current uses and concluding with top-level findings and recommendations for future use. The last section focuses on the NDER, describing how NDER units have been used in the past and also concluding with findings and recommendations for potential future use.

DPA Title VII Overview

Strong authorities for incorporating industry into defense mobilization exist within the overall framework of the Defense Production Act of 1950. This federal law was enacted after the start of the Korean War to allow the President to both influence and harness the domestic industrial base in support of national defense needs,

echoing the broad powers exerted by the U.S. Executive Branch in World Wars I and II. In summarizing DPA's legislative aim to grant the government more control over defense-related production, it was initially described as "something about halfway between full war mobilization and peacetime business as usual."¹

While the DPA was established in a wartime context, government understanding of "national defense" as featured in the statute has officially expanded over the years to include new statutory definitions. For instance, it has evolved to incorporate different spheres of influence for sustaining the safety of American citizens and the emergency response capabilities of the U.S. government, such as responding to national disasters and terrorist attacks, protecting critical infrastructure, and supporting space activity. While Congress has allowed four of the original DPA titles to expire, Titles I, III, and VII remain.

Titles I and III are the most well-known DPA authorities. Title I authorities focus on prioritizing the government's access to certain critical materials and services. The Defense Priorities and Allocations System (DPAS), for example, is regularly used by DoD as delegated authority by the Department of Commerce (DoC) under Title I. Using this authority, DoD has prioritized contracts that assisted with the development and sustainment of many key defense systems including the Integrated Ballistic Missile Defense System, B-2 Bomber, VC-25 Presidential Aircraft, and the Mine-Resistant Ambush Protected Vehicle (MRAP).² Title III authorities allow the government to make grants, purchases, or loans to increase the supply of critical items. In recent years, Title III has been used to try to rebuild domestic capacity in areas such as rare earth processing, batteries, magnets, and microelectronics.

Title VII has long been considered a "potpourri," with some of its earlier sections dealing with "small business, definition of terms, authorization to establish new agencies, authorization to have access to such records and reports required to administer the act, compliance, and liabilities."³ Title VII provides significant authorities for the use of the Committee on Foreign Investment in the United States (CFIUS), an interagency body serving the President in overseeing the national security implications of foreign investment transactions. It also enables the government to conduct industrial base assessments that can include industry surveys.⁴

Title VII also includes Sections 708 and 710, which contain the authorities for establishing voluntary agreements and NDER units, respectively. These sections are lesser used and lesser known than other provisions of the DPA, although they were originally intended to have critical impact in tandem with the rest of Title VII to sharpen overall use of the DPA. Drawing on historical context, one subject matter expert suggested:

We look at the DPA all wrong in order of the titles, when maybe it should be VII, III, I. We used to use industry surveys in the late 30s and identified thousands of companies outside the defense industrial base that could convert production to wartime needs. You used them to get visibility beyond the

¹ Paul McQuade, Mike Reis, and Emily Sullivan, "The History and Use of the Defense Production Act," HAI Legal, n.d., <https://www.hailegal.com/defense-production-act-war-history/>.

² U.S. Library of Congress, Congressional Research Service, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*, by Alexandra G. Neenan and Luke A. Nicastro, R43767 (2023), 8.

³ Hardy Merritt and Luther Carter, eds., *Mobilization and the National Defense* (Washington, D.C.: National Defense University Press, 1985), 41.

⁴ U.S. Library of Congress, *The Defense Production Act of 1950*, 17.

contractual relationships you had. With [Title VII], you could've helped develop where you spend your money in Title I. Number VII shapes the direction investments will go based on conversations ... Number VII is a link from DoD to the vastly larger civilian base.

While Title VII of the DPA was intended to help protect the civilian economy during wartime surges and inform government-industry collaboration, it was largely overshadowed by other uses of the DPA. The movement from large-scale economic mobilization to limited mobilization, the consolidation of the defense industrial base, and the end of the Cold War have lessened the appetite for preparedness programs, contributing to a major decline in the use of voluntary agreements and the end of the NDER program.

Previously, voluntary agreements and NDER units have been used to serve national security purposes in both traditional (i.e., military-related) and non-traditional contexts. As a result of the COVID-19 pandemic and Russia-Ukraine War, increased preoccupation with supply chain issues has prompted a resurgent government-wide interest in DPA Title VII authorities. Much of the interest in DPA Title VII authorities is non-military; Sections 708 and 710 are currently under the domain of the Department of Homeland Security (DHS) and the Federal Emergency Management Agency (FEMA). However, most of their authorities can be delegated to DoD to establish and maintain voluntary agreements or NDER units.

Section 708 – Voluntary Agreements

Overview of Voluntary Agreements

The statutory authority and rules for the use of voluntary agreements can be found in Section 708 of the Defense Production Act, 50 U.S.C. § 4558. Per the authority, under conditions that pose a threat to national defense or national preparedness, the President “may consult with representatives of industry, business, financing, agriculture, labor, and other interests” who can then establish voluntary agreements.⁵ Such voluntary agreements can also result in plans of action, defined in the statute as a combination of one or more methods adopted to implement a voluntary agreement.⁶

Voluntary agreements are unique in their provision of antitrust protections. So long as the entities in a voluntary agreement comply within the scope of statutory requirements, they have special legal defense against any potential civil or criminal actions brought about under antitrust law or breach of contract.⁷ This supports the use of voluntary agreements for preemptive mobilization purposes as well as emergency responses.

Voluntary agreements were established in the early days of the Cold War largely for the government and industry to jointly manage production issues affecting the defense industrial base. The statutory language and authorities for voluntary agreements allow them to be used for a wide variety of industrial sectors, and the DPA has evolved to encompass new threats. Today, there are three existing voluntary agreements: two U.S. Department of Transportation MARAD agreements connecting the sealift and oil tanker industries with DoD,

⁵ 50 U.S.C. § 4558(c)(1); Section 708(c)(1) of the DPA.

⁶ 50 U.S.C. § 4558(b)(2); Section 708(b)(2) of the DPA.

⁷ 50 U.S.C. § 4558(j); Section 708(j) of the DPA. 50 U.S.C. § 4558(o); Section 708(o) of the DPA.

and a FEMA agreement that was established to address urgent needs in the COVID-19 pandemic but which is set to expire in 2025.

Past Use of Voluntary Agreements

Voluntary agreements have their roots in the government-industry committees of World War I and the integration committees of World War II. In World War I, government-industry committees were set up so that businessmen could advise the U.S. government on industry capabilities and deliveries. During World War II, over 100 integration committees worked with military purchasing departments to solve production issues and fix materials and capacity shortages.⁸ The integration committees were said to have solved production issues much more rapidly than government officials might have alone. World War II Ordnance Commander Lt. Gen. Levin H. Campbell noted, “Ordnance could not have met its constantly changing requirements without the extreme flexibility afforded by this grouping of contractors. Specifically, the various integration committees made it possible to turn out thousands of units above and beyond individually rated plant capacities.”⁹

When the DPA was established during the Korean War, it helped set formal procedures for such committees to facilitate the input of business during times of conflict. After World War II, there were two main uses of voluntary agreements. One fell within the category of the so-called integration committees, which worked comparably to their predecessors in World War II. The integration committees consisted of contractors and subcontractors involved in specific weapons programs, working together to improve production processes by standardizing components and processes, alleviating shortages, improving scheduling and coordination among producers, and helping to convert new producers. Another category of “miscellaneous” voluntary agreements involved nondefense producers in the service sectors coordinating economic activities and supply—for instance, through credit restraint agreements and pricing agreements.¹⁰

Voluntary agreements were widely used until Vietnam War, primarily by the Army but also by the Air Force and non-defense agencies. Past examples include the following arrangements:

- The B-47 Production Committee (1951-1957) - created to help speed production of a brand new jet aircraft. It brought on two additional competing aircraft manufacturers and allowed existing producers to exchange information and coordinate production.
- Petroleum Supply Agreement (1951-1976) – helped prepare and subplot plans of joint action to the government in response to petroleum supply crises in 1951, 1956, and 1967, helping to provide information on petroleum supplies and coordinating supply.
- M-14 Rifle Integration Committee (1961-1963) – helped speed production of a new rifle during rising Cold War tensions, training and adding on a new manufacturer.

⁸ Federal Emergency Management Agency, *Affordable Strategies to Improve Industrial Responsiveness: Approved Final Briefing on Standby and Voluntary Agreements*, report prepared by the Analytic Sciences Corporation, Contract No. EMW-84-C-1780 (1987), 22.

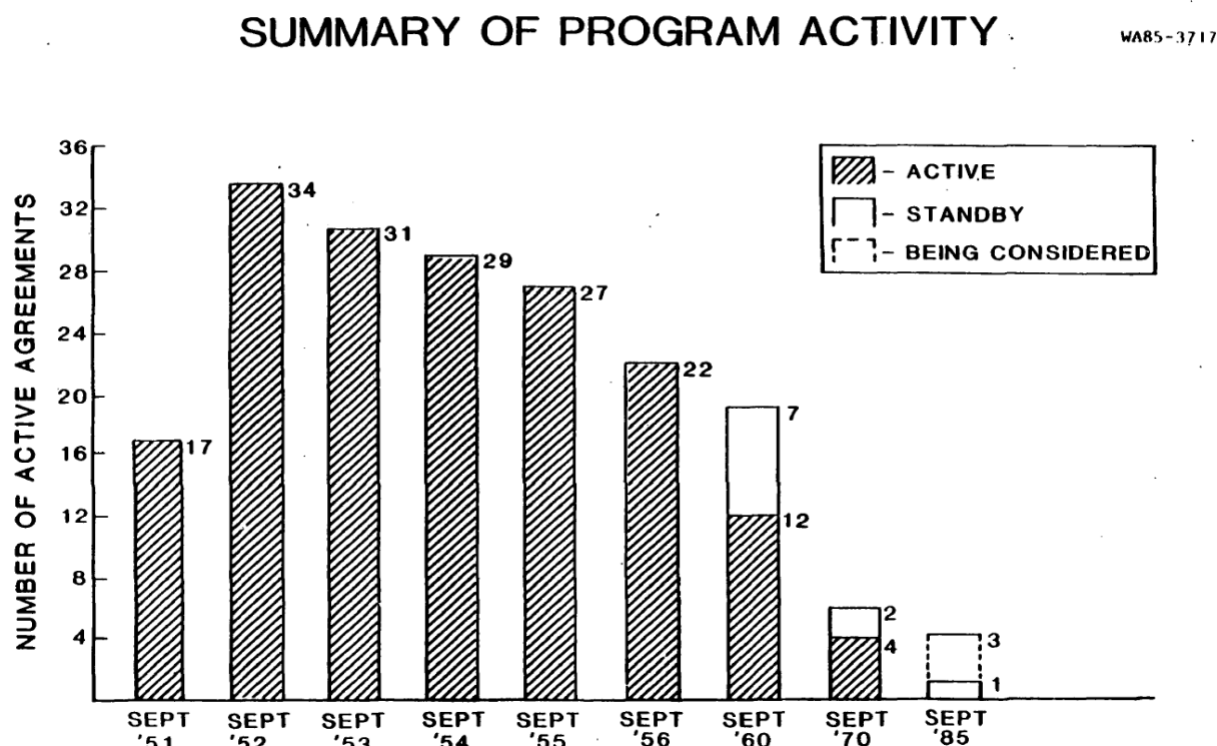
⁹ Federal Emergency Management Agency, *Affordable Strategies to Improve Industrial Responsiveness*, 24.

¹⁰ Federal Emergency Management Agency, *Affordable Strategies to Improve Industrial Responsiveness*, 22-23.

- Small Arms Ammunition Agreement (1951-1984) – sped up ammunition production improvements and led to more rapid ammunition production in the Korean War. A replacement plan was considered in the 1980s to allow private firms and government to make joint plans for producing ammunition, propellants, and explosives in emergency scenarios.
- Voluntary Credit Restraint Program (1951-1952) – controlled business credit and supported defense programs by restraining debt growth. Helped channel capital to expansion projects, limited business inventory hoarding, and diverted manpower and materials toward essential defense programs.¹¹

Of the dozens of voluntary agreements that were created in the years after the DPA had been passed, only the VTA has endured to the present day as a “standby” voluntary agreement. This decline in the use of voluntary agreements is illustrated in **Figure 1**.

Figure 1. The Decline of Voluntary Agreements



SOURCE: “Affordable Strategies to Improve Industrial Responsiveness: Approved Final Briefing on Standby and Voluntary Agreements” prepared by The Analytic Sciences Corporation for FEMA (1987).

NOTES: The chart shows a steady decline in the use of voluntary agreements from the 1950s to the 1980s, which the source attributed primarily to DPA amendments approved by Congress as well as a change in national strategy emphasizing nuclear preparedness over industrial preparedness.

¹¹ Federal Emergency Management Agency, *Affordable Strategies to Improve Industrial Responsiveness*, 24.

There were many factors which contributed to the decline of voluntary agreements. One primary cause is the array of changes to Section 708 of the DPA which were approved by Congress from the 1950s through the 1970s, such as substantial new procedural requirements and a major increase in the authority of the Department of Justice to “question the rationale of voluntary agreements.”¹² Secondly, Congress wanted to reduce the likelihood of anticompetitive behavior and was concerned about the impact of major mobilization programs on small business. Thirdly, national strategy shifted away from an emphasis on full industrial base mobilization, and toward other priorities such as nuclear readiness.¹³ With lack of use and more distance from the last era of full mobilization during the Korean War, the government has largely lost awareness of the potential benefits and processes involved in creating voluntary agreements.

Establishing & Activating Voluntary Agreements

The process for establishing a voluntary agreement is relatively straightforward. First, any sponsor wishing to develop a voluntary agreement must submit a proposal to the Attorney General and FEMA Administrator, outlining the agreement’s purpose, proposed participants, and intended coordination across federal agencies. If the proposal is approved, the sponsor initiates meetings with any interested parties to help develop the agreement. Sponsors must provide the Attorney General, Chairman of the Federal Trade Commission (FTC), and Congress with adequate notice of each meeting set up to help develop the voluntary agreement. The nature of the meetings must also be published in the Federal Register.¹⁴

To commence usage of a voluntary agreement, a copy of the agreement must be submitted to Congress, and the responsible body for the agreement must receive determination from the U.S. Attorney General, in consultation with the Chairman of the FTC, that the agreement is necessary and anti-competitive impact will be limited.¹⁵ The voluntary agreement must be renewed after 5-year intervals, or it will expire.¹⁶

Executive Order (EO) 13603, issued in 2012, allowed for a large group of federal departments and agencies to become the responsible entities for implementing specific voluntary agreements, so long as the Secretary of Homeland Security can track the usage and procedures of the voluntary agreements.¹⁷ FEMA, as part of the Department of Homeland Security (DHS), is largely responsible for developing the standards to be used for voluntary agreements under DPA.¹⁸

As part of a voluntary agreement, the President or delegated authority can set up advisory committees which help accomplish the agreement’s goals.¹⁹ Any rules established for the voluntary agreement, in keeping with 5 U.S.C. § 553, must be published in the Federal Register. According to one subject matter expert interviewed for

¹² Federal Emergency Management Agency, *Affordable Strategies to Improve Industrial Responsiveness*, 26.

¹³ Federal Emergency Management Agency, *Affordable Strategies to Improve Industrial Responsiveness*, 27.

¹⁴ 44 C.F.R. § 332.2(b), 44 C.F.R. 332.2(c).

¹⁵ 50 U.S.C. § 4558(f); Section 708(f) of the DPA.

¹⁶ 50 U.S.C. § 4558(f); Section 708(f) of the DPA.

¹⁷ U.S. Library of Congress, *The Defense Production Act of 1950*, 16.

¹⁸ U.S. Library of Congress, Congressional Research Service, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*, by Alexandra G. Neenan and Luke A. Nicastro, R43767 (2023), 16.

¹⁹ 50 U.S.C. § 4558(d); Section 708(d) of the DPA.

this research, voluntary agreements are intended to “start off public, but then can be navigated privately.” The Attorney General and FTC Chairman must also monitor the voluntary agreement to make sure it is following rules and not indulging anticompetitive practice.²⁰ Once a year, the Attorney General and FTC are also required to submit surveys, which include reports on the results of voluntary agreements and respective plans of action.²¹

An important distinction in the domain of voluntary agreements is that of “use” versus “activation.” When not officially activated in wartime or another national emergency, voluntary agreements are considered to be in standby mode where they remain a tool of emergency preparedness, or are utilized in other key ways supporting the U.S. warfighter or national security. As one interview participant described them, voluntary agreements offer a dual use of “peacetime business for wartime capacity.”

Activation looks different for different voluntary agreements, though it always necessitates various approvals at the relevant levels of authority pertaining to the area of industry or the agency whose needs will be addressed by the voluntary agreement.

Current Voluntary Agreements

MARAD Voluntary Agreements – VISA and VTA

Description & History

Led by MARAD, the VTA and VISA programs are two voluntary agreements maintained in partnership with DoD’s US Transportation Command (USTRANSCOM). MARAD harbors general vessel requisition power and maintains the U.S. Merchant Marine, and USTRANSCOM is the combatant command responsible for military logistics. USTRANSCOM controls the contracts that would be used if the voluntary agreements were activated.

The VTA Program is designed to “provide a responsive transition from peace to contingency operations through procedures agreed upon in advance to provide tanker capacity to support DoD contingency requirements.”²² By keeping a committed commercial tanker capacity on call, VTA also facilitates DoD’s ability to use existing tanker resources while minimizing disruption to commercial operations.²³ Currently, there are approximately 5 firms enrolled in the VTA Program.

The VISA program guarantees DoD assured access to commercial sealift and intermodal equipment from a variety of qualified U.S.-flag merchant vessels during national emergencies or wartime operations. In exchange, enrolled vessels receive priority access to DoD cargoes in peacetime.²⁴ The intermodal resources engaged

²⁰ 50 U.S.C. § 4558(g); Section 708(g) of the DPA.

²¹ 50 U.S.C. § 4558(k); Section 708(g) of the DPA. 50 U.S.C. § 4558(l); Section 708(l) of the DPA.

²² U.S. Department of Transportation, Maritime Administration, “Renewal of the Voluntary Tanker Agreement Program; Revised Form of the Voluntary Agreement,” *Federal Register* 87 no. 214 (November 7, 2022): 67122, <https://www.federalregister.gov/documents/2022/11/07/2022-24184/renewal-of-the-voluntary-tanker-agreement-program-revised-form-of-the-voluntary-agreement>.

²³ U.S. Department of Transportation, “Renewal of the Voluntary Tanker Agreement Program,” 67122.

²⁴ U.S. Department of Transportation, Maritime Administration, “Voluntary Intermodal Sealift Agreement,” (October 20, 2022), <https://www.maritime.dot.gov/national-security/strategic-sealift/voluntary-intermodal-sealift-agreement-visa>.

through VISA include more than ships—they also facilitate DoD’s access to the crews, port and railway networks associated with the global shipping. Currently, there are approximately 44 firms in VISA, with over a dozen larger vessel operators (1000-ton and above) of roll-on/roll-off ships that comprise the main focus of VISA, plus a large number of tug & barge vessel operators. All vessels provide some military utility in support of DoD sustainment.

VISA can be considered a successor program to the Sealift Readiness Program (SRP), a former subsidy program for ships administered by the U.S. Navy’s Military Sealift Command (MSC). SRP was created to support the DoD’s access to U.S.-flag vessels, which the U.S. government could previously requisition in times of conflict to bring into the field for commercial supply runs. SRP was created in the 1970s to meet military shipping needs during “less-than-full-mobilization contingencies.”²⁵ SRP was reportedly expensive to maintain with limited access to shipping and no access to additional intermodal facilities. It also had high barriers for activation—to use it, MSC had to prove that the reserve fleet was insufficient, and MARAD was required explain the SRP activation’s potential impact on the commercial charter industry.²⁶ SRP was not used in either Operation Desert Shield or Operation Desert Storm of the Gulf War, as a process more responsive to time-sensitive military operations was preferred in wartime, and USTRANSCOM wanted to avoid inflicting financial damage on the SRP companies.²⁷ According to MARAD personnel, the perceived limits of the SRP, in combination with the series of Base Realignment and Closure (BRAC) processes, which shifted major military port operations to commercial port partners, were the two major contributors to the establishment of VISA in 1995.

Dating back to 1951, the VTA Program is considerably older than VISA. It is one of the original Korean War voluntary agreements, having been established to meet DoD fuel transportation requirements.²⁸ While active during the Korean War, it has remained in standby mode in case of future emergency. The VTA went dormant in 2013 but was re-authorized for continuation in 2019 as part of a larger strategic plan to grow the U.S.-flag tanker fleet.²⁹ Commercial interest in VTA lapsed because it lacked the business rationale for membership as DoD did not contract with commercial carriers for fuel transportation. After VTA was resuscitated, it applied preexisting VISA processes and language to its processes.³⁰ There are several factors prompting a renewed focus on how the U.S. government should manage fuel transportation. The possibility of a future conflict in the Pacific, plus incidents such as the 2021 fuel leak at the Red Hill Bulk Fuel Storage Facility in Hawaii, have prompted a rethinking of how to emphasize shipping fuel as opposed to having tanks or static sites, and programs like the VTA comprise part of this dialogue.

²⁵ Maritime Transportation Research Board, National Research Council, and National Academy of Sciences, eds., *The Sealift Readiness Program: The Commercial Implications of a Military Contingency Call-Up of U.S. Flag Merchant Ships* (Washington, D.C.: The National Academies Press., 1975), <https://doi.org/10.17226/20891>.

²⁶ James K. Matthews and Cora J. Holt, *So Many, So Much, So Far, So Fast: United States Transportation Command and Strategic Deployment for Operation Desert Shield/Desert Storm* (Office of the Chairman of the Joint Chiefs of Staff and the United States Transportation Command, 1996), 124.

²⁷ Matthews and Holt, *So Many, So Much, So Far, So Fast*, 125.

²⁸ Federal Emergency Management Agency, *Affordable Strategies to Improve Industrial Responsiveness*, 24.

²⁹ Jeff R. Vogel, “MARAD Seeks to Reestablish Voluntary Tanker Agreement,” Cozen O’Connor, November 1, 2019. <http://www1.cozen.im/news-resources/publications/2019/marad-seeks-to-reestablish-voluntary-tanker-agreement>.

³⁰ U.S. Department of Transportation, “Renewal of the Voluntary Tanker Agreement Program,” 67119.

Peacetime Uses & Activation

Although they support different segments of shipping industries in support of national defense, the structures of VISA and VTA are extremely similar. Most large vessels in VISA and VTA are participants in the Maritime Security Program (MSP) or Tanker Security Program (TSP), respectively. MSP and TSP comprise two of MARAD's financial assistance programs, whereby MARAD provides contract holders with a fixed amount of money per year to offset operating costs. Any contractor receiving payments through the TSP or MSP is required by law to enroll in the corresponding voluntary agreement.³¹ Operators receiving MSP funds must also make the capacity of their MSP vessels available at higher percentages than non-MSP vessels in the case of emergency. MSP and TSP serve as major business incentives to participate in the agreements. Commenting on the VISA-MSP link, an expert on the VISA program explained: "MSP has the money and utilizes VISA as the national defense hook."

Non-MSP or TSP companies enroll voluntarily by submitting an application to MARAD and agreeing to comply with DPA statute as well as the terms of proportionate contribution of capacity specified in the voluntary agreement.³²

An important part of navigating the voluntary agreement process is working with the Department of Justice (DOJ). In the case of preexisting voluntary agreements such as VISA and VTA, renewals of approval are easier than cold starts, as long as a continued need for the programs can be conveyed. MARAD explains how the program is continuing to meet needs and standards, which is subject to review by the antitrust division in DOJ. DOJ subsequently refers the agreement for renewal to the FTC, which signs off on the renewal in tandem with the Assistant Attorney General of DOJ's Antitrust Division. In the case of VISA, the renewal process reportedly takes 6-8 months.

While not activated, VISA and VTA maintain utility as arenas for direct negotiations and government contact with industry under antitrust conditions, a main draw for MARAD. Companies are treated as stakeholder partners contributing to DoD's logistical needs while supporting their own long-term viability. In peacetime operations, meetings provide relevant utility and collaborative potential. VTA and VISA have two unclassified, informal meetings per year with the tanker and carrier companies, promoting alignment of priorities and capacities and the sharing of risks and opportunities through open dialogue. These meetings are not subject to Federal Advisory Committee Act (FACA) guidelines. However, if there is a need for activation, VISA and VTA will convene a more formal joint planning advisory group meeting. VISA and VTA meet together at the same time as the issues surrounding the stakeholders similarly impact the operations of both groups.

In the event of a national emergency, VISA and VTA can be activated at the recommendation of the Commander of USTRANSCOM to the Secretary of Defense, who approves after determining that current tanker or sealift capacities are insufficient to support the operations of U.S. forces. The activation authority is then filtered down to MARAD, which in turn notifies the Attorney General and FTC Chair of the activation. For VTA, whole tankers would be chartered for the activation rather than a specified capacity required of each commercial member. It is possible that only a portion of the committed tanker fleet would be activated depending on tankers

³¹ 46 U.S.C. § 53407; 46 U.S.C. § 53106.

³² U.S. Department of Transportation, "Renewal of the Voluntary Tanker Agreement Program," 67126.

characteristics and government needs.³³ In contrast, if VISA was activated, the activation process would work in three phases of increasing commitment percentage of intermodal capacity per VISA participant as determined by DoD. The first phase would necessitate 15% of client capacity, the next phase would be 40%, and the third stage would necessitate 50% capacity.³⁴ However, MSP carriers must commit 100 percent of their MSP vessel capacity and intermodal resources at stage III of VISA activation.³⁵

FEMA Voluntary Agreement – COVID-19 Response

Description & History

In its first ever use of DPA Title VII, FEMA invoked Section 708 authorities during 2020 to form the “Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.” The voluntary agreement was established to bring together industry and the federal government to address various gaps in the manufacture and distribution of critical healthcare resources during the COVID-19 pandemic. Former FEMA Administrator Peter Gaynor described the voluntary agreement as a “space to conduct potentially valuable and expedient conversations to find supply chain bottlenecks, identify insufficient distribution methods, and locate additional resources for critical healthcare resource production.”³⁶

At the start of the COVID-19 pandemic, in March 2020, EO 13911 delegated DPA authorities for health resources to the Secretary of Homeland Security and Secretary of Health and Human Services, who subsequently delegated the authority to FEMA.³⁷ The idea to use the voluntary agreement mechanism under DPA arose the next month out of the work of the FEMA COVID-19 Supply Chain Task Force and the Joint DPA Office, comprised of staff from the Department of Homeland Security (DHS), FEMA, the Department of Health and Human Services (HHS), and the DoD (to include the Defense Logistics Agency).³⁸

The COVID-19 voluntary agreement was first formally announced in the Federal Register in August 2020. FEMA’s Office of Policy and Program Analysis and Office of Response and Recovery devised the organizational structure as well as a PPE Plan of Action; public meetings and commentary suggested strong support for the voluntary agreement.³⁹ According to former FEMA personnel, the voluntary agreement for healthcare resources was fully formed in 7 months, compared to VISA’s seven years. As Section 708 stipulates, voluntary agreements expire

³³ U.S. Department of Transportation, “Renewal of the Voluntary Tanker Agreement Program,” 67125.

³⁴ Andre Kok, “Tabletop Exercise Refines Voluntary Intermodal Sealift Agreement Activation Process,” U.S. Transportation Command, February 16, 2021. <https://www.ustranscom.mil/cmd/panewsreader.cfm?ID=B249EFB0-BDC7-3C1A-6403671EA44CC7CB&yr=2021>.

³⁵ Maritime Administration, “Maritime Administration Fact Sheet : Maritime Security Program (MSP) / Voluntary Intermodal Sealift Agreement (VISA),” by Kevin M. Tokarski and Jerome D. Davis, <https://www.govinfo.gov/content/pkg/GOVPUB-TD11-PURL-gpo9503/pdf/GOVPUB-TD11-PURL-gpo9503.pdf>.

³⁶ U.S. Library of Congress, Congressional Research Service, *The Role of Section 708 of the Defense Production Act in the Federal Government’s Response to COVID-19: Antitrust Considerations*, by Joshua T. Lobert, LSB10534 (2020), 3.

³⁷ Federal Emergency Management Agency, “Voluntary Agreement With Private Industry to Respond to Pandemics,” (January 15, 2021), <https://www.fema.gov/fact-sheet/voluntary-agreement-private-industry-respond-pandemics>.

³⁸ Federal Emergency Management Agency, “Defense Production Act Voluntary Agreement Report to Congress: Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic,” August 10, 2021. https://www.fema.gov/sites/default/files/documents/fema_DPA-voluntary-agreement-report_2020.pdf.

³⁹ Federal Emergency Management Agency, “Defense Production Act Voluntary Agreement Report to Congress.”

after five years; FEMA’s voluntary agreement was formally established in August 2025, so it is set to expire in August 2025 if not renewed.

Processes & Uses

FEMA’s voluntary agreement is best understood as a larger umbrella agreement, separately addressing plans of action for multiple types of critical healthcare resources. It comprised plans of action for six different areas of resources:

- Personal Protective Equipment (PPE);
- Medical Devices;
- Medical Gases;
- Drug Products and Drug Substances;
- Diagnostic Test Kits and other Testing Components; and
- National Multimodal Healthcare Supply Chains.

In April 2022, there was a total of 127 industry participants, and another total of 60 advisory attendees across the six areas of focus. Of those six areas, the National Multimodal Healthcare Supply Chains plan of action, focused on supply chain transportation and logistical requirements, had the highest number of signatories—50 industry participants and 21 advisory attendees.⁴⁰

Each plan of action, focused on a different aspect of the pandemic response, had multiple subcommittees. For example, in the plan of action designed to maximize PPE production and distribution, which was the first of the plans of action to be established, five subcommittees were created to support the effort. One subcommittee was created to define COVID-19 PPE requirements, while the remaining four were intended to address resource shortages in medical respirators, gloves, gowns, and eye and facial coverings. Overall, the subcommittees were designed to oversee the efficient nationwide manufacture and distribution of different types of healthcare equipment, while providing timely information supply and demand, among other responsibilities.⁴¹

In addition to the sub-committees, a Voluntary Agreement Representative Group (VARG), consisting of federal government representatives from various agencies, was set up to help coordinate the voluntary agreement, provide crucial advisory roles, and convey anti-trust guidance.⁴²

Companies voluntarily offered to join the voluntary agreement, which they were largely informed of through Federal Register notices. According to interview participants, companies became signatories because they reportedly saw the potential benefits in working together, wanted to do it for patriotic reasons, or wanted to be privy to critical government-industry collaboration efforts. If requested by FEMA, industry participants could also share competitively sensitive information through secure means. However, direct sharing was highly restricted

⁴⁰ Federal Emergency Management Agency, “FEMA Use of DPA for COVID-19,” June 30, 2022.

<https://www.bis.doc.gov/index.php/documents/2022-update-conference/3063-bis-dpa-fema-06-30-2022-lyle/file>.

⁴¹ Federal Emergency Management Agency, “Defense Production Act Voluntary Agreement Report to Congress.”

⁴² Federal Emergency Management Agency, “Defense Production Act Voluntary Agreement Report to Congress.”

among the participants.⁴³ Private sector partners could leave the voluntary agreement at any time so long as they provided FEMA with written notice 15 days in advance.⁴⁴

According to former FEMA personnel, some plans of action under the umbrella voluntary agreement were more successful than others. The PPE plan of action and the medical gas plan of action were listed as having been among the most effective of the response areas, with the latter being additionally helpful in hurricane responses that occurred during the pandemic.

DOJ played a major oversight role in the actions of the voluntary agreement and its select subcommittees. Beyond attaining approval from FTC and DOJ to establish the voluntary agreement, FEMA was beholden to DOJ's requests for scrutiny and ongoing documentation, as well as its guidance on the legality of the antitrust mechanisms deployed through the voluntary agreement. According to one interview participant, it was difficult to get multiple companies together in the same space to discuss, with DOJ distrustful over the potentiality for pricing cabals. FEMA was more inclined to meet with companies individually rather than providing groups of companies with problem sets that required collaborative solutions.

Findings on the Use of Voluntary Agreements

1. Voluntary agreements provide crucial access to industrial capacity in the event of a national emergency.

Whether it is addressing pressing healthcare needs to save lives or supporting DoD in wartime by making greater stores of critical materials available, voluntary agreements can help the government harness the technological advances and capacities of the commercial sector. A voluntary agreement could also help reduce disruptions to the civilian economy in times of emergency by providing methodical plans of action designed to heed the concerns of industry while gradually integrating their capacities.

In the case of VISA, for example, DoD has assured access to sealift resources which would be a cheaper (and often faster) capacity than airlift transportation to support military logistics. In a major conflict, 90 percent of military equipment would be expected to deploy via sealift. And in peacetime operations, approximately 30 commercial and military ships move freight in support of DoD on any given day.⁴⁵ This provides a consistently "warm" source of potential shipping capacity for the U.S. warfighter if activation is necessary.

Voluntary agreements are fairly inexpensive to maintain, and return-on-investment is considered substantially high. One subject matter expert explained the cost-to-value benefits for a potential activation of VISA. If VISA had to be replicated (i.e., port access, landside networks, expertise, ships) as a government-operated program, the cost to government would be extremely high. One National Defense Transportation Association (NDTA) study conducted in 2006 estimated that cost would be \$65 billion, approximately \$100 billion in current

⁴³ Federal Emergency Management Agency, "Defense Production Act Voluntary Agreement Report to Congress."

⁴⁴ Federal Emergency Management Agency, "Voluntary Agreement With Private Industry to Respond to Pandemics."

⁴⁵ Kok, "Tabletop Exercise Refines Voluntary Intermodal Sealift Agreement Activation Process."

dollars.⁴⁶ In FY 2024, MSP (whose vessel participants form the core of the VISA fleet) had an approximately \$318 million budget. Therefore, if the government spends \$318 million on a program that secures access to a warm and accessible logistics network worth over \$100 billion, it constitutes a massively worthwhile insurance policy.

One subject matter expert emphasized the importance of the emergency preparedness programs such as voluntary agreements for future conflict: “We no longer have the luxury, in case of conflict in the Indo-Pacific, of 6 months or more to prepare, like you had with Desert Storm or the Korean War.”

2. Voluntary agreements create an effective environment for government and industry to closely collaborate on important national security concerns, even in peacetime. The use of voluntary agreements, through their antitrust exemptions, enables effective government-industry collaboration that is not normally available to the federal government. This promotes helpful transparency of information and access to resources. Voluntary agreements create a forum for discussion to discuss needs, capacities, risks, and opportunities. One subject matter expert noted that it can be used to help answer the question, “how can we accomplish this in a mutually beneficial way, not fighting for the same silver? National defense is far more collaborative than people realize.”

Based on feedback from interview participants, a voluntary agreement does not need to be activated to be useful. Voluntary agreements have saved money and supported national security objectives through their collaborative function in peacetime scenarios. A major example of this occurred in 2008, when Pakistan closed off its ports to the International Security Assistance Force (ISAF) supporting NATO in Afghanistan. In one of their meetings, VISA carriers came up with a solution to keep running supplies through the Baltics and former Soviet republics into northern Afghanistan. VISA allowed the carriers to meet with MARAD and DoD to devise the logistics for the solution, which became known as the Northern Distribution Network. “It completely reconfigured logistics lines and never lost a day of service to NATO,” explained one interview participant. “VISA provided the capacity to meet in what would otherwise be seen as collusion. But this is collaboration maximizing benefits for national defense.”

Potentially, voluntary agreements could function more similarly to their integration committee structures which were common in the early Cold War agreements.

3. Voluntary agreements are best focused on specific industrial sectors, not broad sectors or individual companies. Based on the research team’s analysis of current agreements and their historical precedents, there are several areas in which voluntary agreements are potentially more effective in accomplishing their aims. First, voluntary agreements appear to be more suited to industry sectors focused on logistics, as well as more mature industry sectors. Companies that are less dependent on proprietary, high-tech solutions seem more apt to collaborate within the agreement. Secondly, voluntary agreements appear to be suited to solve targeted production and supply issues. And thirdly, voluntary agreements may be a more natural fit for smaller industry

⁴⁶ Reeve and Associates, *The Role of the United States Commercial Shipping Industry in Military Sealift*, prepared for Military Sealift Committee, National Defense Transportation Association (Yarmouthport, MA.: August 2006); cited in U.S. Government Accountability Office, *Maritime Security: DOT Needs to Expediently Finalize the Required National Maritime Strategy for Sustaining U.S.-Flag Fleet*, GAO-18-478 (Washington, DC, 2018), <https://www.gao.gov/assets/gao-18-478.pdf>.

sectors characterized by less fierce competition and more familiarity among businesses. In sectors marked by high levels of integration, there is also an extremely low likelihood of collusion, or situations in which companies try to get better prices or exploit priority status to win government contracts. When comparing the inherent collaborative element of the MARAD agreements to FEMA’s challenges using DPA Title VII for the COVID-19 response, there are several differences that stand out.

The tight-knit shipping communities that constitute VISA and VTA are well-defined and well-integrated forums for participation. For MARAD, working with DOJ is also reportedly an easier process due to the nature of the shipping industry and the longevity of the standby voluntary agreements. For example, it is easier to prove a need to DOJ because of the faster speed and lower cost of shipping cargo as compared to air freight, which is considerably more expensive. The longevity of VISA and VTA have also improved MARAD’s familiarity with DOJ processes; this lends itself to a smoother process for agreement renewals and other aspects of administering the programs.

In contrast to the collaborative dynamic of the shipping industry that constitutes VISA, the most commonly cited challenge in administering the FEMA voluntary agreement was the difficult dynamic that existed among collaborating companies. The nature of the industries was more sprawling, with the several different subcommittees comprising the voluntary agreement—many companies were competitors and unwilling to share proprietary solutions or sensitive data to collaborate on solutions. Companies were reluctant to let the government interfere in supply chains, while on the government side, there was reportedly reluctance to let industry devise solutions. This, on top of the stringent monitoring of DOJ, made it challenging for companies to come together to achieve specific tactical solutions.

However, even for industrial sectors that are highly concentrated with multiple competitors, voluntary agreements provide an opportunity to consolidate supply chains to the benefit of all, and induce nontraditional producers to agree to the same prices for their offerings as traditional producers. “I can’t think of any other tool on the books that would provide the legislation for this,” explained one subject matter expert, regarding the unique ability of voluntary agreements to re-orient an industry, which contractual arrangements on their own cannot do.

While voluntary agreements have been used to help onboard specific new producers and suppliers to help meet federal demand, there is no track record of voluntary agreements being specifically set up or activated to facilitate the government working with a specific supplier. Given the specific antitrust components in the establishment and execution of voluntary agreements, they do not appear appropriate for individual companies.

4. Consistent commercial incentives for companies to participate in voluntary agreements are important for both government and industry. The most successful known uses of voluntary agreements today, especially VISA, offer clear-cut commercial benefits to industry, providing peacetime business in return for wartime capacity. Without a clear incentive, the business case for industry involvement in a voluntary agreement is much lower.

The VISA business case is very strong. Commercial carriers do a great deal of business through VISA. Through receiving the benefit of DoD’s preferential contracting, VISA participants have played a significant role in

delivering supplies and equipment to Ukraine. Approximately 85% of sustainment support to Ukraine is through either VISA participants or through the Civil Reserve Air Fleet (CRAF) program for airlift support, which operates under DPA Title I Authority.

For the MARAD voluntary agreements, MSP and TSP, which provide stipends to participants while stipulating that they must participate in VISA or VTA, the commercial incentives are very clear. The economic incentives extend beyond the MSP and TSP programs, as well. Participants receive preferential DoD contracting in peacetime, and no-bid, first-in-line contracting if the voluntary agreements are activated under pre-negotiated contracts with fair and reasonable market rates.

For the FEMA voluntary agreement, on the other hand, the commercial incentives have been less clear to industry. For companies that wanted to protect their high-tech solutions, there was a disincentivation to collaborate with other companies to come up with joint solutions. Furthermore, DOJ's involvement, which increased paperwork and documentation requirements to carry out the plans of action, furthered the amount of manpower needed to run the voluntary agreement, reducing industry (and government) incentive to participate. According to subject matter experts, it was easy to attract companies to participate in the plans of action for the voluntary agreement, but fostering their collaboration was difficult.

5. Voluntary agreements are best established before a national emergency. The comparative experiences of VISA and FEMA's voluntary agreement show the importance and benefits of establishing a voluntary agreement before a crisis. VISA took some time to establish but has become a well-oiled machine, while the FEMA agreement was created during one of the greatest national emergencies since World War II. More experience is needed establishing new voluntary agreements to ensure smooth functioning in future uses. "They take a lot of TLC," said one subject matter expert associated with the FEMA voluntary agreement. "They're not a just-in-time option."

Creating something brand new during a national crisis is incredibly difficult, particularly in an organization that had never used this authority before. It is therefore not surprising that FEMA's COVID-19 voluntary agreement ended up overly focused on procedures and providing immediate response, but did not include preparedness efforts for potential future emergencies. This was simply the result of trying to build the proverbial airplane while flying it. As one participant explained:

Not setting the voluntary agreement up to include preparedness efforts was a big mistake. It was all response. It will sunset under FEMA, but for future pandemics it would be ideal. They were in so deep, they didn't think to write in bandwidth for future planning.

Thus, it is ideal to establish any future voluntary agreements before a crisis begins.

Recommendations

1. Identify industry sectors where voluntary agreements could be most helpful. DoD, working with FEMA and interagency partners, should identify candidate industrial sectors where potential voluntary agreements could

be most beneficial. DoD should then create a process for prioritizing these sectors and assessing whether or not voluntary agreements are the best fit for each sector (see recommendation #4). Candidate sectors could include precision munitions, defense microelectronics, critical minerals, and other sectors for which the U.S. government could benefit from coordinating supply and demand.

A more targeted approach to voluntary agreements is preferable to one that seeks to address broad commercial sectors or objectives. The observations outlined by this report in finding #3 on voluntary agreements offer several theories of efficacy for future best practice. Voluntary agreements appear to be more successful when used for mature, logistics-based industrial sectors, or smaller, more tight-knit sectors. In practice, they also appear to work well when harnessed to solve highly specific production and supply issues. If an industry sector or national security objective aligns with one or more of these characteristics, it is more likely to be a good candidate for the use of DPA Section 708 authorities.

2. Maximize the collaborative power of voluntary agreements for peacetime preparedness and for future emergencies. To get the most out of the coordinating mechanism of voluntary agreements, regular meetings and an organized, productive relationship with DOJ are a must. The regular, informal meetings held by VISA and VTA have paved the way for national security solutions to arise out of collaboration from getting multiple companies in the same room with their government sponsors. These voluntary agreements have been successful because of their regular use to meet operational DoD needs with regard to the Northern Distribution Network, the Ukraine conflict, and elsewhere; their efforts to build activation guides; and by holding frequent tabletop exercises. Voluntary agreements would be natural venues for conducting close government-industry collaboration around the production of systems needed during a crisis, as we have seen during efforts to provide munitions to Ukraine over the past three years. This regular collaboration would likely align with the original federal intent that voluntary agreements serve as “integration committees” to help solve production issues. These committees, typically focused on defense production, consisted of both primes and subcontractors working together to fix supply chain bottlenecks and onboard new producers as needed.

3. Strengthen the business case for voluntary agreements. Future voluntary agreements need to have strong business cases that echo VISA’s peacetime business for wartime capacity approach. The federal government cannot fully benefit from industry expertise and resources unless there are incentives for industry participants in both peacetime and activation uses. Building on the VISA/VTA models, which utilize MSP and TSP to compel companies to participate via legal and financial mechanisms, could help to ensure companies are not only motivated to join voluntary agreements but also willing to continue providing their resources and expertise in support of national defense.

4. Examine alternatives to voluntary agreements to determine the best fit. The brevity of this project did not allow for a detailed analysis of the suitability of voluntary agreements as compared to other potential approaches. DoD should conduct a follow-on study to assess when to use voluntary agreements and when to use other vehicles. Because of the anti-trust exemption, establishing voluntary agreements requires significant analysis and coordination with DoJ and the FTC. One subject matter expert explained that before using a voluntary agreement, it is important to check if there were any other existing mechanisms that allowed for such

open dialogue: “Is there already something on the books that allows us to have a high level of coordination and discussion? If the answer is no, and we really need to talk freely, then you really need the voluntary agreement.”

This is important because there are other tools beyond voluntary agreements. For example, former FEMA personnel considered the Critical Infrastructure Partnership Advisory Council (CIPAC), a public-private partnership, to be a much more useful mode of collaboration in their response efforts. The CIPAC reportedly accomplished what FEMA had tried and struggled to do with their voluntary agreement plans of action. The Civil Reserve Air Fleet (CRAF), which draws on DPA Title I authority, offers another model, having provided sustained benefit to the U.S. military. It seems to be structured similarly to a phased voluntary agreement activation and is considered a “joint agreement.” Finally, under DPA Title III, private industry can also work with the government through purchase commitments to expand domestic production and supply. Finding the right fit among these tools, including voluntary agreements, will be critical to ensure that the national security need is addressed in the most effective way.

Section 710 – National Defense Executive Reserve (NDER)

Overview of the NDER

Under Section 710 of the DPA, specifically under 50 U.S.C. § 4560(e), the President “is further authorized to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of national defense emergency, as determined by the President.”⁴⁷ This “nucleus executive reserve,” more commonly called the NDER, would comprise a pool of executive volunteers operating in standby mode until the NDER was activated in a national emergency. During a national emergency, they would provide their expertise and knowledge to assume high-level government roles.

The statutory detail in U.S. Code describing the NDER is relatively sparse, but it is codified in several executive orders. It was first provided for in EO 10660, issued in 1956 under the Truman Administration. It was inspired by the roles of the War Industries Board of World War I and the War Production Board of World War II, both of which granted the Executive Office broad authorities to help manage U.S. economic mobilization. Among these authorities was the ability to bring corporate executives into government service to maximize war production. Although the NDER was never activated, various units administered by various agencies with emergency functions were established following the creation of the NDER authority. NDER reservist volunteers from both government and industry were recruited based on their relevant background, whether that was commerce, transportation, energy, the armed services, or others. The recruitment and training aspect of NDER was sustained for decades, but it was maintained inconsistently across the different agencies involved in the program.

Today, no NDER unit exists, but the resuscitation of the NDER Program been discussed among several agencies in DoD, and on Capitol Hill. Under EO 13603, issued in 2012, the Secretary of Homeland Security (who in turn delegates authority to FEMA) is primarily responsible for the NDER program. A Defense Production Act Guide

⁴⁷ 50 U.S.C. § 4560(e); Section 710(e) of the DPA.

(DPAG-1), containing guidance on creating and sustaining the NDER, was issued by FEMA in July 2024 in accordance with EO 13603 and to update outdated preparedness guidance, but it is not currently being used.

History of the NDER

In 1918, President Wilson established the War Industries Board as a separate administrative agency chaired by Bernard Baruch. Baruch and the Board members, serving on a nominal salary, were expected to “act as the general eye of all supply departments in the field of industry,” helping to oversee wartime production and purchasing and direct the management of new and existing facilities.⁴⁸ While previously the U.S. government and public doubted the ability of business to put the interests of the nation above their own, the Overman Act of 1918 granted industry greater power to manage the flow of government contracting.⁴⁹

As chairman, Baruch instituted policies which he had applied as a successful businessman, hiring knowledgeable civilians to direct subdivisions of the Board. The War Industries Board under Baruch centralized control of Army and Navy operations affecting the economy, determined how requirements set by the services were to be met, and helped the military services organize supply and demand.⁵⁰ Once World War I ended, the Board assisted with limiting demand to minimize detriment to the national economy. Throughout these operations, however, there were several power struggles between the War Industries Board and the Pentagon’s forerunner, the U.S. Department of War, which “arose as civilian and military institutions were going through the throes of adjusting to modern warfare where economically the rigid lines of demarkation between them were no longer possible.”⁵¹

During World War II, the War Production Board was established in 1942 as another major effort to properly administer a wartime economy while incorporating industry leadership. A goal of the organization was to balance the civilian economy with the extraordinary demand of the military services. Nelson helped control the complex supply-demand dynamic and planned war production to meet “most military and some civilian needs.”⁵²

The War Production Board, consisting of president-appointed executives, military leaders, and other high-level officials, coordinated with twelve regional offices to serve advisory, policymaking, and progress-reporting functions. The Board, under Sears’ executive Donald Nelson, helped convert a massive amount of civilian industry to meet war production demands, and assigned higher production priorities for scarce and in-demand

⁴⁸ Woodrow Wilson, “Letter to Bernard M. Baruch Requesting Acceptance of Nomination as Chair of the War Industries Board,” The American Presidency Project, March 4, 1918, <https://www.presidency.ucsb.edu/documents/letter-bernard-m-baruch-requesting-acceptance-nomination-chair-the-war-industries-board>.

⁴⁹ Paul A. C. Koistinen, “The ‘Industrial-Military Complex’ in Historical Perspective: The InterWar Years.” *The Journal of American History* 56, no. 4 (1970), <https://doi.org/10.2307/1917520>, 396.

⁵⁰ Koistinen, “The ‘Industrial-Military Complex’ in Historical Perspective,” 401.

⁵¹ Koistinen, “The ‘Industrial-Military Complex’ in Historical Perspective,” 402.

⁵² Christopher J. Tassava, “The American Economy during World War II,” Economic History Association, <https://eh.net/encyclopedia/the-american-economy-during-world-war-ii/>. Two major books also deal extensively with the War Production Board. See Arthur Herman, *Freedom’s Forge: How American Business Produced Victory in World War II* (New York: Random House Trade Paperback, 2012); and Mark R. Wilson, *Destructive Creation: American Business and the Winning of World War II* (Philadelphia: University of Pennsylvania Press, 2016).

materials including steel, aluminum, and rubber.⁵³ This helped reduce conflict between the civilian agencies and military services and ultimately resulted in an impressive increase in American war production. For example, the construction of military aircraft rose from six thousand in 1940 to eighty-five thousand by 1943.⁵⁴

The War Production Board was largely considered a success. Among several tools in the industrial mobilization toolbox, it helped Americans maintain a high standard living while effectively corralling the efforts of American factories to meet wartime demands and streamlining production capacities for American (and other Allied) forces.

The War Industries Board of World War I and the War Production Board of World War II were both dissolved shortly after their respective conflicts drew to an end, but they provided several successful models for U.S. defense-industrial base mobilization, persisting through facets of later policy. Presidents Truman and Eisenhower evoked a partial remobilization through their use of various DPA provisions, some of which lapsed, while others, such as the system of rated strategic priority orders, became essential in 1953 when armistice negotiations ended.⁵⁵

According to several subject matter experts, the NDER was conceived in 1956 as an important successor to previous wartime initiatives for several reasons. First, if the United States was attacked by nuclear weapons, senior leaders associated with NDER could help replace federal officials no longer alive. Secondly, the NDER was intended to foster insider conversation with industry and maintain visibility into the non-voluntary defense industrial basis, bringing affiliated senior private sector voices into national-level discussions. Thirdly, the NDER was also intended to be a tool to help minimize disruptions to commerce and sustain a robust civilian economy even during a wartime surge, like its predecessor in the War Production Board of World War II.

Establishing & Activating the NDER

The top-level authority for declaring a national emergency and delegating DPA authorities is the President. Below the President is the Secretary of Homeland Security, who can also determine that an emergency affecting national defense exists and activation of a unit is necessary to carry out emergency program functions.⁵⁶ The Secretary can re-delegate authority to the FEMA Administrator, per DHS Delegation Number 09052.1 of April 2020.⁵⁷ In turn, an agency official is designated responsible for establishing, administering, and training the

⁵³ Tally D. Fugate, "War Production Board," *The Encyclopedia of Oklahoma History and Culture*, Oklahoma Historical Society, <https://www.okhistory.org/publications/enc/entry?entry=WA021>.

⁵⁴ Fugate, "War Production Board."

⁵⁵ McQuade, Reis, and Sullivan, "The History and Use of the Defense Production Act."

⁵⁶ Administration of Barack Obama, "Executive Order 13603 of March 16, 2012, National Defense Resources Preparedness," <https://www.govinfo.gov/content/pkg/DCPD-201200186/pdf/DCPD-201200186.pdf>.

⁵⁷ U.S. Department of Homeland Security, Federal Emergency Management Agency, "Defense Production Act Guide (DPAG) 1: National Defense Executive Reserve Program and Requirements," July 8, 2024.

assigned NDER unit, with the respective agency sponsoring all administrative matters pertaining to security clearances, training, pay, and other matters.⁵⁸

Under current procedures, which have not been used since the early 1980s, the agency head must notify the Administrator of FEMA when an NDER unit is established to serve as a potential augmentation of agency staffs during an emergency. The agency head must also designate an employee of the agency to manage the NDER activities. The establishing agency issues any additional standards and procedures for the NDER unit, which may differ across different agencies. Each reservist position and the entailing responsibilities would be documented thoroughly and provided to FEMA, and efforts to recruit reservists should begin. Managers of NDER units verify the qualifications of NDER applicants and provide all relevant documentation on potential reservists to FEMA. NDER sponsors ensure reservist training and administrative matters are accomplished to allow the reservist to perform assigned responsibilities within 72 hours to activation. The agency head can disestablish an NDER unit at any time.⁵⁹

When it comes to establishing or overseeing a DoD NDER Unit, the responsible administrative and procedure-setting entity is the Under Secretary of Defense for Personnel and Readiness (USD(P&R)). USD(P&R) would also represent DoD on the Interagency NDER Committee and liaise with the Secretary of Homeland Security regarding any DoD NDER units.⁶⁰

The NDER has not been activated since its inception, but in theory agency heads can activate an NDER unit, “in whole or in part,” if they receive written determination from the Administrator of FEMA that a national defense emergency exists and the activation of the NDER unit is necessary.⁶¹ That is, they may activate members of the NDER by unit or as individuals.⁶²

Before activating an NDER unit, agency heads notify the Assistant to the President for Homeland Security and Counterterrorism.⁶³ Then, the agency head is authorized to execute the President’s authority to appoint civilian personnel or notify the reservists who are being activated, who are also then informed of conflict-of-interest statutes and rules.⁶⁴

The activation of the NDER is subject to differences depending on the nature of the national emergency and the function of the respective agency which the NDER unit supports. There are more extreme levels of emergency that would require more steps for activation, in keeping with the NDER’s original intent to provide a roster of

⁵⁸ Federal Emergency Management Agency, *The National Defense Executive Reserve (NDER): Policies and Procedures*, NI-GRS-87-010, September 24, 1982, https://www.archives.gov/files/records-mgmt/rcs/schedules/general-records-schedules/n1-grs-87-010_sf115.pdf.

⁵⁹ U.S. Department of Homeland Security, “Defense Production Act Guide (DPAG) 1.”

⁶⁰ Office of the Under Secretary of Defense for Personnel and Readiness, “DoD Instruction 1100.06, National Defense Executive Reserve,” July 27, 2021, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/110006p.pdf>.

⁶¹ U.S. Department of Homeland Security, “Defense Production Act Guide (DPAG) 1.”

⁶² Federal Emergency Management Agency, *The National Defense Executive Reserve (NDER)*.

⁶³ Administration of Barack Obama, “Executive Order 13603 of March 16, 2012.”

⁶⁴ U.S. Department of Homeland Security, “Defense Production Act Guide (DPAG) 1.”

qualified individuals to replace civilian leadership in the case of a nuclear attack. For example, according to one document detailing the establishment of a Department of State NDER in 1956, the reserve would be automatically activated in the event of an attack on Washington, with each State reservist given standing orders to proceed to a relocation site immediately. At an initial orientation, reservists would receive emergency plans, materials, and instructions to provide for the continuity of Department of State operations.⁶⁵

At one step below the extremity of an emergency such as an attack on Washington, there are other alternative levels of implementation. Each department and agency can deploy NDER activation based on the emergency's scope and severity; for example, an emergency may only require a single NDER unit from one agency, in a specific location on the East Coast.⁶⁶ Under certain other emergency situations, reservists would also be employed as "special government employees," subject to the provisions of Section 202(a) of Title 18 and working no more than 130 days in a year.⁶⁷ In such situations, these employees would be authorized to keep receiving compensation from private employers.⁶⁸

Although no NDER unit has been activated, a 1991 source on the NDER proposed that potential dollar costs for one year of full activation of the NDER (comprising salary, benefits, per diem, and travel) would be \$180 million in 1986 dollars.⁶⁹ When adjusted for inflation in 2025 dollars, that cost would be approximately \$515 million. The source cited other potential costs in addition to the monetary estimations—for example, activation could supposedly increase tensions, alarm the public, and remove industry executives when their respective organizations need their leadership. Furthermore, conflict of interest restrictions could impede the reservists' ability to act on certain matters, and it would be costly and difficult to integrate them into the federal workforce.⁷⁰ Ultimately, onboarding and maintaining personnel at the executive level has been historically viewed as a highly challenging endeavor.

Past Uses of NDER

Description & History

Throughout the latter half of the twentieth century, an NDER Program existed in non-activated form and function. The NDER program was designed to recruit and train business executives to fill senior staff level positions in the federal workforce during times of national emergency. The NDER reservists, or volunteers, were assigned to various federal departments and agencies with emergency functions, awaiting potential activation of the NDER and preparing indefinitely through various training exercises and conferences. The structure of an NDER was immediately established after statute provided for its existence in 1956.

⁶⁵ U.S. Department of State, "Establishment of a National Defense Executive Reserve Program in the Department of State," CIA FOIA, CIA-RDP82-00490R000100040042-7 (1956), <https://www.cia.gov/readingroom/docs/CIA-RDP82-00490R000100040042-7.pdf>.

⁶⁶ Federal Emergency Management Agency, "Activate the National Defense Reserve," Action GO-GE-02 (September 1991).

⁶⁷ Office of the Under Secretary of Defense for Personnel and Readiness, "DoD Instruction 1100.06."

⁶⁸ U.S. Department of Homeland Security, "Defense Production Act Guide (DPAG) 1."

⁶⁹ Federal Emergency Management Agency, "Activate the National Defense Reserve."

⁷⁰ Federal Emergency Management Agency, "Activate the National Defense Reserve."

Early in its use, the NDER was viewed as a tool to recover from nuclear war or another major national emergency. For example, during a nation-wide rail strike, the NDER might be used in theory to help restore services under government direction. At its start, the number of reservists was very small, consisting of “well-established” men who could personally absorb costs such as travel expenses. The number of reservists steadily grew into the 1960s, fluctuating slightly over the years but remaining relatively high through the duration of the program.

A U.S. General Accounting Office (GAO, now Government Accountability Office) report on the NDER, released ten years later, showed that there were 15 established NDER units in 1982, including 13 units across 8 civil agencies and 2 units within DoD (the Army’s Military Traffic Management Command and the Navy’s MSC). Distributed across these NDER units were 1,954 reservists, with the highest numbers concentrated in the now-extinct Interstate Commerce Commission and Department of Commerce, with no recorded reservists in many of the established NDER units.⁷¹ These numbers are shown in **Figure 2**. According to several documents from the literature review, the number of reservists hovered around 2,000 in the 1970s and 1980s.

⁷¹ U.S. General Accounting Office, Procurement, Logistics, and Readiness Division, *GAO Findings on NDER*, GAO/PLRD-83-51 (Washington, DC, 1983), <https://www.gao.gov/assets/plrd-83-51.pdf>.

Figure 2. Total NDER Personnel, 1982

	Current membership (note a)
Department of Commerce:	
Office of Export Administration	25
Office of Industrial Resource Administration*	432
DOD:	
Army: Military Traffic Management Command	-
Navy: Military Sealift Command*	37
Department of Energy:	
Electric Power Reserve	-
Petroleum and Gas Reserve	-
Solid Fuels Reserve	-
Department of Housing and Urban Development	-
Department of the Interior:	
Bureau of Mines*	57
Emergency Water Administration	5
Department of Labor	-
Department of Transportation:	
Office of Emergency Transportation*	358
Maritime Administration	77
FEMA*	350
ICC	613
Total	1,954

^a/From FEMA NDER Quarterly Report, Sept. 30, 1982.

SOURCE: U.S. General Accounting Office, *GAO Findings on NDER* (1983).

NOTES: The personnel chart shows the number of reservist volunteers among various federal departments and agencies. According to the source, the reservists received training in emergency authorities, procedures, and policies by their sponsoring agencies and were invited to attend conferences and participate in training exercises. Later personnel charts from the mid-1980s show only a slight increase in the number of reservists, but more “gaps” filled in across agencies previously lacking in membership.

FEMA and individual agency units recruited private sector executives to serve in the NDER, sometimes by publicizing the program, other times using existing contacts within the private sector to recruit potential members. Reportedly, FEMA mounted an intensive national recruiting campaign in 1982 which brought in as many as 2,000 responses, while recruiting efforts on the part on individual agencies was markedly less substantial.⁷²

NDER reservists came from a broad array of backgrounds and served as volunteers to many federal departments of agencies, the composition of which changed from the 1950s through the 1990s. Interestingly, NDER reservists

⁷² U.S. General Accounting Office, *GAO Findings on NDER*, 6.

did not only comprise industrial experts, as originally intended. Interview participants and historical records emphasized that NDER members were often extracted from federal agencies to train for national emergency preparedness.

For each agency, the plans for recruiting reservists and even activating the NDER differed slightly. For example, one document, describing an NDER Program for the Department of State, suggests retired foreign service officers as a prime recruitment source. Those with a strong understanding of State operations, or federal employees in government agencies with experience in overseas operations, were also considered choice candidates.⁷³ Overall, in picking reservists, the agency heads were advised to pick seasoned candidates but not those liable to be selected for military service.

Subject matter experts described the program as not having accomplished anything of note; some reservists were even reported as having inappropriately sought membership to gain prestige from the role and the badge that was issued upon membership. It proved difficult to keep reservists and administrators invested in the program or up-to-date with plans and concepts.

Following the end of the Cold War, incentive for mobilization planning and tools such as NDER drastically waned across the federal government. The NDER Program experienced a gradual decline; one interview participant explained that after 1994, FEMA de-emphasized its mobilization function and focused increasingly on natural disaster response, potentially contributing to a drop in motivation to sustain NDER initiatives. Thus, use of the NDER ended in the 1990s or early 2000s due to lack of consistent leadership and motivation to sustain the program.

Findings on the Use of the NDER

1. *The NDER is a powerful authority to form on-call groups of individuals in case of national emergencies.* Despite its lack of success in practice, the NDER authority is a powerful tool to identify and rapidly onboard industry experts, sidestepping drawn-out hiring processes which could put the nation at a disadvantage during national threats. The need for in-depth, industry-gained expertise and innovations in the commercial market will be critical for the government during a national emergency. There are major concerns about the ability of multiple agencies, or the national economy, to handle disruptions caused by China in the event of a major modern conflict, and the existence of an NDER could provide some bench strength for mobilization. In keeping with some of the most important functions of the NDER's predecessor organizations in World War I and II, an activated NDER could also be used to help manage the civilian economy to the benefit of all. Industry-government planning provides a useful mechanism for minimizing disruptions to commerce and keeping the civilian sector healthy during a wartime surge.

2. *The NDER model did not work in practice.* In past uses, protocols for NDER units were inconsistently implemented across agencies, and the NDER devolved into a relic as the national prioritization of industrial mobilization waned. According to several interview participants who could speak to its past operations, the

⁷³ U.S. Department of State, "Establishment of a National Defense Executive Reserve Program in the Department of State."

overall NDER effort was a “disaster” and a “Kentucky Colonels Club” that did not derive tangible benefit from participant expertise. In other words, it was a way for retired industry and government personnel to get their security clearances and enjoy a sense of power from being given a special badge.

The 1983 GAO Report on the NDER noted several other key challenges regarding the state of the NDER program. For one, overall membership and participation statistics remained low, with inconsistent recruiting efforts across the different participating agencies. Most NDER units failed to conduct consistent training and did not provide specific job assignments for their members. Finally, the NDER program was said to be minimally funded, and FEMA’s central database on program membership was considered inaccurate and incomplete.⁷⁴ While these criticisms are no longer relevant as the NDER program has since been dissolved, they provide clues to future issues that could arise with the NDER structure as prescribed by the old model.

3. A modern NDER would need to be structured differently from the past model. Many changes to the Cold War NDER protocol would be necessary to restart the program. The previous NDER model left a bad impression to those familiar with the execution of the program. The reserve mode of navigating an NDER unit entailed a high level of coordination, organization, and documentation at the federal and regional levels to prepare for hypothetical emergency scenarios that did not offer a visible payoff.

A new model for the NDER is needed. This model needs to enable pathways for the U.S. government to access and onboard subject matter experts with relevant, tangible expertise to assist in a national emergency. For many defense priorities, including key technologies or sources of production, there exists a select few individuals with relevant knowledge of operations, and the NDER should offer a pathway for those with the critical expertise a way to bring their problem-solving and outside perspectives to bear on resolving complex issues—potentially in peacetime as well.

Recommendations

1. Establish the model for and create a modern-day NDER. The previous NDER model, consisting of various units across multiple agencies and thousands of members, failed. Thus, a major rethinking of the NDER is necessary. DoD should work with the Executive Office of the President (EOP) to develop that model over the course of 2025. The authorities for establishing a modern-day NDER are likely sufficient, but EOs and policy implementation documents will need to be completely overhauled. The government should start with defining the objectives of and principles behind this new iteration and use that to define the nature and number of individuals required for the future state NDER. Instead of reserve units, for instance, the future NDER would likely be more of extensive list of experts on call for potential government service. Existing efforts like the Army’s Individual Ready Reserve or other models should be evaluated to help build the government’s “rolodex of accessing on demand.” Once the model is established, DoD should work with EOP and other agencies to establish that modern-day NDER as soon as possible.

2. Assess the viability of utilizing the NDER authority to establish a modern-day War Production Board. Recent production challenges providing munitions to Ukraine and major security threats in the IndoPacific theater have

⁷⁴ U.S. General Accounting Office, *GAO Findings on NDER*.

highlighted the critical need for close government-industry collaboration on a level not seen since the early days of the Cold War. DoD, working with the EOP, should assess whether the current NDER authority is appropriate for creating a national level collaborative body akin to World War II's War Production Board. Voluntary agreements create mechanisms for government-industry collaboration in specific market sectors, but the country arguably needs a higher-level group of senior government officials and industry executives overseeing government-industry collaboration. Further study will help DoD and other government leaders determine whether or not to establish this type of collaborative body and what section of DPA authority is most appropriate to support its formation.

Conclusion

This paper examined two little-used authorities of DPA Title VII: Section 708, providing for the use of voluntary agreements, and Section 710, providing for an NDER. Based on in-depth discussions with subject matter experts and a literature review of the available documentation, the research team found that the results of using these tools has been mixed to date. That said, these authorities are incredibly powerful and have tremendous potential uses to address future national security challenges as outlined in the findings of this report. Both have the potential to be used in dynamic, changing modern contexts to prepare the domestic industrial base for future conflict. DoD should therefore work closely with the EOP and interagency partners to consider these findings and recommendations to better utilize voluntary agreements and the NDER in the future.