



# The Defense Production Act Committee Report to Congress

*March 31, 2013*



Homeland  
Security



*Federal Emergency Management  
Agency*

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# Preface

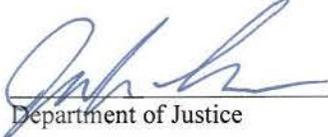
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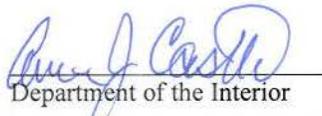
This report of the Defense Production Act Committee (DPAC) has been prepared for submission to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and the Committee on Financial Services of the United States House of Representatives, in accordance with subsection 722(d) of the Defense Production Act of 1950, as amended 50 U.S.C. App. § 2061 et seq. (DPA). This report provides an overview of DPA authorities and activities of Federal departments and agencies during Calendar Years 2011 and 2012 and describes ongoing DPAC activities to assess the use of DPA authorities in support of the national defense, including military, space, and energy programs, disaster preparedness and response activities, critical infrastructure protection and restoration, and counterterrorism programs.

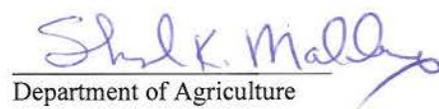
  
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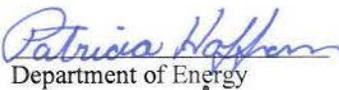
  
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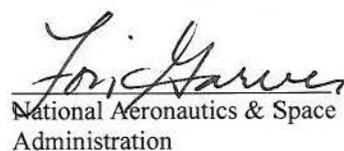
  
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# Executive Summary

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The Defense Production Act Committee (“DPAC” or “Committee”) is an interagency body established to identify whole-of-government approaches to strengthen domestic industrial base capabilities to meet national defense supply requirements under normal and emergency conditions.<sup>1</sup> The Committee advises the President on the effective use of the Defense Production Act (DPA) and develops recommendations for changes to the law and the use of its authorities. To achieve these objectives, the Committee engages in assessment activities and enables information sharing related to the industrial base and DPA authorities.

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

Pursuant to subsection 722(b)(2) of the DPA, the President has designated the Secretary of Homeland Security and the Secretary of Defense as rotating chairpersons of the DPAC. The DPAC Chairperson rotates annually on April 1. Within the Department of Homeland Security, the DPAC responsibilities of the Secretary have been delegated to the Administrator of the Federal Emergency Management Agency. The Administrator was the DPAC Chairperson until March 31, 2013. The Committee’s membership includes the heads of Federal departments and agencies to which the President has delegated DPA authorities and responsibilities.

The Committee is currently conducting several assessments focused on:

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

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<sup>1</sup> As defined in the Defense Production Act, “national defense” means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. “National defense” also includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act 42 U.S.C. § 5195 et seq. and critical infrastructure protection and restoration.

# 1. Introduction

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## 1.1. *Defense Production Act*

The Defense Production Act of 1950, as amended (50 U.S.C. App., §2061 et seq.) (DPA), is the primary source of Presidential authorities to expedite supply and expand productive capacity of materials and services needed to promote the national defense. For the purposes of the DPA, “national defense” means programs for military and energy production or construction, military or critical infrastructure<sup>2</sup> assistance to any foreign nation, homeland security,<sup>3</sup> stockpiling, space, and any directly related activity. “National defense” also includes emergency preparedness<sup>4</sup> activities conducted pursuant to Title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. § 5195 et seq.] (Stafford Act)<sup>5</sup> and critical infrastructure protection and restoration.

Major DPA provisions include:

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

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<sup>2</sup> The DPA defines “critical infrastructure” to mean “any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.”

<sup>3</sup> The DPA defines “homeland security” to include efforts: (A) to prevent terrorist attacks within the United States; (B) to reduce the vulnerability of the United States to terrorism; (C) to minimize damage from a terrorist attack in the United States; and (D) to recover from a terrorist attack in the United States.

<sup>4</sup> “Emergency preparedness” includes all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard.

<sup>5</sup> The purpose of title VI of the Stafford Act is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. This title is carried out by the Administrator of the Federal Emergency Management Agency.

- The authority to establish a cadre of persons with recognized expertise for employment in executive positions in the Federal Government in the event of an emergency [DPA section 710(e)]; and
- The authority to review certain mergers, acquisitions, and takeovers by or with any foreign person that could result in foreign control of any person engaged in interstate commerce in the United States [DPA section 721<sup>6</sup>].

## ***1.2. Defense Production Act Committee***

The Defense Production Act Committee (DPAC), established by section 722 of the DPA and further defined by Executive Order (EO) 13603 (March 16, 2012), is an interagency forum to discuss and share information about the domestic industrial base and DPA authorities and to advise the President on the effective use of these authorities in support of the national defense. The DPAC:

- Identifies whole-of-government approaches to strengthen domestic industrial base capabilities to meet national defense supply requirements under normal and emergency conditions, using DPA authorities;
- Develops recommendations for the effective use of DPA authorities;
- Develops recommendations for changes to the DPA and Executive Branch DPA guidance and procedures to support effective use of DPA authorities;
- Develops recommendations to improve information sharing among Federal agencies on the use of DPA authority, including dissemination of “best practices” and “lessons learned”; and
- Prepares an annual report to Congress, in accordance with section 722 of the DPA.

The position of DPAC Chairperson rotates between the Secretaries of Defense and Homeland Security annually on April 1. On April 1, 2012, the Chair rotated from Defense to Homeland Security. The DPAC is comprised of the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Energy, the Secretary of Homeland Security, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Chair of the Council of Economic Advisers, the Administrator of the National Aeronautics and Space Administration, and the Administrator of General Services. The Director of the Office of Management and Budget and the Director of the Office of Science and Technology Policy are invited to participate in all Committee meetings and activities in an

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<sup>6</sup> The Committee on Foreign Investment in the United States (CFIUS), established by DPA section 721, has a separate annual reporting requirement to Congress. CFIUS issues are not addressed in this report.

advisory role. The DPAC Chairperson may also invite the heads of other departments and agencies to participate in DPAC meetings, as appropriate.

### ***1.3. Organization of the Report***

This report addresses the subjects listed in subsection 722(d) of the DPA. Chapter 2 describes programs in place to make effective use of the DPA authorities to support national defense programs. Chapter 3 includes information about ongoing DPAC assessment activities. Chapter 4 describes procedures and actions to share information among Federal agencies regarding DPA issues. Annex A provides a summary of EO 13603 and a review of the DPA authorities of Federal departments and agencies. Annex B contains the full text of EO 13603.

## **2. Use of DPA Authorities**

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

### **2.1. Use of Title I Authorities: Priority Ratings**

Title I of the DPA provides the President the authority to require preferential performance on contracts and orders, as necessary or appropriate, to meet national defense requirements. EO 13603 delegates these authorities to various federal departments.

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

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

Use of priority authorities by Government organizations to support non-military programs has been relatively limited. In the past, DHS has used DPAS-rated orders to obtain industrial

resources in support of such activities as: hurricane and flood preparedness and response; Homeland Security Technology Programs; the Customs and Border Protection Air and Marine P-3 Aviation Program; and the Federal Emergency Management Agency (FEMA) National Radio System Program. Other Federal departments and agencies have also used DPAS priority ratings in support of DHS-approved programs, including the U.S. Army Corps of Engineers (for example, during its response to the 2011 Missouri River flooding).

### **2.1.1. Consistent and Unified Federal Priorities and Allocations System**

During the past two years, the six federal departments that are delegated priorities and allocations authority with respect to certain resources continued their collaborative efforts to implement a consistent and unified Federal priorities and allocations system to the extent practicable, with DHS providing coordination for this interagency effort. New rules for this system are based, primarily, on DPAS guidance and procedures and address the potential use of the priorities and allocations authority for all types of resources that may be needed to support the national defense. These rules incorporate several key elements of the DPAS, including: mandatory acceptance of rated orders; preferential scheduling of rated orders to meet delivery requirements; and extension of priority ratings by contractors to lower-level suppliers and subcontractors.

### **2.2. Use of Title VII Authorities: Voluntary Agreements and Plans of Action**

The purpose of a voluntary agreement is to allow cooperation among business competitors to expedite or expand the supply of critical materials or services to meet national defense needs, particularly under emergency conditions. Participants in a voluntary agreement, established in accordance with section 708 of the DPA, are granted relief from antitrust laws. Before a voluntary agreement may take effect, the Attorney General is required to make a written finding that the purpose of helping provide for the national defense cannot reasonably be achieved without the voluntary agreement or with a voluntary agreement having fewer anti-competitive effects. Guidance and procedures for use of the section 708 authority are provided in 44 CFR 332, "Voluntary Agreements Under Section 708 of the Defense Production Act of 1950, as Amended."

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

### **2.3. Use of Title III Authorities**

Title III of the DPA authorizes various actions by the President to create, expand, maintain, or modernize domestic production capabilities for industrial resources and critical technology items needed for national defense purposes. Title III is focused on ensuring that the industrial base can

meet national defense needs, at any subcontractor tier. Such a focus necessitates that selected projects follow sound business models and meet the requirements for long-term economic viability after such Title III assistance has ended.

DOD is the only department with Title III funding and a program office dedicated to the use of Title III authorities. As a result, the DOD DPA Title III Program Office coordinates and executes government-wide use of Title III authorities to address industrial base shortfalls on behalf of all Federal departments and agencies engaged in procurement related to the national defense.<sup>7</sup> Since the 1980s, most Title III projects have been funded entirely by DOD, but other agencies have also occasionally participated. Given the interagency commitment to the industrial base assessment study groups established by the DPAC, additional federal department and agency involvement in Title III actions is expected.

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

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

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

At the end of calendar year 2012, the DPA Title III Program had 34 domestic firms under agreement/contract. No projects reached completion during the year, while four new projects were awarded; an additional project is expected to be awarded in early 2013.

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<sup>7</sup> DOD Directive 4400.01E (October 12, 2001) delegates authority and responsibilities within DOD regarding use of the DPA authorities and designates the Secretary of the Air Force as the DOD Executive Agent for the Defense DPA III Program.

The following projects were initiated in 2012:

- Bio-Synthetic Paraffinic Kerosene (BSPK), (Sept 2012)
- SIBC CMOS FPA, (May 2012)
- SIBC Solar Cell Germanium, (Mar 2012)
- Terahertz Spectrometer (THz), (Sept 2012)
- Advanced Drop-In Biofuels Production Project (award date TBD)

Previously awarded DPA Title III projects that are ongoing involve the following:

- Advanced Carbon Nanotubes
- (Domestic) Armstrong Titanium Production
- Atomic Layer Deposition Hermetic Coatings
- ALON & Spinel Optical Ceramics
- Beryllium Supply Industrial Base
- Coal-Based Carbon Foam
- Conductive Composites
- Extremely Large Domestic Expendable and Reusable Structures (ELDERS)
- Gallium Nitride (GaN) Radar and Electronic Warfare (EW) Monolithic Microwave Integrated Circuit (MMIC) Producibility
- Gallium Nitride (GaN) X-Band Monolithic Microwave Integrated Circuits (MMICs)
- Heavy Forging Production Capacity
- High Homogeneity Optical Glass
- Integrated Advanced Composite Fiber Placement (IACFP)
- Light-Weight Ammunition & Armor
- Lithium Ion Batteries for Space (LISA)
- Low Cost Military Global Positioning Receivers (GPS) for Space
- Military Lens System Fabrication & Assembly
- Mini-Refrigerant Compressors for Man-Portable Cooling
- Non-Aerospace Titanium (NATASTP)
- Polyhedral Oligomeric Silsesquioxane (POSS) Nanotechnology
- Radiation Hardened Microprocessors
- Radiation Hardened Cryogenic Readout Integrated Circuits (ROICs)
- Small Secure Satellite Communication (SATCOM) Transceiver
- SIBC ROICs ON Semi
- SIBC Traveling Wave Tube Amplifiers (TWTAs) for Space
- Silicon Carbide Powder Production and Ceramic Armor Manufacturing
- Thermal Battery Production
- Titanium Metal Matrix Composites (TiMMCs)
- Reactive Plastic CO2 Absorbent
- Vacuum Induction Melting, Vacuum Arc Remelting (VIM-VAR) Furnace Capacity

### **3. DPAC Assessment Activities**

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

#### **3.1. DPAC Industrial Capability Assessment Activities**

In accordance with a Memorandum of Agreement between DHS and DOD, the DPAC has established DOD as coordinator of Industrial Capability Study Groups to conduct assessments and develop long-term strategies for addressing the supply chain problems of various industrial sectors. Each of these study groups is chaired by a senior subject-matter expert from a civilian agency who directs the group's work, while DOD provides operational staff and funding for assessment activities. During 2011, three study groups were established to examine supply chain issues related to metal fabrication, led by the DOC; power and energy, led by the DOE; and telecommunications, led by the White House Office of Science & Technology Policy.

At a September 2011 meeting, the DPAC tasked each study group with identifying for analysis annually three to five sub-tiers that agencies consider essential to national defense. The goal of these study groups is to identify industrial base shortfalls related to unmet or potentially unmet Government needs essential to multiple Federal departments and agencies to inform recommendations for mitigation (e.g., use of DPA Title III authorities). To facilitate their work, the study groups have engaged in a number of data-gathering and analytical activities, including holding broad and specialized interagency meetings of subject matter experts and acquisition specialists, discussions with industry, market analysis, and site visits. Additionally, elements of the DOD Sector-by-Sector, Tier-by-Tier (S2T2)<sup>8</sup> activity are contributing to study group analyses.

The number and scope of potential DPA Title III activities is limited by current Title III funding to the highest-priority supply chain risks (e.g., in Fiscal Year 2012, funds made available through a \$150 million increase for activities of DOD over the account's anticipated budget may be applied as seed monies for specific mitigation efforts). Consequently, a premium is placed on developing a ranked order of merit for identified supply chain risks. Requirements are prioritized based on interagency supported analysis of factors, such as (1) how cross-cutting is an issue within the interagency, (2) how critical are the capabilities affected, (3) how difficult is it to replace the supply chain component if it is disrupted, and (4) how fragile is the supply chain component to deviations in Government procurement. Any study group recommendations involving Title III authority are focused on short-term activities that will ensure long-term economic viability for a particular sector.

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<sup>8</sup> S2T2 collects and analyzes industrial base data to create a DOD-wide repository held in a consistent format that gives the DOD the opportunity to systematically identify critical and fragile niches of the industrial base, to consider interdependencies between seemingly unrelated acquisition programs because their supply chains intersect at the lower tiers, and to otherwise improve decision-making as it relates to the industrial base.

### **3.1.1. *Metal Fabrication Study Group***

The Metal Fabrication Study Group surveyed senior acquisition officials from across the Federal Government regarding unmet agency mission-critical component needs that are limited by current domestic metal fabrication capabilities. Based on this interagency discourse and subsequent industry engagement, the Study Group identified three primary cross-cutting risk areas that are essential to the national defense: forgings, castings, and machining:

1. Much of the foundation of domestic forging was established through investments made several decades ago. Yet, the critical need for this capability has not diminished. The Study Group found that risks in the supply chain for domestically produced forged-quality parts, especially those produced by heavy forging presses, have the potential to impair capabilities of the industrial base to meet the needs of various federal agencies, including DOD, DOE, the National Aeronautics and Space Administration, and DOT. Some affected components include: aircraft wheels and landing gear, vehicle armor, steam generators, railcar components, large rotor disks for power turbines, and rocket engine parts.
2. The domestic castings industry lacks the ability to efficiently adapt processes and create tools for the low-volume demand items the U.S. Government frequently requires. Some essential systems affected include: aircraft fuselages, aircraft wing skins, gas turbine casings, submarine propellers, nuclear power components, and railroad truck frames.
3. In examining the machining industry, the Study Group found no lack of domestic machining capacity or capability. However, the cost impact of the material waste and tooling development can be significant, and virtually every critical defense system relies on machined components. Advances in machining process efficiency and the promise of near-net-shape processing prior to machining could reduce the extent of machining processes, with likely economic advantages. Additionally, advances in additive manufacturing capabilities could complement traditional machining, especially for small lot sizes, when processing expensive materials is involved or complex advanced designs challenge the inherent capability of machining.

Based on its findings, the Study Group determined that: (1) forged-quality metal components represent the highest-priority industrial base shortfall within metal fabrication due to the current risks and the pervasiveness of the capability gap; (2) it is unlikely that the private sector will be able or willing to address the issue unilaterally; and (3) economically viable solutions are lacking. The Study Group is recommending that the national defense needs in the areas of castings adaptability and machining be addressed in the near future.

### **3.1.2. *Telecommunications Study Group***

In support of the telecommunications infrastructure supply chain policy objective of “enhancing the viability of United States (U.S.) science, technology, and advanced manufacturing capabilities to achieve national security objectives,” the National Security Staff tasked the DPAC with assessing the market viability and emerging trends of pertinent U.S. supply chains. In

response to this tasking, the DPAC established a Telecommunications Study Group, co-chaired and staffed by DOD and the White House Office of Science and Technology Policy personnel.

The DPAC Telecommunications Study Group created an analytical process to assess the capability gaps and Government needs of the sector and develop recommendations addressing U.S. Government and critical infrastructure needs and supporting U.S. competitiveness. It identified six essential equipment subsectors for assessment: (1) routing and switching equipment; (2) optical transport equipment; (3) professional services; (4) sub-components; (5) Operating System Software with a focus on Network Management Software; and (6) wireless networking equipment.

The Telecommunications Study Group's comprehensive assessment of the U.S. position in the global telecommunications equipment market found diminishing capabilities of the U.S. industrial base in key sectors of the market. The Study Group's work included a detailed analysis of extensive market data, discussions with domestic telecommunications companies and trade associations, and consideration of responses received from an official Request for Information (RFI) that closed in June 2012. Specifically, the Study Group has concluded that several factors have combined to reduce the relative position of U.S. equipment vendors. These factors include: the rapid consolidation of the global carrier market; market-impacting foreign-government policies; and low labor costs in foreign markets. As a consequence, U.S. manufacturers face increased competition from overseas vendors and reduced profit margins. While the U.S. still has internationally competitive capabilities in many of the key telecommunications equipment market sectors, a global shift in the market has left the U.S. with only one domestic firm in the top tier, a few medium-size manufacturers (annual sales exceeding \$500 million), and several smaller vendors. The U.S. no longer has a wireless equipment vendor capable of producing at scale. Three primary consequences of the market's transformation include:

1. The U.S. is losing its capabilities in key equipment sectors;
2. There are fewer leading U.S. vendors for agencies and universities to partner with for research and development (R&D); and
3. The options to successfully translate domestic innovation into U.S. telecommunications equipment are increasingly limited.

The Study Group is in the process of developing recommendations for public-private partnerships and co-investment in key wireless and optical subsectors. These partnerships will likely involve coordinated activities related to applied R&D, technology demonstrations, scale-up, and facilitating government as an early adopter. Production scale-up could be implemented using DPA Title III authorities to ensure that essential Government needs can be met.

### **3.1.3. *Power and Energy Study Group***

For its initial assessment cycle, the Power and Energy Study Group surveyed pertinent senior acquisition officials and subject matter experts from across the Federal Government to identify cross-cutting shortfalls, risks, and concerns related to fulfillment of current and future

government requirements. Based on this survey, preliminary analysis, and follow-up interagency conversations, it was determined that the Study Group should focus on shortfalls related to (1) fuel cells; (2) lightweight materials; and (3) gallium nitride (GaN) substrates.

## **Fuel Cells**

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

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

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

Based on its analysis, the Study Group issued a formal RFI on fuel cell systems (closed May 2012) to confirm its preliminary conclusions and fill identified gaps in knowledge. The Study Group is currently in the process of prioritizing potential approaches to mitigating these fuel cell manufacturing shortfalls.

## **Lightweight Materials**

Availability of advanced lightweight materials (e.g., carbon fiber) is a cross-cutting requirement crucial to improving energy efficiency. Critical government systems affected range from vehicles and aircraft to alternative energy sources such as wind power. The Study Group's analytical team has determined, however, that development of advanced lightweight materials and expansion of their availability has been hindered by the difficulty of predicting demand. The supply uncertainty and price volatility of these materials has prevented their adoption for commercial

applications. Consequently, technical breakthroughs – such as, alternative precursors, composite forming, or material joining – may be slow to develop and insufficient to spur the level of commercialization necessary to expand the availability and affordability of advanced lightweight materials to meet government needs.

### **Gallium Nitride (GaN) on Silicon Carbide (SiC) Substrates**

Unique government mission requirements lead to a low-demand need for power electronic systems related to transmit-and-receive modules (e.g., electronic warfare capabilities such as counter-IED (improvised explosive device) devices and active radar systems and frequency jamming) that require specialized GaN on SiC substrates. The significant capital investments necessary to develop advanced integrated circuit fabrication capabilities using GaN on SiC, however, have prevented private industry from expanding or upgrading their facilities to meet U.S. Government demand. Unless addressed, the need for these components is expected to increase at a pace greater than the industrial base's ability to produce them, and the high cost of GaN on SiC devices will limit their implementation and deployment. DOE's Office of Energy Efficiency and Renewable Energy's efforts with electric drive vehicles, solar, wind, geothermal should produce additional pressures on GaN on SiC manufacturers since the chargers, dc-dc converters, and inverters required by these systems are expected to increasingly rely on wide bandgap-based semiconductors (e.g., GaN and SiC). To address this industrial base shortfall, the Study Group is recommending that the DPA Title III Program expand its current efforts related to GaN to include GaN on SiC in order to improve industry's ability to meet government needs.

### **3.2. DPAC DPA Authorities Assessment Activities**

The Study Group on Defense Production Act Issues was established by the DPAC in March 2011 to address a number of questions involving use of DPA authorities. These questions focused on:

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

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

## **4. Information Sharing on DPA Issues**

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There are a wide variety of guidance, procedures, and activities that promote information sharing on industrial base capabilities and DPA issues among federal departments and agencies.

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

### ***4.1. DPA-Related Guidance and Procedures Involving Information Sharing***

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

### ***4.2. Interagency Working Groups and Agreements***

DHS is directed by a number of Presidential orders and directives to provide coordination and guidance for DPA and other emergency preparedness plans and programs. DHS fulfills the coordination by convening periodic interagency working groups and meetings with representatives of individual agencies. For example, DHS has been coordinating an interagency working group with membership consisting of the agencies that are developing the priorities and allocations regulations discussed in section 2.1.1 of this report. DHS also convenes an interagency working group each year to share information and prepare a report to Congress on the use of DPA section 101 authority to ensure the preparedness of industry to reduce interruptions in critical infrastructure and key resource operations during emergencies.

### ***4.3. DOC Defense Industrial Capability and Technology Assessments***

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

### ***4.4. Offsets in Defense Trade***

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

offsets in defense trade pursuant to Section 723 of the DPA.<sup>9</sup> The United States Government has established an interagency team to consult with foreign nations on limiting the adverse effects of offsets in defense procurement. The data collected by DOC's BIS are utilized in the multilateral and bilateral consultations of the team and its working group.

#### **4.5. DPA Websites**

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

##### **4.5.1. DOD Websites**

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

Under Secretary of Defense for Acquisition, Technology, & Logistics: “Defense Priorities & Allocations System (DPAS)” – <http://www.acq.osd.mil/mibp/dpas.shtml>

Naval Supply Systems Command: “Defense Priorities & Allocations System (DPAS)” – <https://www.navsup.navy.mil/navsup/ourteam/navsup/dpas>

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

Defense Acquisition University: “Defense Priorities and Allocations System Continuous Learning Module (CLC 043)” – <https://learn.dau.mil>

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

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

##### **4.5.2. DHS Websites**

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

Emergency Management Institute Courses:

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

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<sup>9</sup> Offsets in defense trade encompass a range of industrial compensation arrangements required by foreign governments as a condition of the purchase of defense articles and services from a non-domestic source.

#### **4.5.3. DOC Websites**

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

DOC/BIS: “Offsets in Defense Trade” –  
<http://www.bis.doc.gov/defenseindustrialbaseprograms/osies/offsets/default.htm>

DOC/BIS: “Defense Industrial Capability and Technology Assessments” –  
<http://www.bis.doc.gov/defenseindustrialbaseprograms/osies/defmarketresearchrpts/default.htm>

# Annex A

## Delegation of DPA Authorities

### **A.1. *Summary of Executive Order 13603***

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

### **A.2. *Delegation of DPA Authorities***

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

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

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

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

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

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

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

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

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

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

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

EO 12742 requires similar determinations (but applying a "national security" standard) by DOD regarding prompt delivery of the articles or materials for the exclusive use of the Armed Forces of the United States and DOE regarding prompt delivery of the articles or materials for DOE's atomic energy programs.

#### **A.4. *Title III Authorities***

EO 13603 delegates authorities of the President under Sections 301, 302, and 303 of the DPA. The head of each Federal department or agency engaged in procurement for the national defense<sup>10</sup> is authorized to:

- Make loan guarantees (DPA section 301), direct loans (DPA section 302), purchase commitments and purchases (DPA section 303(a)), and subsidy payments (DPA section 303(c));
- Make provision for the development of production capabilities;
- Make provision for the increased use of emerging technologies in security program applications and to enable the rapid transition of emerging technologies;
- Procure and install equipment in industrial facilities (DPA section 303(e));
- Transfer materials acquired under section 303 of the DPA to the National Defense Stockpile, if such transfer is determined by the Secretary of Defense as the National Defense Stockpile Manager to be in the public interest (DPA section 303(f));
- Make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources (DPA section 303(g));
- Make the required determinations, judgments, certifications, findings, and notifications required by the DPA with respect to use of these authorities [after appropriate consultation], with the exception of determinations made by the President under DPA section 303(a)(7)(B);
- Utilize Title III authority or any other provision of law to provide appropriate incentives to develop, maintain, modernize, restore, and expand the productive capacities of domestic sources for critical components, critical technology items, materials, and industrial resources essential for the execution of the national security strategy of the United States (DPA section 107(a)); and

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<sup>10</sup> This includes the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, the Interior, Justice, State, and Transportation; the Office of the Director of National Intelligence; the Central Intelligence Agency; the General Services Administration; and the National Aeronautics and Space Administration.

industrial resources essential for the execution of the national security strategy of the United States (DPA section 107(a)); and

- Utilize the authority of Title III of the Act to guarantee the purchase or lease of advance manufacturing equipment and any related services for purposes of the DPA section 108(b).

In addition, the Secretaries of Defense and the Interior are authorized to make provision to encourage the exploration, development, and mining of critical and strategic materials and other materials (DPA section 303(a)(1)(B)).

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

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

#### **A.5. *Title VII Authorities***

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

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

#### **A.6. *Preparedness Measures***

Based, in part, on DPA authorities, EO 12656, as amended, directs the head of each federal department and agency, as appropriate, to design preparedness measures to permit a rapid and effective transition from routine to emergency operations and to make effective use of the period following initial indication of a probable national security emergency. This EO assigns lead responsibilities to various departments and agencies to develop plans, procedures, and programs for national security emergencies with respect to resources within their jurisdictions. .

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

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

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

# Annex B

## Executive Order 13603

The White House

Office of the Press Secretary

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For Immediate Release

March 16, 2012

### Executive Order -- National Defense Resources Preparedness

#### EXECUTIVE ORDER

#### NATIONAL DEFENSE RESOURCES PREPAREDNESS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and section 301 of title 3, United States Code, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

#### PART I - PURPOSE, POLICY, AND IMPLEMENTATION

Section 101. Purpose. This order delegates authorities and addresses national defense resource policies and programs under the Defense Production Act of 1950, as amended (the "Act").

Sec. 102. Policy. The United States must have an industrial and technological base capable of meeting national defense requirements and capable of contributing to the technological superiority of its national defense equipment in peacetime and in times of national emergency. The domestic industrial and technological base is the foundation for national defense preparedness. The authorities provided in the Act shall be used to strengthen this base and to ensure it is capable of responding to the national defense needs of the United States.

Sec. 103. General Functions. Executive departments and agencies (agencies) responsible for plans and programs relating to national defense (as defined in section 801(j) of this order), or for resources and services needed to support such plans and programs, shall:

- (a) identify requirements for the full spectrum of emergencies, including essential military and civilian demand;
- (b) assess on an ongoing basis the capability of the domestic industrial and technological base to satisfy requirements in peacetime and times of national emergency, specifically evaluating the

availability of the most critical resource and production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;

(c) be prepared, in the event of a potential threat to the security of the United States, to take actions necessary to ensure the availability of adequate resources and production capability, including services and critical technology, for national defense requirements;

(d) improve the efficiency and responsiveness of the domestic industrial base to support national defense requirements; and

(e) foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, services, components, and equipment to enhance industrial base efficiency and responsiveness.

Sec. 104. Implementation. (a) The National Security Council and Homeland Security Council, in conjunction with the National Economic Council, shall serve as the integrated policymaking forum for consideration and formulation of national defense resource preparedness policy and shall make recommendations to the President on the use of authorities under the Act.

(b) The Secretary of Homeland Security shall:

(1) advise the President on issues of national defense resource preparedness and on the use of the authorities and functions delegated by this order;

(2) provide for the central coordination of the plans and programs incident to authorities and functions delegated under this order, and provide guidance to agencies assigned functions under this order, developed in consultation with such agencies; and

(3) report to the President periodically concerning all program activities conducted pursuant to this order.

(c) The Defense Production Act Committee, described in section 701 of this order, shall:

(1) in a manner consistent with section 2(b) of the Act, 50 U.S.C. App. 2062(b), advise the President through the Assistant to the President and National Security Advisor, the Assistant to the President for Homeland Security and Counterterrorism, and the Assistant to the President for Economic Policy on the effective use of the authorities under the Act; and

(2) prepare and coordinate an annual report to the Congress pursuant to section 722(d) of the Act, 50 U.S.C. App. 2171(d).

(d) The Secretary of Commerce, in cooperation with the Secretary of Defense, the Secretary of Homeland Security, and other agencies, shall:

- (1) analyze potential effects of national emergencies on actual production capability, taking into account the entire production system, including shortages of resources, and develop recommended preparedness measures to strengthen capabilities for production increases in national emergencies; and
- (2) perform industry analyses to assess capabilities of the industrial base to support the national defense, and develop policy recommendations to improve the international competitiveness of specific domestic industries and their abilities to meet national defense program needs.

## PART II - PRIORITIES AND ALLOCATIONS

Sec. 201. Priorities and Allocations Authorities. (a) The authority of the President conferred by section 101 of the Act, 50 U.S.C. App. 2071, to require acceptance and priority performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, is delegated to the following agency heads:

- (1) the Secretary of Agriculture with respect to food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer;
  - (2) the Secretary of Energy with respect to all forms of energy;
  - (3) the Secretary of Health and Human Services with respect to health resources;
  - (4) the Secretary of Transportation with respect to all forms of civil transportation;
  - (5) the Secretary of Defense with respect to water resources; and
  - (6) the Secretary of Commerce with respect to all other materials, services, and facilities, including construction materials.
- (b) The Secretary of each agency delegated authority under subsection (a) of this section (resource departments) shall plan for and issue regulations to prioritize and allocate resources and establish standards and procedures by which the authority shall be used to promote the national defense, under both emergency and non-emergency conditions. Each Secretary shall authorize the heads of other agencies, as appropriate, to place priority ratings on contracts and orders for materials, services, and facilities needed in support of programs approved under section 202 of this order.
- (c) Each resource department shall act, as necessary and appropriate, upon requests for special priorities assistance, as defined by section 801(l) of this order, in a time frame consistent with the urgency of the need at hand. In situations where there are competing program requirements for limited resources, the resource department shall consult with the Secretary who made the

required determination under section 202 of this order. Such Secretary shall coordinate with and identify for the resource department which program requirements to prioritize on the basis of operational urgency. In situations involving more than one Secretary making such a required determination under section 202 of this order, the Secretaries shall coordinate with and identify for the resource department which program requirements should receive priority on the basis of operational urgency.

(d) If agreement cannot be reached between two such Secretaries, then the issue shall be referred to the President through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism.

(e) The Secretary of each resource department, when necessary, shall make the finding required under section 101(b) of the Act, 50 U.S.C. App. 2071(b). This finding shall be submitted for the President's approval through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism. Upon such approval, the Secretary of the resource department that made the finding may use the authority of section 101(a) of the Act, 50 U.S.C. App. 2071(a), to control the general distribution of any material (including applicable services) in the civilian market.

Sec. 202. Determinations. Except as provided in section 201(e) of this order, the authority delegated by section 201 of this order may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

(a) by the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by the Department of Defense, space, and directly related activities;

(b) by the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and

(c) by the Secretary of Homeland Security with respect to all other national defense programs, including civil defense and continuity of government.

Sec. 203. Maximizing Domestic Energy Supplies. The authorities of the President under section 101(c)(1) (2) of the Act, 50 U.S.C. App. 2071(c)(1) (2), are delegated to the Secretary of Commerce, with the exception that the authority to make findings that materials (including equipment), services, and facilities are critical and essential, as described in section 101(c)(2)(A) of the Act, 50 U.S.C. App. 2071(c)(2)(A), is delegated to the Secretary of Energy.

Sec. 204. Chemical and Biological Warfare. The authority of the President conferred by section 104(b) of the Act, 50 U.S.C. App. 2074(b), is delegated to the Secretary of Defense. This authority may not be further delegated by the Secretary.

### PART III - EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

Sec. 301. Loan Guarantees. (a) To reduce current or projected shortfalls of resources, critical technology items, or materials essential for the national defense, the head of each agency engaged in procurement for the national defense, as defined in section 801(h) of this order, is authorized pursuant to section 301 of the Act, 50 U.S.C. App. 2091, to guarantee loans by private institutions.

(b) Each guaranteeing agency is designated and authorized to: (1) act as fiscal agent in the making of its own guarantee contracts and in otherwise carrying out the purposes of section 301 of the Act; and (2) contract with any Federal Reserve Bank to assist the agency in serving as fiscal agent.

(c) Terms and conditions of guarantees under this authority shall be determined in consultation with the Secretary of the Treasury and the Director of the Office of Management and Budget (OMB). The guaranteeing agency is authorized, following such consultation, to prescribe: (1) either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with such guarantee contracts; and (2) regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection therewith.

Sec. 302. Loans. To reduce current or projected shortfalls of resources, critical technology items, or materials essential for the national defense, the head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 302 of the Act, 50 U.S.C. App. 2092, to make loans thereunder. Terms and conditions of loans under this authority shall be determined in consultation with the Secretary of the Treasury and the Director of OMB.

Sec. 303. Additional Authorities. (a) To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 303 of the Act, 50 U.S.C. App. 2093, to make provision for purchases of, or commitments to purchase, an industrial resource or a critical technology item for Government use or resale, and to make provision for the development of production capabilities, and for the increased use of emerging technologies in security program applications, and to enable rapid transition of emerging technologies.

(b) Materials acquired under section 303 of the Act, 50 U.S.C. App. 2093, that exceed the needs of the programs under the Act may be transferred to the National Defense Stockpile, if, in the judgment of the Secretary of Defense as the National Defense Stockpile Manager, such transfers are in the public interest.

Sec. 304. Subsidy Payments. To ensure the supply of raw or nonprocessed materials from high cost sources, or to ensure maximum production or supply in any area at stable prices of any materials in light of a temporary increase in transportation cost, the head of each agency engaged in procurement for the national defense is delegated the authority of the President under section

303(c) of the Act, 50 U.S.C. App. 2093(c), to make subsidy payments, after consultation with the Secretary of the Treasury and the Director of OMB.

Sec. 305. Determinations and Findings. (a) Pursuant to budget authority provided by an appropriations act in advance for credit assistance under section 301 or 302 of the Act, 50 U.S.C. App. 2091, 2092, and consistent with the Federal Credit Reform Act of 1990, as amended (FCRA), 2 U.S.C. 661 *et seq.*, the head of each agency engaged in procurement for the national defense is delegated the authority to make the determinations set forth in sections 301(a)(2) and 302(b)(2) of the Act, in consultation with the Secretary making the required determination under section 202 of this order; provided, that such determinations shall be made after due consideration of the provisions of OMB Circular A 129 and the credit subsidy score for the relevant loan or loan guarantee as approved by OMB pursuant to FCRA.

(b) Other than any determination by the President under section 303(a)(7)(b) of the Act, the head of each agency engaged in procurement for the national defense is delegated the authority to make the required determinations, judgments, certifications, findings, and notifications defined under section 303 of the Act, 50 U.S.C. App. 2093, in consultation with the Secretary making the required determination under section 202 of this order.

Sec. 306. Strategic and Critical Materials. The Secretary of Defense, and the Secretary of the Interior in consultation with the Secretary of Defense as the National Defense Stockpile Manager, are each delegated the authority of the President under section 303(a)(1)(B) of the Act, 50 U.S.C. App. 2093(a)(1)(B), to encourage the exploration, development, and mining of strategic and critical materials and other materials.

Sec. 307. Substitutes. The head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 303(g) of the Act, 50 U.S.C. App. 2093(g), to make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other resources to aid the national defense.

Sec. 308. Government-Owned Equipment. The head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 303(e) of the Act, 50 U.S.C. App. 2093(e), to:

(a) procure and install additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the Federal Government and to procure and install government-owned equipment in plants, factories, or other industrial facilities owned by private persons;

(b) provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under sections 301, 302, or 303 of the Act, 50 U.S.C. App. 2091, 2092, 2093; and

(c) sell or otherwise transfer equipment owned by the Federal Government and installed under section 303(e) of the Act, 50 U.S.C. App. 2093(e), to the owners of such plants, factories, or other industrial facilities.

Sec. 309. Defense Production Act Fund. The Secretary of Defense is designated the Defense Production Act Fund Manager, in accordance with section 304(f) of the Act, 50 U.S.C. App. 2094(f), and shall carry out the duties specified in section 304 of the Act, in consultation with the agency heads having approved, and appropriated funds for, projects under title III of the Act.

Sec. 310. Critical Items. The head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 107(b)(1) of the Act, 50 U.S.C. App. 2077(b)(1), to take appropriate action to ensure that critical components, critical technology items, essential materials, and industrial resources are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency. Appropriate action may include restricting contract solicitations to reliable sources, restricting contract solicitations to domestic sources (pursuant to statutory authority), stockpiling critical components, and developing substitutes for critical components or critical technology items.

Sec. 311. Strengthening Domestic Capability. The head of each agency engaged in procurement for the national defense is delegated the authority of the President under section 107(a) of the Act, 50 U.S.C. App. 2077(a), to utilize the authority of title III of the Act or any other provision of law to provide appropriate incentives to develop, maintain, modernize, restore, and expand the productive capacities of domestic sources for critical components, critical technology items, materials, and industrial resources essential for the execution of the national security strategy of the United States.

Sec. 312. Modernization of Equipment. The head of each agency engaged in procurement for the national defense, in accordance with section 108(b) of the Act, 50 U.S.C. App. 2078(b), may utilize the authority of title III of the Act to guarantee the purchase or lease of advance manufacturing equipment, and any related services with respect to any such equipment for purposes of the Act. In considering title III projects, the head of each agency engaged in procurement for the national defense shall provide a strong preference for proposals submitted by a small business supplier or subcontractor in accordance with section 108(b)(2) of the Act, 50 U.S.C. App. 2078(b)(2).

#### PART IV - VOLUNTARY AGREEMENTS AND ADVISORY COMMITTEES

Sec. 401. Delegations. The authority of the President under sections 708(c) and (d) of the Act, 50 U.S.C. App. 2158(c), (d), is delegated to the heads of agencies otherwise delegated authority under this order. The status of the use of such delegations shall be furnished to the Secretary of Homeland Security.

Sec. 402. Advisory Committees. The authority of the President under section 708(d) of the Act, 50 U.S.C. App. 2158(d), and delegated in section 401 of this order (relating to establishment of advisory committees) shall be exercised only after consultation with, and in accordance with, guidelines and procedures established by the Administrator of General Services.

Sec. 403. Regulations. The Secretary of Homeland Security, after approval of the Attorney General, and after consultation by the Attorney General with the Chairman of the Federal Trade

Commission, shall promulgate rules pursuant to section 708(e) of the Act, 50 U.S.C. App. 2158(e), incorporating standards and procedures by which voluntary agreements and plans of action may be developed and carried out. Such rules may be adopted by other agencies to fulfill the rulemaking requirement of section 708(e) of the Act, 50 U.S.C. App. 2158(e).

## PART V - EMPLOYMENT OF PERSONNEL

Sec. 501. National Defense Executive Reserve. (a) In accordance with section 710(e) of the Act, 50 U.S.C. App. 2160(e), there is established in the executive branch a National Defense Executive Reserve (NDER) composed of persons of recognized expertise from various segments of the private sector and from government (except full time federal employees) for training for employment in executive positions in the Federal Government in the event of a national defense emergency.

(b) The Secretary of Homeland Security shall issue necessary guidance for the NDER program, including appropriate guidance for establishment, recruitment, training, monitoring, and activation of NDER units and shall be responsible for the overall coordination of the NDER program. The authority of the President under section 710(e) of the Act, 50 U.S.C. App. 2160(e), to determine periods of national defense emergency is delegated to the Secretary of Homeland Security.

(c) The head of any agency may implement section 501(a) of this order with respect to NDER operations in such agency.

(d) The head of each agency with an NDER unit may exercise the authority under section 703 of the Act, 50 U.S.C. App. 2153, to employ civilian personnel when activating all or a part of its NDER unit. The exercise of this authority shall be subject to the provisions of sections 501(e) and (f) of this order and shall not be redelegated.

(e) The head of an agency may activate an NDER unit, in whole or in part, upon the written determination of the Secretary of Homeland Security that an emergency affecting the national defense exists and that the activation of the unit is necessary to carry out the emergency program functions of the agency.

(f) Prior to activating the NDER unit, the head of the agency shall notify, in writing, the Assistant to the President for Homeland Security and Counterterrorism of the impending activation.

Sec. 502. Consultants. The head of each agency otherwise delegated functions under this order is delegated the authority of the President under sections 710(b) and (c) of the Act, 50 U.S.C. App. 2160(b), (c), to employ persons of outstanding experience and ability without compensation and to employ experts, consultants, or organizations. The authority delegated by this section may not be redelegated.

## PART VI - LABOR REQUIREMENTS

Sec. 601. Secretary of Labor. (a) The Secretary of Labor, in coordination with the Secretary of Defense and the heads of other agencies, as deemed appropriate by the Secretary of Labor, shall:

- (1) collect and maintain data necessary to make a continuing appraisal of the Nation's workforce needs for purposes of national defense;
- (2) upon request by the Director of Selective Service, and in coordination with the Secretary of Defense, assist the Director of Selective Service in development of policies regulating the induction and deferment of persons for duty in the armed services;
- (3) upon request from the head of an agency with authority under this order, consult with that agency with respect to: (i) the effect of contemplated actions on labor demand and utilization; (ii) the relation of labor demand to materials and facilities requirements; and (iii) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor;
- (4) upon request from the head of an agency with authority under this order: (i) formulate plans, programs, and policies for meeting the labor requirements of actions to be taken for national defense purposes; and (ii) estimate training needs to help address national defense requirements and promote necessary and appropriate training programs; and
- (5) develop and implement an effective labor management relations policy to support the activities and programs under this order, with the cooperation of other agencies as deemed appropriate by the Secretary of Labor, including the National Labor Relations Board, the Federal Labor Relations Authority, the National Mediation Board, and the Federal Mediation and Conciliation Service.

(b) All agencies shall cooperate with the Secretary of Labor, upon request, for the purposes of this section, to the extent permitted by law.

## PART VII - DEFENSE PRODUCTION ACT COMMITTEE

Sec. 701. The Defense Production Act Committee. (a) The Defense Production Act Committee (Committee) shall be composed of the following members, in accordance with section 722(b) of the Act, 50 U.S.C. App. 2171(b):

- (1) The Secretary of State;
- (2) The Secretary of the Treasury;
- (3) The Secretary of Defense;
- (4) The Attorney General;

- (5) The Secretary of the Interior;
- (6) The Secretary of Agriculture;
- (7) The Secretary of Commerce;
- (8) The Secretary of Labor;
- (9) The Secretary of Health and Human Services;
- (10) The Secretary of Transportation;
- (11) The Secretary of Energy;
- (12) The Secretary of Homeland Security;
- (13) The Director of National Intelligence;
- (14) The Director of the Central Intelligence Agency;
- (15) The Chair of the Council of Economic Advisers;
- (16) The Administrator of the National Aeronautics and Space Administration; and
- (17) The Administrator of General Services.

(b) The Director of OMB and the Director of the Office of Science and Technology Policy shall be invited to participate in all Committee meetings and activities in an advisory role. The Chairperson, as designated by the President pursuant to section 722 of the Act, 50 U.S.C. App. 2171, may invite the heads of other agencies or offices to participate in Committee meetings and activities in an advisory role, as appropriate.

Sec. 702. Offsets. The Secretary of Commerce shall prepare and submit to the Congress the annual report required by section 723 of the Act, 50 U.S.C. App. 2172, in consultation with the Secretaries of State, the Treasury, Defense, and Labor, the United States Trade Representative, the Director of National Intelligence, and the heads of other agencies as appropriate. The heads of agencies shall provide the Secretary of Commerce with such information as may be necessary for the effective performance of this function.

## PART VIII - GENERAL PROVISIONS

Sec. 801. Definitions. In addition to the definitions in section 702 of the Act, 50 U.S.C. App. 2152, the following definitions apply throughout this order:

(a) "Civil transportation" includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its

territories and possessions, and the District of Columbia, and related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. "Civil transportation" also shall include direction, control, and coordination of civil transportation capacity regardless of ownership. "Civil transportation" shall not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly.

(b) "Energy" means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquification, and coal gasification), solar, wind, other types of renewable energy, atomic energy, and the production, conservation, use, control, and distribution (including pipelines) of all of these forms of energy.

(c) "Farm equipment" means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

(d) "Fertilizer" means any product or combination of products that contain one or more of the elements nitrogen, phosphorus, and potassium for use as a plant nutrient.

(e) "Food resources" means all commodities and products, (simple, mixed, or compound), or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. "Food resources" also means potable water packaged in commercially marketable containers, all starches, sugars, vegetable and animal or marine fats and oils, seed, cotton, hemp, and flax fiber, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product.

(f) "Food resource facilities" means plants, machinery, vehicles (including on farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).

(g) "Functions" include powers, duties, authority, responsibilities, and discretion.

(h) "Head of each agency engaged in procurement for the national defense" means the heads of the Departments of State, Justice, the Interior, and Homeland Security, the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Aeronautics and Space Administration, the General Services Administration, and all other agencies with authority delegated under section 201 of this order.

(i) "Health resources" means drugs, biological products, medical devices, materials, facilities, health supplies, services and equipment required to diagnose, mitigate or prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.

(j) "National defense" means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5195 *et seq.*, and critical infrastructure protection and restoration.

(k) "Offsets" means compensation practices required as a condition of purchase in either government to government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act, 22 U.S.C. 2751 *et seq.*, and the International Traffic in Arms Regulations, 22 C.F.R. 120.1 130.17.

(l) "Special priorities assistance" means action by resource departments to assist with expediting deliveries, placing rated orders, locating suppliers, resolving production or delivery conflicts between various rated orders, addressing problems that arise in the fulfillment of a rated order or other action authorized by a delegated agency, and determining the validity of rated orders.

(m) "Strategic and critical materials" means materials (including energy) that (1) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national emergency, and (2) are not found or produced in the United States in sufficient quantities to meet such need and are vulnerable to the termination or reduction of the availability of the material.

(n) "Water resources" means all usable water, from all sources, within the jurisdiction of the United States, that can be managed, controlled, and allocated to meet emergency requirements, except "water resources" does not include usable water that qualifies as "food resources."

Sec. 802. General. (a) Except as otherwise provided in section 802(c) of this order, the authorities vested in the President by title VII of the Act, 50 U.S.C. App. 2151 *et seq.*, are delegated to the head of each agency in carrying out the delegated authorities under the Act and this order, by the Secretary of Labor in carrying out part VI of this order, and by the Secretary of the Treasury in exercising the functions assigned in Executive Order 11858, as amended.

(b) The authorities that may be exercised and performed pursuant to section 802(a) of this order shall include:

(1) the power to redelegate authorities, and to authorize the successive redelegation of authorities to agencies, officers, and employees of the Government; and

(2) the power of subpoena under section 705 of the Act, 50 U.S.C. App. 2155, with respect to (i) authorities delegated in parts II, III, and section 702 of this order, and (ii) the functions assigned to the Secretary of the Treasury in Executive Order 11858, as amended, provided that the subpoena power referenced in subsections (i) and (ii) shall be utilized only after the scope and purpose of the investigation, inspection, or inquiry to which the subpoena relates have been defined either by the appropriate officer identified in section 802(a) of this order or by such other person or persons as the officer shall designate.

(c) Excluded from the authorities delegated by section 802(a) of this order are authorities delegated by parts IV and V of this order, authorities in section 721 and 722 of the Act, 50 U.S.C. App. 2170-2171, and the authority with respect to fixing compensation under section 703 of the Act, 50 U.S.C. App. 2153.

Sec. 803. Authority. (a) Executive Order 12919 of June 3, 1994, and sections 401(3)-(4) of Executive Order 12656 of November 18, 1988, are revoked. All other previously issued orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this order shall remain in effect except as they are inconsistent with this order or are subsequently amended or revoked under proper authority. Nothing in this order shall affect the validity or force of anything done under previous delegations or other assignment of authority under the Act.

(b) Nothing in this order shall affect the authorities assigned under Executive Order 11858 of May 7, 1975, as amended, except as provided in section 802 of this order.

(c) Nothing in this order shall affect the authorities assigned under Executive Order 12472 of April 3, 1984, as amended.

Sec. 804. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

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

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

BARACK OBAMA

THE WHITE HOUSE,  
March 16, 2012.