

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

**M E M O R A N D U M**

To: Members of the Committee on Financial Services

From: FSC Majority Committee Staff

Date: May 3, 2013

Subject: May 8, 2013 Monetary Policy and Trade Subcommittee on “Reauthorizing the Defense Production Act”

---

The Subcommittee on Monetary Policy and Trade will hold a hearing on “Reauthorizing the Defense Production Act” at 2 p.m. Wednesday, May 8, 2013, in Room 2128 of the Rayburn House Office Building. This hearing will examine the Defense Production Act (DPA) and the issues related to its reauthorization. This will be a one-panel hearing with the following witnesses:

- Mr. David J. Kaufman, Associate Administrator, Policy, Program Analysis and International Affairs, Federal Emergency Management Agency, U.S. Department of Homeland Security
- The Honorable Kevin J. Wolf, Assistant Secretary, Export Administration, Department of Commerce
- Mr. Brett B. Lambert, Deputy Assistant Secretary of Defense, Manufacturing and Industrial Base Policy, Department of Defense

**Background**

Although the jurisdiction of the Financial Services Committee is generally limited to matters affecting financial markets and financial institutions, the Committee has jurisdiction over one matter that has more to do with national defense than financial services: in the House of Representatives, the Financial Services Committee has sole legislative jurisdiction for the Defense Production Act of 1950.

Enacted in 1950 shortly after the outbreak of the Korean War, the Defense Production Act was intended to mobilize U.S. productive capacity. The Act granted the President broad powers to provide prompt, adequate, and uninterrupted supplies of

industrial resources to satisfy national security needs. More recently, powers granted to the President under the Act have expanded to include the protection of critical infrastructure and needs arising from civil emergencies.

When it was enacted, the Act comprised seven titles, including controversial ones related to wage and price controls. As the Korean War wound down, four of the Act's titles were allowed to expire, leaving three titles that remain effective.

Title I—Priorities and Allocations—grants the President the authority to prioritize the performance of specific contracts to meet urgent defense or readiness requirements and to allocate resources to industries to optimize the production of defense materials. This authority allows the government to move to the head of a company's production and delivery schedule, and indemnifies the company against breach-of-contract lawsuits by non-government entities.

Title III—Expansion of Productive Capacity and Supply—authorizes the President to use loans, loan guarantees, purchase commitments, and grants to encourage contractors to establish or expand activities to provide increased industrial capacity for defense needs. This title supports the production of items that domestic manufacturers would not otherwise produce but which are essential to national defense, such as flat-panel displays suitable for use in tanks or radiation-hardened electronics that can withstand attacks that could blind military satellites.

Title VII—General Provisions—authorizes the President to provide antitrust exemptions for voluntary agreements and joint activities among private entities intended to address production and distribution problems that might impair national defense preparedness. Title VII also extends the authorities of the Act to natural disasters and civil emergencies. Title VII also allows the creation of a “reserve corps” of defense executives who may be called upon to provide expertise in certain circumstances. Title VII also contains the sunset clause for the bulk of the Act.<sup>1</sup>

## **Recent History of the Defense Production Act**

Presidents have used the authorities granted under the Defense Production Act in a number of ways, both to meet national defense needs and to respond to natural disasters. For example, two decades ago President George H.W. Bush relied heavily on the Act during Operation Desert Storm. More recently, President Clinton used his authority under the Act

---

<sup>1</sup> Although most of the Defense Production Act is subject to the sunset clause in Title VII, Section 721—generally referred to as the “Committee on Foreign Investment in the United States” (CFIUS) section—does not sunset and thus requires no reauthorization. Section 721 authorizes the President to suspend or prohibit the acquisition, merger, or takeover of a domestic firm by a foreign firm if that action would threaten or impair national security.

during the Bosnian conflict, and President George W. Bush relied on the act in the Iraq and Afghanistan wars. Presidents have also used their powers under the Act in the wake of natural disasters, such as floods and hurricanes. President Bush used powers granted under the Act after Hurricane Katrina to procure railroad switching and signaling equipment to get trains back into operation and to restore other critical infrastructure.

Because the authorities under the Act have proven useful for meeting national security needs and responding to natural disasters, Congress has typically reauthorized the Act for five or more years at a time. If the Act comes up for renewal in an election year, however, Congress usually passes a short-term extension of one month to a year. In one instance, Congress permitted the authorities granted under the Act to lapse, although there was no intervening need for emergency use. The Act is next up for reauthorization when it expires at the end of 2014.

Although the Financial Services Committee has sole jurisdiction over the Act, given its potential to affect financial markets, the Committee has recognized that national defense and emergency preparedness are beyond its expertise. As a result, the Committee has avoided specific directives or earmarks governing the use of authorities granted under the Act, instead leaving those decisions to the Armed Services and Homeland Security Committees.

Congress last reauthorized the Act in 2009. An executive order implementing the changes made during the Act's reauthorization was not issued until last year. That order primarily restated existing regulations and added capacity to protect critical infrastructure. The principal change was the creation of a Defense Production Act Committee. The Committee's purpose is to ensure that senior Administration officials in departments designated by the President as potential users of authorities under the Act are aware of the authorities and how to use them properly.

### **Controversy Regarding the Defense Production Act**

Historically, the Executive Branch's exercise of the authorities granted under the Defense Production Act has not been controversial. The authorities granted under Title I have been exercised only in the context of national disasters or wartime. The authorities granted under Title III have been used to encourage manufacturers to produce items which they otherwise would not produce. Programs under Title III are paid for through "no year" funding which usually amounts to only a few hundred million dollars at a time, spread among ten to 30 projects.

Recently, however, the Defense Department has claimed that it has the authority under Title III to provide seed money to fund the startup of biofuel production plants for

the Navy. The Defense Department's attempt to exercise its authority under Title III to fund these biofuel production plants has provoked criticism in both chambers of Congress. The Defense Department initially envisioned a program jointly funded by the Departments of Defense, Energy, and Agriculture as well as private sources that would pay for the startup of as many as five or six cellulosic ethanol plants. Congress, however, has not approved the funding for the Departments of Energy and Agriculture to pay for these startups. Nonetheless, the Defense Department has moved ahead with the project, and late last year announced that it intended to enter into as many as five contracts totaling \$30 million for the first phase of the project.

The National Defense Authorization Act enacted last year contains a provision that prohibits the Defense Department from using FY 2013 appropriations for Title III to pay for the biofuel project without Congressional approval. The Defense Department responded to the restriction by using unexpended "no year" FY 2012 Title III funding, even though critics of the biofuel program have pointed out that the program did not meet the requirement that Title III expenditures reduce "shortfalls of industrial resources, critical technology items, or essential materials needed for national defense purposes." Critics of the biofuel program have further charged that because overall funding for Title III is limited, the Defense Department's use of the funds for the biofuel project will hold up other critical projects or end them altogether. Although none of the contracts announced by the Defense Department has yet been signed, three are said to be near approval and the Defense Department has reportedly escrowed \$70 million in FY 2012 for the second phase of the project, which includes construction that would begin in late 2014.

**Suggestions for further reading:**

Daniel H. Else, "Defense Production Act: Purpose and Scope," CRS Report for Congress (May 14, 2009), available at <http://www.crs.gov/Products/rs/pdf/RS20587.pdf>.