

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.

(15) Person

The term “person” includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

(16) Services

The term “services” includes any effort that is needed for or incidental to—

(A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item;

(B) the construction of facilities;

(C) the movement of individuals and property by all modes of civil transportation; or

(D) other national defense programs and activities.

(17) Small business concern

The term “small business concern” means a business concern that meets the requirements of section 3(a) of the Small Business Act [15 U.S.C. 632(a)] and the regulations promulgated pursuant to that section, and includes such business concerns owned and controlled by socially and economically disadvantaged individuals or by women.

(Sept. 8, 1950, ch. 932, title VII, § 702, 64 Stat. 815; June 30, 1953, ch. 171, § 8, 67 Stat. 130; Pub. L. 91-379, title I, § 102, Aug. 15, 1970, 84 Stat. 796; Pub. L. 102-558, title I, § 132, Oct. 28, 1992, 106 Stat. 4210; Pub. L. 103-337, div. C, title XXXIV, § 3411(b), Oct. 5, 1994, 108 Stat. 3110; Pub. L. 108-195, § 5, Dec. 19, 2003, 117 Stat. 2893; Pub. L. 111-67, § 8, Sept. 30, 2009, 123 Stat. 2017.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in par. (14), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143. Title VI of the Act is classified generally to subchapter IV-B (§ 5195 et seq.) of chapter 68 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2009—Par. (1). Pub. L. 111-67, § 8(1), substituted “equipment identified by the President” for “military equipment identified by the Secretary of Defense”.

Pars. (2), (3). Pub. L. 111-67, § 8(2)-(4), added par. (3), redesignated former par. (3) as (2), and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: “The term ‘critical industry for national security’ means any industry (or industry sector) identified pursuant to section 2503(6) of title 10, United States Code, and such other industries or industry sectors as may be designated by the President as essential to provide industrial resources required for the execution of the national security strategy of the United States.”

Pars. (4), (5). Pub. L. 111-67, § 8(2), (5), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck

out former par. (4). Prior to amendment, text of par. (4) read as follows: “The term ‘critical technology’ includes any technology that is included in 1 or more of the plans submitted pursuant to section 6681 of title 42, United States Code, or section 2508 of title 10, United States Code (unless subsequently deleted), or such other emerging or dual use technology as may be designated by the President.”

Par. (6). Pub. L. 111-67, § 8(5), (6), redesignated par. (7) as (6), in heading, struck out “defense” after “Domestic”, and, in text, substituted “‘domestic industrial base’” for “‘domestic defense industrial base’” and struck out “‘graduated mobilization.’” after “‘peacetime.’” Former par. (6) redesignated (5).

Pars. (7) to (9). Pub. L. 111-67, § 8(2), (5), (7), redesignated pars. (8), (10), and (11) as (7) to (9), respectively, and struck out former par. (9). Prior to amendment, text of par. (9) read as follows: “The term ‘essential weapon system’ means a major weapon system and other items of military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States.” Former par. (7) redesignated (6).

Pars. (10), (11). Pub. L. 111-67, § 8(8), added pars. (10) and (11). Former pars. (10) and (11) redesignated (8) and (9), respectively.

Par. (12). Pub. L. 111-67, § 8(9), substituted “base” for “capacity”.

Par. (14). Pub. L. 111-67, § 8(10), substituted “military or critical infrastructure assistance to any foreign nation, homeland security” for “military assistance to any foreign nation”.

Par. (16). Pub. L. 111-67, § 8(11), added subpars. (C) and (D).

Par. (18). Pub. L. 111-67, § 8(2), struck out par. (18). Text read as follows: “The term ‘small business concern owned and controlled by socially and economically disadvantaged individuals’ has the same meaning as in section 8(d)(3)(C) of the Small Business Act.”

2003—Pars. (3) to (13). Pub. L. 108-195, § 5(1), (2), added par. (3) and redesignated former pars. (3) to (12) as (4) to (13), respectively. Former par. (13) redesignated (14).

Par. (14). Pub. L. 108-195, § 5(1), (3), redesignated par. (13) as (14) and inserted “and critical infrastructure protection and restoration” before period at end of last sentence. Former par. (14) redesignated (15).

Pars. (15) to (18). Pub. L. 108-195, § 5(1), redesignated pars. (14) to (17) as (15) to (18), respectively.

1994—Par. (13). Pub. L. 103-337 inserted at end “Such term includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act.”

1992—Pub. L. 102-558 amended section generally, substituting present provisions for provisions defining terms “person”, “materials”, “facilities”, “national defense”, “wages, salaries, and other compensation”, and “defense contractor”.

1970—Subsec. (d). Pub. L. 91-379, § 102(1), inserted reference to space in definition of national defense.

Subsec. (f). Pub. L. 91-379, § 102(2), added subsec. (f).

1953—Subsec. (d). Act June 30, 1953, amended subsec. (d) generally which, among other changes, inserted references to construction, military assistance to foreign nations and stockpiling, and struck out specific reference to “operations or activities in connection with the Mutual Defense Assistance Act of 1949, as amended”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

TERMINATION DATE

Termination of section, see section 2166(a) of this Appendix.

§ 2153. Civilian personnel

Any officer or agency head may—

(1) appoint civilian personnel without regard to section 5331(b) of title 5, United States Code, and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(2) fix the rate of basic pay for such personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates,

except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule, as the President deems appropriate to carry out this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix].

(Sept. 8, 1950, ch. 932, title VII, § 703, 64 Stat. 816; July 31, 1951, ch. 275, title I, § 109(a), (b), 65 Stat. 138; Pub. L. 102-558, title I, § 133, Oct. 28, 1992, 106 Stat. 4212.)

AMENDMENTS

1992—Pub. L. 102-558 amended section generally, substituting present provisions for provisions relating to delegation of Presidential authority, creation of new agencies, appointment and compensation of officers and personnel, and State representation in regional offices.

1951—Subsec. (a). Act July 31, 1951, § 109(a), provided that executive head of one agency under this act shall be paid at a rate comparable to that paid heads of executive departments.

Subsec. (b). Act July 31, 1951, § 109(b), to provide for State representation in regional offices.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

TERMINATION DATE

Termination of section, see section 2166(a) of this Appendix.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

COMPENSATION OF CERTAIN OFFICIALS IN DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Compensation for certain officials in Domestic and International Business Administration fixed at certain prescribed rates by Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, formerly set out as a note under section 1511 of Title 15, Commerce and Trade.

COMPENSATION OF DIRECTOR AND DEPUTY DIRECTOR, BUREAU OF DOMESTIC COMMERCE

Compensation for Director and Deputy Director, Bureau of Domestic Commerce, Department of Commerce, was fixed at certain prescribed rates by Ex. Ord. No. 11567, Nov. 16, 1970, 35 F.R. 17701, which was superseded by Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, formerly set out as a note under section 1511 of Title 15, Commerce and Trade.

EXECUTIVE ORDER No. 10193

Ex. Ord. No. 10193, Dec. 16, 1950, 15 F.R. 9031, which provided for conduct of mobilization effort of the Gov-

ernment, was revoked by Ex. Ord. No. 10480, Aug. 14, 1953, 18 F.R. 4939, formerly set out below.

EXECUTIVE ORDER No. 10200

Ex. Ord. No. 10200, Jan. 3, 1951, 16 F.R. 61, as amended by Ex. Ord. No. 10281, Aug. 28, 1951, 16 F.R. 8789; Ex. Ord. No. 10433, Feb. 4, 1953, 18 F.R. 761, which related to establishment of Defense Production Administration, was revoked by Ex. Ord. No. 10480, Aug. 18, 1953, 18 F.R. 4939, formerly set out below.

EXECUTIVE ORDER No. 10224

Ex. Ord. No. 10224, Mar. 15, 1951, 16 F.R. 2543, as amended by Ex. Ord. No. 10461, June 17, 1953, 18 F.R. 3513, which provided for establishment of the National Advisory Board on Mobilization Policy was revoked by section 7(1) of Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061, which was subsequently superseded by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, formerly set out as a note under section 2271 of this Appendix.

EXECUTIVE ORDER No. 10281

Ex. Ord. No. 10281, Aug. 28, 1951, 16 F.R. 8789, which related to defense materials procurement and supply, was revoked by Ex. Ord. No. 10480, Aug. 14, 1953, 18 F.R. 4939, formerly set out below.

EXECUTIVE ORDER No. 10308

Ex. Ord. No. 10308, Dec. 3, 1951, 16 F.R. 12303, creating the Committee on Government Contract Compliance, was revoked and the Committee abolished by Ex. Ord. No. 10479, Aug. 17, 1953, 18 F.R. 4899, which was subsequently revoked by Ex. Ord. No. 10925, Mar. 7, 1961, 26 F.R. 1977.

EXECUTIVE ORDER No. 10433

Ex. Ord. No. 10433, Feb. 4, 1953, 18 F.R. 761, which provided for merger of Defense Production Administration with the Office of Defense Mobilization, was revoked by Ex. Ord. No. 10480, Aug. 14, 1953, 18 F.R. 4939, formerly set out below.

EXECUTIVE ORDER No. 10461

Ex. Ord. No. 10461, June 17, 1953, 18 F.R. 3513 which related to transfer of functions effected by Reorganization Plan No. 3 of 1953, was superseded by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, formerly set out as a note under section 2271 of this Appendix.

EXECUTIVE ORDER No. 10480

Ex. Ord. No. 10480, Aug. 14, 1953, 18 F.R. 4939, as amended by Ex. Ord. No. 10489, Sept. 26, 1953, 18 F.R. 6201; Ex. Ord. No. 10537, June 22, 1954, 19 F.R. 3807; Ex. Ord. No. 10574, Nov. 8, 1954, 19 F.R. 7249; Ex. Ord. No. 10662, Mar. 14, 1956, 21 F.R. 1673; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 10819, May 11, 1959, 24 F.R. 3779; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 11062, Nov. 19, 1962, 27 F.R. 11447; Ex. Ord. No. 11956, Jan. 13, 1977, 42 F.R. 2947; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12381, § 4, Sept. 8, 1982, 47 F.R. 39795; Ex. Ord. No. 12521, June 24, 1985, 50 F.R. 26335; Ex. Ord. No. 12649, Aug. 11, 1988, 53 F.R. 30639; Ex. Ord. No. 12773, Sept. 26, 1991, 56 F.R. 49387, which provided for administration of defense mobilization program, was revoked by section 904(a)(3) of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29533, formerly set out below.

EXECUTIVE ORDER No. 10660

Ex. Ord. No. 10660, Feb. 15, 1956, 21 F.R. 1117, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which established a National Defense Executive Reserve, was superseded by Ex. Ord. No. 11179, Sept. 22, 1964, 29 F.R. 13239, formerly set out below.

EXECUTIVE ORDER No. 11179

Ex. Ord. No. 11179, Sept. 22, 1964, 29 F.R. 13239, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R.

43239, which established National Defense Executive Reserve, was revoked by section 904(a)(5) of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29533, formerly set out below.

EXECUTIVE ORDER NO. 12919

Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29525, as amended by Ex. Ord. No. 11858, §11, as added by Ex. Ord. No. 13456, §1, Jan. 23, 2008, 73 F.R. 4680; Ex. Ord. No. 13286, §24, Feb. 28, 2003, 68 F.R. 10624, which delegated authorities and addressed national defense industrial resource policies and programs under the Defense Production Act of 1950, was revoked by Ex. Ord. No. 13603, §803(a), Mar. 16, 2012, 77 F.R. 16660, set out below.

EX. ORD. NO. 13603. NATIONAL DEFENSE RESOURCES
PREPAREDNESS

Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16651, provided:

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, as-

sist 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[s] 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, [formerly set out above] and sections 401(3)–(4) of Executive Order 12656 of November 18, 1988, [42 U.S.C. 5195 note] 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, enforce-

able 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.

§ 2154. Regulations and orders

(a) In general

Subject to section 709 [section 2159 of this Appendix] and subsection (b), the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix].

(b) Procurement regulations

Any procurement regulation, procedure, or form issued pursuant to subsection (a) shall be issued pursuant to section 25 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1302, 1303], and shall conform to any governmentwide procurement policy or regulation issued pursuant to section 6 or 25 of that Act [see 41 U.S.C. 1121 et seq., 1302, 1303].

(Sept. 8, 1950, ch. 932, title VII, § 704, 64 Stat. 816; July 31, 1951, ch. 275, title I, § 109(c), 65 Stat. 139; Pub. L. 102–558, title I, § 134, Oct. 28, 1992, 106 Stat. 4212.)

REFERENCES IN TEXT

Sections 6 and 25 of the Office of Federal Procurement Policy Act, referred to in subsec. (b), were sections 6 and 25 of Pub. L. 93–400, which were classified to sections 405 and 421, respectively, of former Title 41, Public Contracts, and were repealed and largely restated in subchapter II (§ 1121 et seq.) of chapter 11 and as sections 1302 and 1303 of Title 41, Public Contracts, by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

AMENDMENTS

1992—Pub. L. 102–558 amended section generally, substituting present provisions for provisions authorizing promulgation of rules, regulations, and orders by the President in order to carry out sections 2061 to 2170 of this Appendix.

1951—Act July 31, 1951, limited authority to regulate natural gas where a State agency is handling the matter.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of this Appendix.

TERMINATION DATE

Termination of section, see section 2166(a) of this Appendix.

DELEGATION OF FUNCTIONS

Functions of President under act Sept. 8, 1950 [section 2061 et seq. of this Appendix], relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, eff. June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade.

§ 2155. Investigations; records; reports; subpoenas; right to counsel

(a) The President shall be entitled, while this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] is in effect and for a period of two