

**Statement of**  
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**Before the**  
**Committee on Banking, Housing, and Urban Affairs**  
**U.S. Senate**  
**July 16, 2013**

Chairman Johnson, Senator Crapo, Members of the Committee:

I appreciate the opportunity to testify before the Committee this morning on the important role the Defense Production Act (DPA) continues to play in supporting our national defense. I will focus my comments on the non-permanent DPA authorities in Titles I and VII that are relevant to the Department of Commerce and the activities of the Department under those authorities.

The Department of Commerce plays several roles in implementing DPA authorities related to the defense industrial base. First, under Title I, the Department administers the Defense Priorities and Allocations System. Second, under Title VII, the Department analyzes the health of U.S. defense industrial base sectors. Third, also under Title VII, the Department submits an annual report to Congress on offsets in defense trade. All three DPA authorities need to be reauthorized before September 30, 2014. I will briefly discuss each of these roles.

## **I. Defense Priorities and Allocations System**

Title I of the Defense Production Act authorizes the President to require acceptance and priority performance of contracts and 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.

These authorities to prioritize contracts and require allocations for industrial resources were most recently delegated to the Secretary of Commerce by Executive Order 13603 which was issued in March 2012. However, the Department has had similar authority since the DPA was first enacted in 1950.

Today, the Bureau of Industry and Security implements these authorities through the Defense Priorities and Allocations System regulation (15 CFR Part 700) (most commonly known as the “DPAS”). The DPAS establishes procedures for the placement, acceptance, and performance of priority rated contracts and orders and for the allocation of materials, services and facilities and is regularly used to support the acquisition of industrial resources needed to support U.S. national defense requirements, especially by the Department of Defense.

All companies in the United States must comply with the provisions of the DPAS regulation.

The key elements of the DPAS regulation are mandatory acceptance of rated orders, preferential scheduling, and extension of priority ratings throughout the supply chain. Under the DPAS, there are two levels of priority designated by the symbols “DO” and “DX.” All “DO” rated orders have equal priority with each other and take preference over unrated orders. All “DX”

rated orders have equal priority with each other and take preference over “DO” rated orders and unrated orders.

A “priority rating” on a contract or order notifies a supplier that the contract is supporting an approved national defense program and that the supplier must accept and give the order priority over unrated commercial orders (or lower rated orders in the event of competing “DX” and “DO” orders), as necessary, to meet the required delivery date. A contractor in receipt of a rated order, in turn, places “priority rated orders” with its subcontractors for parts and components. Our industrial base is well-versed in the DPAS based on more than 60 years of experience in receiving and placing priority rated contracts and orders to support Department of Defense requirements. The private sector also appreciates that the DPA includes a protection against claims in the event a contractor, subcontractor, or supplier is required to reschedule an unrated order after receipt of a rated order.

The Department of Commerce has delegated authority to the Departments of Defense (DOD), Energy (DOE), and Homeland Security (DHS), and the General Services Administration, to place priority ratings on contracts or orders for industrial resources to support programs determined by DOD, DOE, or DHS as “necessary or appropriate to promote the national defense.” The Department of Commerce may also authorize other government agencies, foreign governments, owners and operators of critical infrastructure, or companies to place priority ratings on contracts or orders on a case-by-case basis. Such requests must first be determined as “necessary or appropriate to promote the national defense” by DOD, DOE, or DHS.

Let me briefly highlight a few examples of the Department's work in administering the DPAS.

The Department of Defense remains the primary user of the DPAS. My Department has worked closely with DOD to support the U.S. Armed Forces through the DPAS to expedite the delivery of industrial resources needed to support critical operational requirements, including the Interceptor Body Armor, counter-improvised explosive devices, and the Mine Resistant Ambush Protected vehicle programs. In addition, Commerce, in coordination with the Department of Defense, has authorized foreign defense ministries to place priority ratings on contracts and orders with U.S. suppliers for equipment needed to support coalition operations in Iraq and Afghanistan. My Department is very proud of the role we have played through the DPAS to support our servicemen and servicewomen and to assist our coalition partners.

The Department has also worked closely with the Department of Homeland Security's Federal Emergency Management Agency through the DPAS to support emergency preparedness and critical infrastructure protection and restoration requirements. For example, the Department worked with DHS to authorize the U.S. Army Corps of Engineers to use the DPAS to support the repair and expansion of the Hurricane Protection System for the Louisiana Gulf Coast Region. The Corps of Engineers placed priority ratings on hundreds of contracts to expedite delivery of pumps, structural steel and concrete for levees and floodwalls, and other related flood control infrastructure to reduce the risk of floodwaters from future natural disasters. The Department has also worked with DHS to authorize other Federal agencies (including the Department of State, the Federal Bureau of Investigation, and Commerce's National Oceanic and Atmospheric Administration) to place priority ratings on orders to expedite the delivery of industrial resources

needed to enhance the protection of government facilities and to support systems designed to detect and track severe weather.

These examples, and the testimony from my DOD and DHS colleagues, demonstrate how the DPAS remains critically relevant to support our national defense, including military and homeland security requirements.

Since the 2009 reauthorization of the Defense Production Act, the Department has also collaborated with the five other federal departments that are delegated priorities and allocations authority with respect to other resources (Agriculture, Energy, Defense, Health and Human Services, and Transportation) and with DHS to develop and implement a consistent and unified Federal priorities and allocations system to the extent practicable. The new rules being developed by the other departments for the resources under their priorities and allocations jurisdiction are based primarily on DPAS guidance and procedures and 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. The Department of Commerce is also in the process of updating the DPAS regulation based on our collaboration with our interagency partners.

## **II. Defense Industrial Base Studies**

Under Section 705 of the DPA and Executive Order 13603, the Department also conducts surveys and assessments of defense-related industries and technologies. These assessments are usually requested by the Department of Defense. Using these industrial base studies, the

Departments of Commerce and Defense can, for example, monitor trends, benchmark industry performance, and raise awareness of diminishing manufacturing capabilities. The studies also provide detailed data that are unavailable from other sources.

Currently, the Department of Commerce has a number of studies underway, including an assessment of the U.S space industry supply chain. Commerce has partnered with NASA, the U.S. Air Force, and the National Reconnaissance Office to gain an understanding of the complicated network supporting the development, production and sustainment of products and services across the defense, intelligence community, civil and commercial space sectors. Additionally, Commerce is assessing the cartridge and propellant actuated device (CAD/PAD) industry, and the underwater acoustics and transducers industry. When completed, these assessments will provide the requesting agency or agencies with information needed to understand the health and viability of the studied sector.

### **III. Offsets in Defense Trade**

Pursuant to Section 723 of the DPA, the Department also reports to Congress annually on the impact of offsets in defense trade. Offsets in defense trade encompass a range of industrial compensation practices required by foreign governments as a condition of the purchase of defense articles and services from a non-domestic source. This mandatory compensation can be directly related to the purchased defense article or service or it can involve activities or goods unrelated to the defense sale.

The Department collects data annually from U.S. firms involved in defense exports with associated offset agreements in order to assess the impact of offsets in defense trade. In February 2013, the Department submitted its 17th report to Congress on offsets in defense trade, with data covering the 1993-2011 period. U.S. industry submitted 2012 offset data to the Department in June 2013 in accordance with the offset reporting regulation (15 CFR Part 701). The Department will analyze this data and present its findings to Congress later this year.

#### **IV. Defense Production Act Committee**

The Department of Commerce is also a member of the interagency Defense Production Act Committee (DPAC) which was established pursuant to the 2009 DPA reauthorization to advise the President on the effective use of the act's authority. The President has designated Homeland Security and Defense as rotating chairs of the DPAC. Commerce plays an active role in the work of study groups established by the DPAC, including the group that is assessing the use of DPA authorities to support disaster preparedness and response and critical infrastructure protection and restoration activities.

#### **Summary**

In sum, the DPA provides authority for a variety of programs at the Department of Commerce of substantial importance to our nation's security. The DPAS continues to facilitate the timely delivery of industrial resources to support the Department of Defense, coalition partners, and increasingly, to meet Homeland Security requirements. The DPA also facilitates valuable assessments of the health of key sectors of the defense industrial base and the impact of offsets in defense trade.

The Department of Commerce looks forward to working with the Committee to reauthorize the non-permanent provisions of the Defense Production Act.

Thank you.