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Executive Order 12919: Emergency Powers of the President

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Summary

Executive Order 12919 concerns industrial preparedness during times of war and national emergency. This brief report uses simple language to describe what Executive Order 12919 does. It is intended to clarify common misunderstandings about the Order's purpose and scope.

The scope of Executive Order 12919 is sometimes misunderstood. For example, congressional offices sometimes receive correspondence expressing concerns that Executive Order 12919 reflects an attempt by the President to assume powers not conferred on him under the Constitution and to consolidate all the powers of the federal government under the Executive Branch and also that the Order somehow allows the President to declare martial law. Those concerns are unwarranted. As its caption (*i.e.*, National Defense Industrial Resources Preparedness) itself implies, Executive Order 12919 relates exclusively to the preparedness of U.S. defense-related industries in times of war or other national emergencies. It has nothing whatever to do with declarations of martial law. It has no effect at all on the continued powers of Congress and the federal courts during periods of war or other national emergencies.

This Executive Order implements certain policies and programs established by Act of Congress (*i.e.*, the Defense Production Act of 1950). It updates delegations of authority and other procedures dating back as far as the administration of President Franklin Roosevelt (see section 904 of the order itself). The order is divided into nine parts each of which is further divided into various sections. These parts and sections are described below.

Executive Order 12919 is a public document and can be examined or copied at any federal depository library. It appears in volume 59 of the *Federal Register* beginning at page 29525.

Part I – Purpose, Policy and Implementation

As its caption suggests, this part of the order contains statements of the order's general purpose, the overall policy reflected by the order, and how the order implements such purpose and policy.

Section 101 is captioned “Purpose” and consists of one sentence which simply declares that the object of the order is to delegate certain authorities that are conferred on the President under the Defense Production Act of 1950 and also to describe how certain policies and programs under that Act are to be carried out.

Section 102 is captioned “Policy” and states the general policy objective of assuring that the United States has an industrial and technology base that will meet national defense needs.

Section 103 is captioned “General Functions” and specifies the general duties of various departments and agencies of the federal government that are responsible for acquisition of defense-related goods in the event of war or national emergency.

Section 104 is captioned “Implementation” and describes in general terms the duties of the National Security Counsel, the Director of the Federal Emergency Management Agency (FEMA), and other officers of the federal government in assuring national industrial preparedness.

Part II – Priorities and Allocations

Section 201 of the Order is captioned “Priorities and Allocations” and delegates certain authorities that are conferred under the Defense Production Act of 1950 on the President to various cabinet officers. This section also describes how the various agencies of the United States are to coordinate their activities with respect to the acquisition of materiel and goods needed during a time of war or other national emergency.

Section 202 is captioned “Determinations” and limits when the authority delegated under section 201 is allowed to be exercised. The Secretary of Defense, the Secretary of Energy, and the Director of FEMA must make certain written determinations before the specified authority can be used.

Section 203 is captioned “Maximizing Domestic Energy Supplies” and specifies duties of the Secretary of Commerce and the Secretary of Energy and also delegates certain presidential authority under the Defense Production Act of 1950 to them in relation to energy supplies.

Section 204 is captioned “Chemical and Biological Warfare” and delegates certain presidential authority under the Defense Production Act of 1950 to the Secretary of Defense but also specifically prohibits the Secretary from further delegating that authority.

Part III – Expansion of Productive Capacity and Supply

Section 301 is captioned “Financing Institution Guarantees” and sets out rules that heads of government departments and agencies must follow when they want to assure that

industrial or technological resources critical to national defense can be acquired by issuing certain guarantees to public and private financing institutions.

Section 302 is captioned “Loans” and sets out rules the Secretary of the Treasury and the head of the Export-Import Bank must follow when applying for loans to help assure that industrial or technological resources critical to national defense can be acquired.

Section 303 is captioned “Purchase Commitments” and sets out rules an agency head must follow when purchasing or making commitments to purchase an industrial resource or critical technology. This section also allows certain excess purchases to be transferred to the National Defense Stockpile.

Section 304 is captioned “Subsidy Payments” and allows the Secretary of the Treasury to make certain subsidy payments in order to ensure the supply of raw materials from certain sources.

Section 305 is captioned “Determinations and Findings” and allows agency heads to make certain required determinations, judgments, statements, certifications, and findings in carrying out duties under sections 301 through 303 of this Order.

Section 306 is captioned “Strategic and Critical Materials” and allows the Secretary of the Interior to encourage exploration, development, and mining of certain materials. It also allows agency heads to make provision for the development of substitutes for certain materials.

Section 307 is captioned “Government-owned Equipment” and allows agency heads to install additional equipment and so on in government-owned facilities and also in privately owned industrial facilities.

Section 308 is captioned “Identification of Shortfalls” and restricts guarantees, loans, and certain other actions under Part III of the Order except during national emergencies or periods specially designated by the President.

Section 309 is captioned “Defense Production Act Fund Manager” and designates the Secretary of Defense to serve as the Defense Production Act Fund Manager under the terms of the National Defense Production Act of 1950.

Section 310 is captioned “Critical Items List” and requires the Secretary of Defense to maintain a list critical items and technologies needed for national defense and also requires agency heads to take needed actions to assure that items on that list are available from reliable sources.

Section 311 is captioned “Strengthening Domestic Capability” and allows agency heads to encourage development, maintenance, modernization, or expansion of productive capacities in order to assure availability of items on the list noted above.

Section 312 is captioned “Modernization of Equipment” and allows agency heads to purchase or lease certain advanced manufacturing equipment and related services.

Part IV – Impact of Offsets

Section 401 is captioned “Offsets” and sets out rules the Secretary of Commerce must follow in carrying out certain responsibilities delegated by the President with respect to offsets.

Part V – Voluntary Agreements and Advisory Committees

Section 501 is captioned “Appointments” and delegates certain presidential authority under the terms of the Defense Production Act of 1950 to certain department and agency heads.

Section 502 is captioned “Advisory Committees” and requires consultation with the Administrator of General Services in establishing advisory committees.

Part VI – Employment of Personnel

Section 601 is captioned “National Defense Executive Reserve” and sets out rules for establishing a National Defense Executive Reserve composed of persons of recognized expertise from the private sector and from non-full-time government employees.

Section 602 is captioned “Consultants” and allows agency heads to employ consultants but prohibits them from further delegating this authority.

Part VII – Labor Supply

Section 701 is captioned “Secretary of Labor” and requires the Secretary of Labor to maintain data concerning personnel needs in connection with national defense industries.

Part VIII – Defense Industrial Base Information and Reports

Section 801 is captioned “Foreign Acquisition of Companies” and requires specified officers of the federal government to keep track of foreign efforts to acquire US companies involved in defense-related research or production.

Section 802 is captioned “Defense Industrial Base Information System” and requires the Secretary of Defense to maintain an information system relating to the US defense-related industrial base.

Part IX – General Provisions

Section 901 is captioned “Definitions” and supplies definitions for certain terms used in the Order.

Section 902 is captioned “General” and sets out certain administrative rules.

Section 903 is captioned “Authority” and states what effect the Order has on certain other orders and administrative declarations already in existence.

Section 904 is captioned “Effect on Other Orders” and sets out a list of previous executive orders that are superseded or revoked by this Order.

Section 905 is captioned “Judicial Review” and says that this Order does not create any right enforceable against the United States in a court of law.

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