

The Power of The Defense Production Act to Compel

Written by Nick Sanders
Monday, 09 March 2015 00:00

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

(a) The President shall be entitled, while this Act ... is in effect and for a period of two years thereafter, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the regulations or orders issued thereunder. The authority of the President under this section includes the authority to obtain information in order to perform industry studies assessing the capabilities of the United States industrial base to support the national defense.

Presidential Executive Order (March 16, 2012)

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

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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.

“This use of DPA sets a dangerous precedent. This appears to be a fishing expedition rather than a real risk assessment process, with no clear objective as to how the data will be used and sets a dangerous precedent of government demanding private information without clear and compelling reason.

“By demanding corporate information under threat of fines and imprisonment, the Government is changing the fundamental nature of the relationship between it and the private sector from one of a public-private partnership to potential adversaries.

“This use of DPA could have a chilling effect on needed information sharing between the public and private partnerships and thus compromise our longer term security.

“There is no assurance available from government that the information garnered through this process will be adequately secured. We have been unable to determine who will have access to the data, how the data will be used and under what authority, how long it will be retained, and whether it will be adequately protected.

We are mindful that much of the data in the current requests is valuable and proprietary.”

-- The Internet Security Alliance (July 27, 2011) (Link [here](#))

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